

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934  
For the quarterly period ended September 30, 2013

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934  
For the transition period from \_\_\_\_\_ to \_\_\_\_\_  
Commission File No. 0-15279

**GENERAL COMMUNICATION, INC.**

(Exact name of registrant as specified in its charter)

**State of Alaska**

(State or other jurisdiction of  
incorporation or organization)

**92-0072737**

(I.R.S Employer  
Identification No.)

**2550 Denali Street**

**Suite 1000**

**Anchorage, Alaska**

(Address of principal  
executive offices)

**99503**

(Zip Code)

Registrant's telephone number, including area code: **(907) 868-5600**

Not Applicable

Former name, former address and former fiscal year, if changed since last report

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files.)  Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer", "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act:

Large accelerated filer

Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company)

Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes  No

The number of shares outstanding of the registrant's classes of common stock as of October 31, 2013, was:

37,295,000 shares of Class A common stock; and  
3,166,000 shares of Class B common stock.

GENERAL COMMUNICATION, INC.  
FORM 10-Q  
FOR THE QUARTER ENDED SEPTEMBER 30, 2013

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### Cautionary Statement Regarding Forward-Looking Statements

You should carefully review the information contained in this Quarterly Report, but should particularly consider any risk factors that we set forth in this Quarterly Report and in other reports or documents that we file from time to time with the Securities and Exchange Commission ("SEC"). In this Quarterly Report, in addition to historical information, we state our future strategies, plans, objectives or goals and our beliefs of future events and of our future operating results, financial position and cash flows. In some cases, you can identify these so-called "forward-looking statements" by words such as "may," "will," "should," "expects," "plans," "anticipates," "believes," "estimates," "predicts," "potential," "project," or "continue" or the negative of these words and other comparable words. All forward-looking statements involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance, achievements, plans and objectives to differ materially from any future results, performance, achievements, plans and objectives expressed or implied by these forward-looking statements. In evaluating these statements, you should specifically consider various factors, including those identified under "Risk Factors" in Item 1A of our December 31, 2012 annual report on Form 10-K. Those factors may cause our actual results to differ materially from any of our forward-looking statements. For these forward looking statements, we claim the protection of the safe harbor for forward-looking statements provided by the Private Securities Litigation Reform Act of 1995.

You should not place undue reliance on any such forward-looking statements. Further, any forward-looking statement, and the related risks, uncertainties and other factors speak only as of the date on which they were originally made and we expressly disclaim any obligation or undertaking to update or revise any forward-looking statement to reflect any change in our expectations with regard to these statements or any other change in events, conditions or circumstances on which any such statement is based. New factors emerge from time to time, and it is not possible for us to predict what factors will arise or when. In addition, we cannot assess the impact of each factor on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements.

PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

**GENERAL COMMUNICATION, INC. AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**  
(Unaudited)

(Amounts in thousands)

ASSETS	September 30, 2013	December 31, 2012
<b>Current assets:</b>		
Cash and cash equivalents	\$ 57,933	24,491
Receivables	202,287	150,436
Less allowance for doubtful receivables	2,842	3,215
Net receivables	199,445	147,221
Deferred income taxes	42,800	12,897
Prepaid expenses	12,413	8,441
Inventories	8,880	12,098
Other current assets	299	1,678
Total current assets	321,770	206,826
Property and equipment in service, net of depreciation	919,260	838,247
Construction in progress	125,473	94,418
Net property and equipment	1,044,733	932,665
Cable certificates	191,635	191,635
Goodwill	215,384	77,294
Wireless licenses	91,567	25,967
Restricted cash	11,912	30,933
Other intangible assets, net of amortization	15,915	16,560
Deferred loan and senior notes costs, net of amortization of \$6,020 and \$4,554 at September 30, 2013 and December 31, 2012, respectively	12,654	11,189
Other assets	87,877	13,453
Total other assets	626,944	367,031
Total assets	\$ 1,993,447	1,506,522

See accompanying condensed notes to interim consolidated financial statements.

(Continued)

**GENERAL COMMUNICATION, INC. AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**  
(Unaudited)  
(Continued)

(Amounts in thousands)

LIABILITIES AND STOCKHOLDERS' EQUITY	September 30, 2013	December 31, 2012
<b>Current liabilities:</b>		
Current maturities of obligations under long-term debt and capital leases	\$ 8,088	7,923
Accounts payable	56,127	52,384
Deferred revenue	26,230	25,218
Accrued payroll and payroll related obligations	26,781	19,440
Accrued interest	21,758	6,786
Accrued liabilities	15,880	15,242
Subscriber deposits	1,344	1,366
Total current liabilities	156,208	128,359
<b>Long-term debt, net</b>		
Long-term debt, net	1,012,867	875,123
Obligations under capital leases, excluding current maturities	67,918	72,725
Obligation under capital lease due to related party, excluding current maturity	1,885	1,892
Deferred income taxes	161,722	123,661
Long-term deferred revenue	91,074	89,815
Other liabilities	32,118	25,511
Total liabilities	1,523,792	1,317,086
<b>Commitments and contingencies</b>		
<b>Stockholders' equity:</b>		
<b>Common stock (no par):</b>		
Class A. Authorized 100,000 shares; issued 37,443 and 38,534 shares at September 30, 2013 and December 31, 2012, respectively; outstanding 37,353 and 38,357 shares at September 30, 2013 and December 31, 2012, respectively	8,525	22,703
Class B. Authorized 10,000 shares; issued and outstanding 3,166 and 3,169 shares at September 30, 2013 and December 31, 2012, respectively; convertible on a share-per-share basis into Class A common stock	2,674	2,676
Less cost of 90 and 177 Class A common shares held in treasury at September 30, 2013 and December 31, 2012, respectively	(866)	(1,617)
Paid-in capital	29,591	25,832
Retained earnings	123,913	107,584
Total General Communication, Inc. stockholders' equity	163,837	157,178
Non-controlling interests	305,818	32,258
Total stockholders' equity	469,655	189,436
Total liabilities and stockholders' equity	\$ 1,993,447	1,506,522

See accompanying condensed notes to interim consolidated financial statements.

**GENERAL COMMUNICATION, INC. AND SUBSIDIARIES**  
**CONSOLIDATED INCOME STATEMENTS**  
(Unaudited)

(Amounts in thousands, except per share amounts)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2013	2012	2013	2012
Revenues	\$ 220,427	178,494	596,304	526,505
Cost of goods sold (exclusive of depreciation and amortization shown separately below)	74,730	62,754	205,039	177,687
Selling, general and administrative expenses	69,547	58,228	197,965	181,258
Depreciation and amortization expense	37,466	32,120	105,861	97,850
Operating income	38,684	25,392	87,439	69,710
<b>Other expense:</b>				
Interest expense (including amortization of deferred loan fees)	(17,522)	(16,765)	(51,850)	(50,868)
Loss on extinguishment of debt	—	—	(103)	—
Other	(180)	166	(127)	125
Other expense	(17,702)	(16,599)	(52,080)	(50,743)
Income before income tax expense	20,982	8,793	35,359	18,967
Income tax expense	(970)	(5,270)	(8,157)	(10,387)
Net income	20,012	3,523	27,202	8,580
Net income (loss) attributable to non-controlling interests	11,107	(177)	10,873	(531)
Net income attributable to General Communication, Inc.	\$ 8,905	3,700	16,329	9,111
Basic net income attributable to General Communication, Inc. common stockholders per Class A common share	\$ 0.22	0.09	0.40	0.22
Basic net income attributable to General Communication, Inc. common stockholders per Class B common share	\$ 0.22	0.09	0.40	0.22
Diluted net income attributable to General Communication, Inc. common stockholders per Class A common share	\$ 0.22	0.09	0.39	0.22
Diluted net income attributable to General Communication, Inc. common stockholders per Class B common share	\$ 0.22	0.09	0.39	0.22

See accompanying condensed notes to interim consolidated financial statements.

**GENERAL COMMUNICATION, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
**NINE MONTHS ENDED SEPTEMBER 30, 2013 AND 2012**

(Unaudited)

(Amounts in thousands)	Class A Common Stock	Class B Common Stock	Class A Shares Held in Treasury	Paid-in Capital	Retained Earnings	Non- controlling Interests	Total Stockholders' Equity
Balances at January 1, 2012	\$ 26,179	2,679	(2,225)	32,795	97,911	16,308	173,647
Net income	—	—	—	—	9,111	(531)	8,580
Common stock repurchases and retirements	(13,189)	—	—	—	—	—	(13,189)
Shares issued under stock option plan	1,929	—	—	—	—	—	1,929
Issuance of restricted stock awards	10,621	—	—	(10,621)	—	—	—
Share-based compensation expense	—	—	—	3,989	—	—	3,989
Issuance of treasury shares related to deferred compensation payment	—	—	511	69	—	—	580
Other	3	(3)	7	—	—	—	7
Balances at September 30, 2012	<u>\$ 25,543</u>	<u>2,676</u>	<u>(1,707)</u>	<u>26,232</u>	<u>107,022</u>	<u>15,777</u>	<u>175,543</u>
Balances at January 1, 2013	\$ 22,703	2,676	(1,617)	25,832	107,584	32,258	189,436
Net income	—	—	—	—	16,329	10,873	27,202
Common stock repurchases and retirements	(15,518)	—	130	—	—	—	(15,388)
Shares issued under stock option plan	333	—	—	—	—	—	333
Issuance of restricted stock awards	1,005	—	—	(1,005)	—	—	—
Share-based compensation expense	—	—	—	4,764	—	—	4,764
Issuance of treasury shares related to deferred compensation payment	—	—	621	—	—	—	621
Investment by non-controlling interest	—	—	—	—	—	272,198	272,198
Distribution to non-controlling interest	—	—	—	—	—	(9,511)	(9,511)
Other	2	(2)	—	—	—	—	—
Balances at September 30, 2013	<u>\$ 8,525</u>	<u>2,674</u>	<u>(866)</u>	<u>29,591</u>	<u>123,913</u>	<u>305,818</u>	<u>469,655</u>

See accompanying condensed notes to interim consolidated financial statements.

**GENERAL COMMUNICATION, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**NINE MONTHS ENDED SEPTEMBER 30, 2013 AND 2012**  
(Unaudited)

(Amounts in thousands)

	2013	2012
Cash flows from operating activities:		
Net income	\$ 27,202	8,580
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization expense	105,861	97,850
Deferred income tax expense	8,157	10,387
Share-based compensation expense	4,729	3,990
Loss on extinguishment of debt	103	—
Other noncash income and expense items	4,672	5,986
Change in operating assets and liabilities	(9,888)	(21,627)
Net cash provided by operating activities	140,836	105,166
Cash flows from investing activities:		
Purchases of property and equipment	(135,515)	(104,351)
Purchase of business	(100,000)	—
Restricted cash	19,021	5,465
Grant proceeds	2,405	5,492
Purchases of other assets and intangible assets	(3,149)	(3,741)
Other	412	—
Net cash used in investing activities	(216,826)	(97,135)
Cash flows from financing activities:		
Borrowing on Senior Credit Facility	227,000	60,000
Repayment of debt and capital lease obligations	(95,920)	(62,659)
Purchase of treasury stock to be retired	(15,388)	(13,189)
Distribution to non-controlling interest	(5,390)	—
Payment of debt issuance costs	(2,990)	—
Borrowing of other long-term debt	1,787	3,980
Proceeds from stock option exercises	333	1,929
Other	—	76
Net cash provided by (used in) financing activities	109,432	(9,863)
Net increase (decrease) in cash and cash equivalents	33,442	(1,832)
Cash and cash equivalents at beginning of period	24,491	29,387
Cash and cash equivalents at end of period	\$ 57,933	27,555

See accompanying condensed notes to interim consolidated financial statements.



**GENERAL COMMUNICATION, INC. AND SUBSIDIARIES**  
**Condensed Notes to Interim Consolidated Financial Statements**  
**(Unaudited)**

The accompanying unaudited interim consolidated financial statements include the accounts of General Communication, Inc. ("GCI") and its direct and indirect subsidiaries and have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") for interim financial information. Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements. They should be read in conjunction with our audited consolidated financial statements for the year ended December 31, 2012, filed with the SEC on March 8, 2013, as part of our annual report on Form 10-K. In the opinion of management, all adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation have been included. The results of operations for interim periods are not necessarily indicative of the results that may be expected for an entire year or any other period.

(1) Business and Summary of Significant Accounting Principles

In the following discussion, GCI and its direct and indirect subsidiaries are referred to as "we," "us" and "our."

(a) Business

GCI, an Alaska corporation, was incorporated in 1979. We offer the following services primarily in Alaska:

- Postpaid and prepaid wireless telephone services and sale of wireless telephone handsets and accessories,
- Video services,
- Internet access services,
- Wholesale wireless, including postpaid and prepaid wireless plans for resale by other carriers and roaming for certain wireless carriers,
- Origination and termination of wireline traffic for certain common carriers,
- Local and long-distance voice services,
- Data network services,
- Broadband services, including our SchoolAccess<sup>®</sup> offering to rural school districts, our ConnectMD<sup>®</sup> offering to rural hospitals and health clinics, and managed video conferencing,
- Managed services to certain commercial customers,
- Sales and service of dedicated communications systems and related equipment, and
- Lease, service arrangements and maintenance of capacity on our fiber optic cable systems used in the transmission of services within Alaska and between Alaska and the remaining United States and foreign countries.

(b) Principles of Consolidation

Our consolidated financial statements include the consolidated accounts of GCI and its wholly owned subsidiaries, The Alaska Wireless Network, LLC ("AWN") of which we own a two-third interest and four variable interest entities ("VIEs") for which we are the primary beneficiary after providing certain loans and guarantees. These VIEs are Terra GCI Investment Fund, LLC ("TIF"), Terra GCI 2 Investment Fund, LLC ("TIF 2"), Terra GCI 2-USB Investment Fund, LLC ("TIF 2-USB") and Terra GCI 3 Investment Fund, LLC ("TIF 3"). TIF became a VIE on August 30, 2011. TIF 2 and TIF 2-USB became VIEs on October 3, 2012. TIF 3 became a VIE on December 11, 2012. We also include in our consolidated financial statements non-controlling interests in consolidated subsidiaries for which our ownership is less than 100 percent. All significant intercompany transactions between non-regulated affiliates of our company are eliminated. Intercompany transactions generated between regulated and non-regulated affiliates of our company are not eliminated in consolidation.

(c) Non-controlling Interests

Non-controlling interests represent the equity ownership interests in consolidated subsidiaries not owned by us. Non-controlling interests are adjusted for contributions, distributions, and loss attributable to the non-controlling interest partners of the consolidated entities. Income and loss is allocated to the non-controlling interests based on the respective governing documents.

**GENERAL COMMUNICATION, INC. AND SUBSIDIARIES**  
**Condensed Notes to Interim Consolidated Financial Statements**  
**(Unaudited)**

(d) Acquisition

On July 22, 2013, we closed the transactions under the Asset Purchase and Contribution Agreement ("Wireless Agreement") entered into on June 4, 2012 by and among Alaska Communications Systems Group, Inc. ("ACS"), GCI, ACS Wireless, Inc., a wholly owned subsidiary of ACS, GCI Wireless Holdings, LLC, a wholly owned subsidiary of GCI, and AWN, pursuant to which the parties agreed to contribute the respective wireless network assets of GCI, ACS and their affiliates to AWN. This transaction provides a statewide network with the spectrum mix, scale, advanced technology and cost structure necessary to compete with Verizon Wireless and AT&T Mobility in Alaska. AWN will provide wholesale services to GCI and ACS. GCI and ACS will use the AWN network in order to continue to sell services to their respective retail customers. GCI and ACS will continue to compete against each other and other wireless providers in the retail market.

Under the terms of the Wireless Agreement, we contributed our wireless network assets and certain rights to use capacity to AWN. Additionally, ACS contributed its wireless network assets and certain rights to use capacity to AWN. As consideration for the contributed business assets and liabilities, ACS received \$100.0 million in cash, a one-third ownership percentage in AWN and entitlements to receive preferential cash distributions totaling \$190.0 million over the first four years of AWN's operations ("Preference Period") contingent on the future cash flows of AWN. The preferential cash distribution is cumulative and may be paid beyond the Preference Period until the entire \$190.0 million is paid. ACS's preferential cash distributions are expected to be higher than that which they would receive from their one-third interest. We received a two-third ownership percentage in AWN, as well as entitlements to receive all remaining cash distributions after ACS's preferential cash distributions during the Preference Period. The distributions to each member are subject to adjustment based on the number of ACS and GCI wireless subscribers, with the aggregate adjustment capped at \$21.8 million for each member over the Preference Period. Following the Preference Period, we and ACS will receive distributions proportional to our ownership interests.

We accounted for the acquisition of AWN using the acquisition method of accounting for business combinations with GCI treated as the acquiring entity. Accordingly, the assets and liabilities contributed from ACS were recorded at estimated fair values as of the date of acquisition. We used a combination of the discounted cash flows and market method to value the wireless licenses. We used the cost approach to value the acquired fixed assets and right-to-use assets. We used a discounted cash flow method to determine the fair value of the non-controlling interest. The assets and liabilities contributed to AWN by GCI were measured at their carrying amount immediately prior to the contribution as GCI is maintaining control over the assets and liabilities.

**GENERAL COMMUNICATION, INC. AND SUBSIDIARIES**  
**Condensed Notes to Interim Consolidated Financial Statements**  
**(Unaudited)**

We have not completed our analysis of the valuation, therefore, the amounts recorded and classifications used for the assets acquired and liabilities assumed are provisional and subject to change. We will finalize the amounts recognized as we obtain the information necessary to complete our analysis. The following table summarizes the preliminary purchase price and the estimated fair value of ACS's assets acquired and liabilities assumed, effective July 23, 2013 (amounts in thousands):

Purchase price:	
Cash consideration paid	\$ 100,000
Fair value of the one-third ownership interest of AWN	272,198
Total purchase price	<u>\$ 372,198</u>
Purchase price allocation:	
Acquired assets	
Current assets	\$ 17,132
Property and equipment, including construction in progress	82,865
Goodwill	138,090
Wireless licenses	65,600
Other assets	74,523
Fair value of liabilities assumed	<u>(6,012)</u>
Total fair value of assets acquired and liabilities assumed	<u>\$ 372,198</u>

Goodwill in the amount of \$138.1 million was recorded as a result of the acquisition and assigned to our Wireless segment. The recorded amount is provisional and subject to change as we obtain the necessary information to complete our analysis. Goodwill is calculated as the excess of the consideration transferred over the net assets recognized and represents the estimated future economic benefits arising from other assets acquired that could not be individually identified and separately recognized. The goodwill is primarily the result of synergies expected from the combination and to obtain access to wireless spectrum. Other assets is primarily comprised of capacity rights to use.

The acquisition resulted in additional revenues of \$27.7 million for the three and nine months ended September 30, 2013. It is impracticable for us to determine the amount of earnings of the acquired business included in our Consolidated Income Statement for the three and nine months ended September 30, 2013, due to the significant transfer of personnel, fixed assets and other expenses into and between newly created and historical cost centers that has occurred subsequent to the acquisition.

Unaudited pro forma financial information does not purport to be indicative of the actual results that would have occurred if the acquisition had actually been completed on January 1, 2012, nor is it necessarily indicative of the future revenue of the combined company. The following unaudited pro forma financial information is presented as if the acquisition occurred on January 1, 2012 (amounts in thousands):

	(unaudited)		(unaudited)	
	Three Months Ended September 30,		Nine Months Ended September 30,	
	2013	2012	2013	2012
Pro forma consolidated revenue	\$ 229,706	213,118	681,926	630,376

**GENERAL COMMUNICATION, INC. AND SUBSIDIARIES**  
**Condensed Notes to Interim Consolidated Financial Statements**  
**(Unaudited)**

Supplemental pro forma earnings have not been provided as it would be impracticable due to the nature of GCI's and ACS's respective wireless operations prior to the business combination. GCI and ACS were unable to disaggregate the components of expenses related to their wireless operations contributed to AWN and thus the amounts would require estimates so significant as to render the disclosure irrelevant.

Transaction costs of \$4.6 million were incurred during 2012 and 2013 of which \$1.6 million were recorded in selling, general and administrative expense the nine months ended September 30, 2013.

(e) Recently Issued Accounting Pronouncements

There were various updates recently issued which represented technical corrections to the accounting literature or application to specific industries. None of the updates are expected to have a material impact on our consolidated financial position, results of operations or cash flows.

(f) Recently Adopted Accounting Pronouncements

Accounting Standards Update ("ASU") 2012-2, "Intangibles – Goodwill and Other (Topic 350): Testing Indefinite-Lived Intangible Assets for Impairment" allows an entity to assess qualitative factors (such as changes in management, key personnel, strategy, key technology or customers) to determine if it is more likely than not that an indefinite-lived intangible asset is impaired and thus whether it is necessary to perform the quantitative impairment test in accordance with GAAP. The adoption of ASU 2012-2 on January 1, 2013 did not have a material impact on our income statements, financial position or cash flows.

ASU 2012-4, "Technical Corrections and Improvements" includes amendments that cover a wide range of topics in the Accounting Standards Codification ("ASC"). These amendments include technical corrections and improvements to the ASC and conforming amendments related to fair value measurements. The adoption of ASU 2012-4 on January 1, 2013 did not have a material impact on our income statements, financial position or cash flows.

(g) Regulatory Accounting

We account for our regulated operations in accordance with the accounting principles for regulated enterprises. These accounting principles recognize the economic effects of rate regulation by recording cost and a return on investment as such amounts are recovered through rates authorized by regulatory authorities. Accordingly, plant and equipment is depreciated over lives approved by regulators and certain costs and obligations are deferred based upon approvals received from regulators to permit recovery of such amounts in future years. Our cost studies and depreciation rates for our regulated operations are subject to periodic audits that could result in a change to recorded revenues.

(h) Earnings per Common Share

We compute net income attributable to GCI per share of Class A and Class B common stock using the "two class" method. Therefore, basic net income per share is computed by dividing net income applicable to common stockholders by the weighted average number of common shares outstanding during the period. Diluted net income per share is computed by dividing net income by the weighted average number of common and dilutive common equivalent shares outstanding during the period. The computation of the dilutive net income per share of Class A common stock assumes the conversion of Class B common stock to Class A common stock, while the dilutive net income per share of Class B common stock does not assume the conversion of those shares. Additionally, in applying the "two-class" method, undistributed earnings are allocated to both common shares and participating securities. Our restricted stock grants are entitled to dividends and meet the criteria of a participating security.

Undistributed earnings for each year are allocated based on the contractual participation rights of Class A and Class B common shares as if the earnings for the year had been distributed. In accordance with our Articles of Incorporation, if and when dividends are declared on our common stock in accordance with Alaska corporate law, equivalent dividends shall be paid with respect to the shares of Class A and Class B common stock. Both classes of common stock have identical dividend rights and would therefore share equally in our net assets in the event of liquidation. As such, we have allocated undistributed earnings on a proportionate basis.

**GENERAL COMMUNICATION, INC. AND SUBSIDIARIES**  
**Condensed Notes to Interim Consolidated Financial Statements**  
**(Unaudited)**

Earnings per common share ("EPS") and common shares used to calculate basic and diluted EPS consist of the following (amounts in thousands, except per share amounts):

	Three Months Ended September 30,			
	2013		2012	
	Class A	Class B	Class A	Class B
<b>Basic net income per share:</b>				
Numerator:				
Allocation of undistributed earnings	\$ 8,211	694	\$ 3,419	281
Denominator:				
Weighted average common shares outstanding	37,434	3,166	38,600	3,170
Basic net income attributable to GCI common stockholders per common share	<u>\$ 0.22</u>	<u>0.22</u>	<u>\$ 0.09</u>	<u>0.09</u>
<b>Diluted net income per share:</b>				
Numerator:				
Allocation of undistributed earnings for basic computation	\$ 8,211	694	\$ 3,419	281
Reallocation of undistributed earnings as a result of conversion of Class B to Class A shares	694	—	281	—
Reallocation of undistributed earnings as a result of conversion of dilutive securities	—	6	—	(2)
Net income adjusted for allocation of undistributed earnings and effect of share based compensation that may be settled in cash or shares	\$ 8,905	700	\$ 3,700	279
Denominator:				
Number of shares used in basic computation	37,434	3,166	38,600	3,170
Conversion of Class B to Class A common shares outstanding	3,166	—	3,170	—
Unexercised stock options	176	—	230	—
Number of shares used in per share computation	<u>40,776</u>	<u>3,166</u>	<u>42,000</u>	<u>3,170</u>
Diluted net income attributable to GCI common stockholders per common share	<u>\$ 0.22</u>	<u>0.22</u>	<u>\$ 0.09</u>	<u>0.09</u>

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	Nine Months Ended September 30,			
	2013		2012	
	Class A	Class B	Class A	Class B
<b>Basic net income per share:</b>				
Numerator:				
Allocation of undistributed earnings	\$ 15,070	1,259	\$ 8,420	691
Denominator:				
Weighted average common shares outstanding	37,887	3,167	38,614	3,170
Basic net income attributable to GCI common stockholders per common share	<u>\$ 0.40</u>	<u>0.40</u>	<u>\$ 0.22</u>	<u>0.22</u>
<b>Diluted net income per share:</b>				
Numerator:				
Allocation of undistributed earnings for basic computation	\$ 15,070	1,259	\$ 8,420	691
Reallocation of undistributed earnings as a result of conversion of Class B to Class A shares	1,259	—	691	—
Reallocation of undistributed earnings as a result of conversion of dilutive securities	—	(10)	—	(6)
Effect of share based compensation that may be settled in cash or shares	(26)	—	—	—
Net income adjusted for allocation of undistributed earnings and effect of share based compensation that may be settled in cash or shares	\$ 16,303	1,249	\$ 9,111	685
Denominator:				
Number of shares used in basic computation	37,887	3,167	38,614	3,170
Conversion of Class B to Class A common shares outstanding	3,167	—	3,170	—
Unexercised stock options	175	—	235	—
Effect of share based compensation that may be settled in cash or shares	90	—	158	—
Number of shares used in per share computation	41,319	3,167	42,177	3,170
Diluted net income attributable to GCI common stockholders per common share	<u>\$ 0.39</u>	<u>0.39</u>	<u>\$ 0.22</u>	<u>0.22</u>

Weighted average shares associated with outstanding share awards for the three and nine months ended September 30, 2013 and 2012, which have been excluded from the computations of diluted EPS, because the effect of including these share awards would have been anti-dilutive, consist of the following (shares, in thousands):

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	Three Months Ended September 30,		Nine Months Ended September 30,	
	2013	2012	2013	2012
Shares associated with anti-dilutive unexercised stock options	82	82	86	88
Share based compensation that may be settled in cash or shares, the effect of which is anti-dilutive	90	158	—	—
<b>Total excluded from diluted EPS calculation</b>	<b>172</b>	<b>240</b>	<b>86</b>	<b>88</b>

Shares associated with contingent awards for the three and nine months ended September 30, 2012, which have been excluded from the computations of diluted EPS because the contingencies of these awards had not been met at September 30, 2012, consist of the following (shares, in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2013	2012	2013	2012
Shares associated with contingent awards	—	58	—	58

(i) Common Stock

Following are the changes in issued common stock for the nine months ended September 30, 2013 and 2012 (shares, in thousands):

	Class A	Class B
	Balances at December 31, 2011	39,296
Class B shares converted to Class A	2	(2)
Shares issued upon stock option exercises	284	—
Share awards issued	516	—
Shares retired	(980)	—
Shares acquired to settle minimum statutory tax withholding requirements	(292)	—
Other	(8)	—
<b>Balances at September 30, 2012</b>	<b>38,818</b>	<b>3,169</b>
Balances at December 31, 2012	38,534	3,169
Class B shares converted to Class A	3	(3)
Shares issued upon stock option exercises	54	—
Share awards issued	664	—
Shares retired	(1,795)	—
Shares acquired to settle minimum statutory tax withholding requirements	(17)	—
<b>Balances at September 30, 2013</b>	<b>37,443</b>	<b>3,166</b>

GCI's Board of Directors has authorized a common stock buyback program for the repurchase of GCI's Class A and Class B common stock in order to reduce the outstanding shares of Class A and Class B common stock. We are authorized to increase our repurchase limit \$5.0 million per quarter indefinitely and to use stock option exercise proceeds to repurchase additional shares. If stock repurchases are less than

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the total approved quarterly amount the difference may be carried forward and used to repurchase additional shares in future quarters. The cost of the repurchased common stock reduced Common Stock on our Consolidated Balance Sheets.

During the three months ended September 30, 2013 and 2012, we repurchased 242,000 and 111,000 shares, respectively, of our Class A common stock under the stock buyback program at a cost of \$2.2 million and \$1.0 million, respectively. During the nine months ended September 30, 2013 and 2012, we repurchased 1.7 million and 1.0 million shares, respectively, of our Class A common stock under the stock buyback program at a cost of \$15.1 million and \$10.0 million, respectively. Under this program we are currently authorized to make up to \$101.2 million of repurchases as of September 30, 2013. The repurchased stock was constructively retired as of September 30, 2013.

We expect to continue the repurchases for an indefinite period dependent on leverage, liquidity, company performance, and market conditions and subject to continued oversight by GCI's Board of Directors. The open market repurchases have complied and will continue to comply with the restrictions of Rule 10b-18 under the Securities Exchange Act of 1934, as amended.

**(j) Revenue Recognition**

We recorded high cost support revenue under the Universal Service Fund ("USF") program of \$14.9 million and \$10.7 million for the three months ended September 30, 2013 and 2012, respectively, and \$36.0 million and \$31.8 million for the nine months ended September 30, 2013 and 2012, respectively. At September 30, 2013, we have \$46.8 million in high cost support accounts receivable.

As an Eligible Telecommunications Carrier ("ETC"), we receive support from the Universal Service Fund ("USF") to support the provision of wireline local access and wireless service in high cost areas. On November 29, 2011, the FCC published a final rule to reform the methodology for distributing USF high cost support for voice and broadband services, as well as to the access charge regime for terminating traffic between carriers ("High Cost Order"). The High Cost Order defined the division of support to Alaska between Urban and Remote areas. Our Remote high cost support revenue recognition policy is described in Note 1(t) of our December 31, 2012 annual report on Form 10-K.

The High Cost Order mandated that as of January 1, 2012, Urban high cost support payments were frozen at the monthly average of the subject CETC's 2011 annual support. A 20% annual phase down commenced July 1, 2012, decreasing support 20% each annual period until no support is paid starting July 1, 2016. If a successor funding mechanism is not operational on July 1, 2014, the phase down will stop at 60% and the subject CETCs will continue to receive annual support payments at the 60% level until a successor funding mechanism is operational. Urban high cost support is not dependent upon line counts.

We apply the proportional performance revenue recognition method to account for the impact of the declining payments while our level of service provided and associated costs remain constant. Included in the original calculation were the scheduled Urban high cost support payments from October 2011 through June 2014 net of our Urban accounts receivable balance at September 30, 2011. An equal amount of this result was recognized as Urban support revenue each period through the six months ended June 30, 2013. When the original calculation was performed we could not predict the likelihood of a successor funding mechanism being operational on July 1, 2014; therefore we did not include projected support payments beyond June 2014. At September 30, 2013, we believe a successor funding mechanism may be operational in January 2015 therefore we have updated our calculation to include the scheduled Urban high cost support payments from July 2013 through January 2017 net of the remaining Urban accounts receivable balance at September 30, 2011.

For both Remote and Urban high cost support revenue our ability to collect our accrued USF support is contingent upon continuation of the USF program and upon our eligibility to participate in that program, which is subject to change by future regulatory, legislative or judicial actions. We adjust revenue and the account receivable in the period the FCC makes a program change or we assess the likelihood that such a change has increased or decreased revenue. We do not recognize revenue until our ETC status has been approved by the RCA.



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(k) Use of Estimates

The preparation of financial statements in conformity with GAAP requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Significant items subject to estimates and assumptions include the allowance for doubtful receivables, unbilled revenues, accrual of the USF high cost remote area program support, share-based compensation, inventory at lower of cost or market, reserve for future customer credits, liability for incurred but not reported medical insurance claims, valuation allowances for deferred income tax assets, depreciable and amortizable lives of assets, the carrying value of long-lived assets including goodwill, cable certificates and wireless licenses, our effective tax rate, purchase price allocations, deferred lease expense, asset retirement obligations, the accrual of cost of goods sold (exclusive of depreciation and amortization expense) ("Cost of Goods Sold"), depreciation and the accrual of contingencies and litigation. Actual results could differ from those estimates.

(l) Classification of Taxes Collected from Customers

We report sales, use, excise, and value added taxes assessed by a governmental authority that is directly imposed on a revenue-producing transaction between us and a customer on a net basis in our Consolidated Income Statements. The following are certain surcharges reported on a gross basis in our Consolidated Income Statements (amounts in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2013	2012	2013	2012
Surcharges reported gross	\$ 1,116	1,214	3,549	4,094

(2) Consolidated Statements of Cash Flows Supplemental Disclosures

Changes in operating assets and liabilities consist of (amounts in thousands):

Nine Months Ended September 30,	2013	2012
Increase in accounts receivable, net	\$ (41,962)	(52,020)
Increase in prepaid expenses	(1,066)	(312)
(Increase) decrease in inventories	3,218	(4,426)
Decrease in other current assets	1,379	1,167
Decrease in other assets	(197)	3,337
Increase (decrease) in accounts payable	6,114	(3,768)
Increase in deferred revenues	1,012	1,900
Increase (decrease) in accrued payroll and payroll related obligations	7,234	(1,320)
Increase in accrued liabilities	1,259	14,616
Increase in accrued interest	14,972	14,678
Decrease in subscriber deposits	(22)	(125)
Increase (decrease) in long-term deferred revenue	(739)	5,739
Decrease in components of other long-term liabilities	(1,090)	(1,093)
Total change in operating assets and liabilities	<u>\$ (9,888)</u>	<u>(21,627)</u>

The following items are for the nine months ended September 30, 2013 and 2012 (amounts in thousands):

Net cash paid or received:	2013	2012
Interest paid, net of amounts capitalized	\$ 40,417	37,874

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The following items are non-cash investing and financing activities for the nine months ended September 30, 2013 and 2012 (amounts in thousands):

	2013	2012
Non-cash additions for purchases of property and equipment	\$ 17,013	20,854
Asset retirement obligation additions to property and equipment	\$ 1,066	644
Deferred compensation distribution denominated in shares	\$ 621	511
Net assets acquired with equity in AWN (see Note 1(d))	\$ 272,198	—

(3) Intangible Assets and Goodwill

In connection with our 2013 organizational realignment, it was necessary to reclassify goodwill to conform to the current period's segment presentation. See Note 7, "Segments" of this Form 10-Q for further discussion of our change in segments. Goodwill will be re-allocated to the segments using a relative fair value approach which is not yet final. Goodwill allocated to our Wireless and Wireline segments as of September 30, 2013 is preliminarily estimated at \$153.8 million and \$61.6 million, respectively. Goodwill allocated to our Wireless and Wireline segments as of September 30, 2012 is preliminarily estimated at \$15.7 million and \$59.2 million, respectively. Wireless licenses and goodwill allocated to the Wireless segment increased substantially in the current quarter as a result of the consummation of the AWN transaction. See Note 1(d), "Acquisition" of this Form 10-Q for further discussion of the AWN transaction. Goodwill assigned to our Wireline segment increased in the fourth quarter of 2012 due to contingent payments to former shareholders of United Utilities, Inc., our wholly owned subsidiary. The amount recorded at December 31, 2012 was the final contingent payment.

Amortization expense for amortizable intangible assets was as follows (amounts in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2013	2012	2013	2012
Amortization expense	\$ 1,451	1,275	4,338	3,900

Amortization expense for amortizable intangible assets for each of the five succeeding fiscal years is estimated to be (amounts in thousands):

Years Ending December 31,	
2013	\$ 5,309
2014	5,015
2015	3,489
2016	1,874
2017	937

(4) Long-Term Debt

On April 30, 2013, GCI Holdings, Inc. ("Holdings"), a wholly owned subsidiary of GCI, entered into a Third Amended and Restated Credit and Guarantee Agreement with Credit Agricole Corporate and Investment Bank, as administrative agent ("Amended Senior Credit Facility"). The Amended Senior Credit Facility provides up to \$240.0 million in delayed draw term loans and a \$150.0 million revolving credit facility. The Amended Senior Credit Facility replaced the Senior Credit Facility described in Note 6(c) of our December 31, 2012 annual report on Form 10-K. At closing Holdings borrowed \$100.0 million of the delayed draw term loan and used the

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proceeds to pay down all of the outstanding debt under the previous Senior Credit Facility, pay loan fees and for general corporate purposes. The Amended Senior Credit Facility will mature on April 30, 2018.

The interest rate on our Amended Senior Credit Facility is London Interbank Offered Rate ("LIBOR") plus the following Applicable Margin set forth opposite each applicable Total Leverage Ratio below.

Total Leverage Ratio (as defined)	Applicable Margin
>=5.5	3.00%
>=5.0 but <5.5	2.75%
>=4.5 but <5.0	2.50%
>=4.0 but <4.5	2.25%
<4.0	2.00%

Borrowings under the Amended Senior Credit Facility are subject to certain financial covenants and restrictions on indebtedness. Our Amended Senior Credit Facility Total Leverage Ratio (as defined) may not exceed 6.5 to one through June 30, 2014 and shall not exceed 5.95 to one any time thereafter; the Senior Leverage Ratio (as defined) may not exceed 3.00 to one; and our Interest Coverage Ratio (as defined) must not be less than 2.50 to one at any time.

The terms of the Amended Senior Credit Facility include customary representations and warranties, customary affirmative and negative covenants and customary events of default. At any time after the occurrence of an event of default under the Amended Senior Credit Facility, the lenders may, among other options, declare any amounts outstanding under the Amended Senior Credit Facility immediately due and payable and terminate any commitment to make further loans under the Amended Senior Credit Facility. The obligations under the Amended Senior Credit Facility are secured by a security interest on substantially all of the assets of Holdings and the subsidiary guarantors, as defined in the Amended Senior Credit Facility, and on the stock of Holdings.

The amendment to our Senior Credit Facility in April 2013 was a partial substantial modification of our existing Senior Credit Facility resulting in a \$0.1 million write-off of previously deferred loan fees on our Consolidated Income Statement for the nine months ended September 30, 2013. Net deferred loan fees of \$0.7 million associated with the portion of our previous Senior Credit Facility that was determined not to have been substantially modified are being amortized over the life of the Amended Senior Credit Facility.

In connection with the Amended Senior Credit Facility, we paid loan fees and other expenses of \$0.4 million that were expensed immediately on our Consolidated Income Statement for the nine months ended September 30, 2013 and \$3.0 million that were deferred and are being amortized over the life of the Amended Senior Credit Facility.

In July 2013, we borrowed \$100.0 million under the delayed draw term loan resulting in a total of \$200.0 million borrowed under the delayed draw term loan as of September 30, 2013. Additionally, we have borrowed \$27.0 million under the revolving portion and have \$0.5 million of letters of credit outstanding under the Amended Senior Credit Facility at September 30, 2013, which leaves \$162.5 million available for borrowing as of September 30, 2013.

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(5) Financial Instruments

Fair Value of Financial Instruments

The fair value of a financial instrument is the amount at which the instrument could be exchanged in a current transaction between willing parties. At September 30, 2013 and December 31, 2012, the fair values of cash and cash equivalents, net receivables, inventories, accounts payable, accrued payroll and payroll related obligations, accrued interest, accrued liabilities, and subscriber deposits approximate their carrying value due to the short-term nature of these financial instruments. The carrying amounts and approximate fair values of our financial instruments at September 30, 2013 and December 31, 2012 follow (amounts in thousands):

	September 30, 2013		December 31, 2012	
	Carrying Amount	Fair Value	Carrying Amount	Fair Value
Current and long-term debt and capital lease obligations	\$ 1,090,758	1,090,281	957,663	979,594
Other liabilities	\$ 31,608	30,246	25,511	24,766

The following methods and assumptions were used to estimate fair values:

Current and long-term debt and capital lease obligations: The fair values of the \$325.0 million in aggregate principal amount of 6.75% Senior Notes due 2021 issued by GCI, Inc., our wholly owned subsidiary, the \$425.0 million in aggregate principal amount of 8.63% Senior Notes due 2019 issued by GCI, Inc., Rural Utilities Service debt, CoBank mortgage note payable, and capital leases are based upon quoted market prices for the same or similar issues or on the current rates offered to us for the same remaining maturities. The fair value of our Amended Senior Credit Facility is estimated to approximate the carrying value because this instrument is subject to variable interest rates.

Other Liabilities: Lease escalation liabilities are valued at the discounted amount of future cash flows using quoted market prices on current rates offered to us. Deferred compensation liabilities are carried at fair value, which is the amount payable as of the balance sheet date. Asset retirement obligations are recorded at their fair value and, over time, the liability is accreted to its present value each period.

Fair Value Measurements

Assets measured at fair value on a recurring basis as of September 30, 2013 and December 31, 2012 are as follows (amounts in thousands):

	Fair Value Measurement at Reporting Date Using		
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
<b>September 30, 2013 Assets</b>			
Deferred compensation plan assets (mutual funds)	\$ 2,059	—	—
Total assets at fair value	\$ 2,059	—	—
<b>December 31, 2012 Assets</b>			
Deferred compensation plan assets (mutual funds)	\$ 1,758	—	—
Total assets at fair value	\$ 1,758	—	—

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The valuation of our mutual funds is determined using quoted market prices in active markets utilizing market observable inputs.

(6) Stockholders'  
Equity

Shared-Based Compensation

Our Amended and Restated 1986 Stock Option Plan ("Stock Option Plan"), provides for the grant of options and restricted stock awards (collectively "award") for a maximum of 15.7 million shares of GCI Class A common stock, subject to adjustment upon the occurrence of stock dividends, stock splits, mergers, consolidations or certain other changes in corporate structure or capitalization. If an award expires or terminates, the shares subject to the award will be available for further grants of awards under the Stock Option Plan. The Compensation Committee of GCI's Board of Directors administers the Stock Option Plan. Substantially all restricted stock awards granted vest over periods of up to three years. There have been no options granted since 2010. The requisite service period of our awards is generally the same as the vesting period. Options granted pursuant to the Stock Option Plan are only exercisable if at the time of exercise the option holder is our employee, non-employee director, or a consultant or advisor working on our behalf. New shares are issued when restricted stock awards are granted or stock option agreements are exercised. We have 3.0 million shares available for grant under the Stock Option Plan at September 30, 2013.

The total fair value of options vesting during the nine months ended September 30, 2013 and 2012, was \$78,000 and \$0.6 million, respectively. The total intrinsic values, determined as of the date of exercise, of options exercised in the nine months ended September 30, 2013 and 2012, were \$0.1 million and \$1.1 million, respectively. We received \$0.3 million and \$1.9 million in cash from stock option exercises in the nine months ended September 30, 2013 and 2012, respectively.

A summary of nonvested restricted stock award activity under the Stock Option Plan for the nine months ended September 30, 2013, follows (share amounts in thousands):

	Shares	Weighted Average Grant Date Fair Value
Nonvested at January 1, 2013	1,127	\$ 9.59
Granted	664	\$ 8.27
Vested	(119)	\$ 7.87
Forfeited	(15)	\$ 8.50
Nonvested at September 30, 2013	1,657	

The following is a summary of our share-based compensation expense for the nine months ended September 30, 2013 and 2012 (amounts in thousands):

	2013	2012
Share-based compensation expense	\$ 4,764	3,989
Adjustment to fair value of liability classified awards	(35)	1
Total share-based compensation expense	\$ 4,729	3,990

Share-based compensation expense is classified as Selling, General and Administrative Expense in our Consolidated Income Statements. Unrecognized share-based compensation expense was \$7.4 million relating to 1.7 million unvested restricted stock awards and \$43,000 relating to 19,000 unvested stock options as of September 30, 2013. We expect to recognize share-based compensation expense over a weighted average period of 1 year for stock options and 2 years for restricted stock awards.

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(7) Segments

Effective January 1, 2013, we refocused our business and now have two reportable segments, Wireless and Wireline. The Wireless segment's revenue is derived from wholesale wireless services. The Wireline segment's revenue includes all of our other revenue, specifically a full range of retail wireless, data, video and voice services to residential, local, national and global businesses, governmental entities and public and private educational institutions; wholesale data and voice services to other common carrier customers; Internet, data network and managed services to rural schools and health organizations and regulated voice services to residential and commercial customers in 61 rural communities primarily in Southwest Alaska. This change reflects our plan to strategically focus on our wireless network and is how our chief operating decision maker now measures performance and makes resource allocation decisions. Prior to 2013 we had operated our business under five reportable segments – Consumer, Network Access, Commercial, Managed Broadband and Regulated Operations. The historical segment data has been reclassified to conform to the revised reportable segments.

Wireless plan fee and excess usage revenues from external customers are allocated between our Wireless and Wireline segments. The Wireless segment records the Cost of Goods Sold related to wireless equipment sales up to an agreed-upon amount after which it is recorded in the Wireline segment. Selling, general and administrative expenses are charged to the Wireless segment based upon a shared services agreement. The remaining selling, general and administrative expenses are charged to the Wireline segment.

We evaluate performance and allocate resources based on earnings before depreciation and amortization expense, net interest expense, income taxes, share-based compensation expense, accretion expense, income or loss attributable to non-controlling interest, non-cash right-to-use expense and non-cash contribution adjustment ("Adjusted EBITDA"). Management believes that this measure is useful to investors and other users of our financial information in evaluating operating profitability as an analytical indicator of income generated to service debt and fund capital expenditures. In addition, multiples of current or projected earnings before depreciation and amortization, net interest expense, and income taxes ("EBITDA") are used to estimate current or prospective enterprise value. The accounting policies of the reportable segments are the same as those described in Note 1, "Business and Summary of Significant Accounting Policies" of this Form 10-Q. We have no intersegment sales.

We earn all revenues through sales of services and products within the United States. All of our long-lived assets are located within the United States of America, except approximately 82% of our undersea fiber optic cable systems which transit international waters and all of our satellite transponders.

Net assets in the Wireless segment increased substantially in the current quarter as a result of the consummation of the AWN transaction. See Note 1(d), "Acquisition" of this Form 10-Q for further discussion of the AWN transaction.

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Summarized financial information for our reportable segments for the three and nine months ended September 30, 2013 and 2012 follows (amounts in thousands):

	Three Months Ended			Nine Months Ended		
	Wireless	Wireline	Total Reportable Segments	Wireless	Wireline	Total Reportable Segments
September 30, 2013						
Revenues	\$ 68,097	152,330	220,427	137,493	458,811	596,304
Adjusted EBITDA	\$ 37,260	41,457	78,717	66,722	132,783	199,505
September 30, 2012						
Revenues	\$ 32,262	146,232	178,494	92,066	434,439	526,505
Adjusted EBITDA	\$ 13,194	46,255	59,449	38,857	134,842	173,699

A reconciliation of reportable segment Adjusted EBITDA to consolidated income before income taxes follows (amounts in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2013	2012	2013	2012
Reportable segment Adjusted EBITDA	\$ 78,717	59,449	199,505	173,699
Less depreciation and amortization expense	(37,466)	(32,120)	(105,861)	(97,850)
Less share-based compensation expense	(1,823)	(1,395)	(4,729)	(3,990)
Less non-cash contribution expense	—	—	—	(960)
Less accretion expense	(178)	(201)	(460)	(541)
Less facility rights to use	(563)	—	(563)	—
Other	(3)	(341)	(453)	(648)
Consolidated operating income	38,684	25,392	87,439	69,710
Less other expense	(17,702)	(16,599)	(52,080)	(50,743)
Consolidated income before income tax expense	\$ 20,982	8,793	35,359	18,967

(8) Related Party Transaction

Upon closing of the AWN acquisition on July 22, 2013, ACS became a related party for financial statement reporting purposes. We have paid ACS \$9.5 million and received \$4.8 million in payments from ACS since the acquisition date. At September 30, 2013 we have \$7.2 million in receivables from ACS and \$5.4 million in payables to ACS. We also have long term capacity exchanges with ACS for which no money is exchanged.

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(9) Variable Interest

Entities

We have entered into several arrangements under the New Markets Tax Credit ("NMTC") program with US Bancorp to help fund a \$59.3 million project to extend terrestrial broadband service for the first time to rural Northwestern Alaska communities via a high capacity hybrid fiber optic and microwave network. When completed, the project, called TERRA-Northwest ("TERRA-NW"), will connect to the TERRA-Southwest network and provide a high capacity backbone connection from the served communities to the Internet. The NMTC program was provided for in the Community Renewal Tax Relief Act of 2000 ("Act") to induce capital investment in qualified lower income communities. The Act permits taxpayers to claim credits against their federal income taxes for up to 39% of qualified investments in the equity of community development entities ("CDEs"). CDEs are privately managed investment institutions that are certified to make qualified low-income community investments. On August 30, 2011, we entered into the first arrangement ("NMTC #1"). On October 3, 2012, we entered into the second arrangement ("NMTC #2"). On December 11, 2012, we entered into the third arrangement ("NMTC #3").

US Bancorp is the sole investor in TIF, TIF 2, TIF 2-USB and TIF 3, and as such, is entitled to substantially all of the benefits derived from the NMTCs. All of the loan proceeds to Unicom, Inc. ("Unicom"), our wholly owned subsidiary, net of syndication and arrangement fees, are restricted for use on TERRA-NW. Restricted cash of \$11.9 million and \$30.9 million was held by Unicom at September 30, 2013 and December 31, 2012, respectively, and is included in our Consolidated Balance Sheets. We began construction on TERRA-NW in 2012 and expect to complete all current phases of the project in 2014. We began offering service on Phase 1 of this new facility on January 3, 2013.

These transactions include put/call provisions whereby we may be obligated or entitled to repurchase US Bancorp's interests in TIF, TIF 2, TIF 2-USB and/or TIF 3. We believe that US Bancorp will exercise the put options in August 2018, October 2019 and December 2019, at the end of the compliance periods for NMTC #1, NMTC #2 and NMTC #3, respectively. The NMTCs are subject to 100% recapture for a period of seven years as provided in the Internal Revenue Code. We are required to be in compliance with various regulations and contractual provisions that apply to the NMTC arrangements. Non-compliance with applicable requirements could result in projected tax benefits not being realized by US Bancorp. We have agreed to indemnify US Bancorp for any loss or recapture of NMTCs until such time as our obligation to deliver tax benefits is relieved. There have been no credit recaptures as of September 30, 2013. The value attributed to the puts/calls is nominal.

We have determined that TIF, TIF 2, TIF 2-USB and TIF 3 are VIEs. The ongoing activities of the VIEs – collecting and remitting interest and fees and NMTC compliance – were all considered in the initial design and are not expected to significantly affect economic performance throughout the life of the VIEs. Management considered the contractual arrangements that obligate us to deliver tax benefits and provide various other guarantees to US Bancorp, US Bancorp's lack of a material interest in the underlying economics of the project, and the fact that we are obligated to absorb losses of the VIEs. We concluded that we are the primary beneficiary of each and consolidated the VIEs in accordance with the accounting standard for consolidation.

US Bancorp's contributions, net of syndication fees and other direct costs incurred in structuring the NMTC arrangements, are included in Non-controlling Interests on the Consolidated Balance Sheets. Incremental costs to maintain the structure during the compliance period are recognized as incurred to selling, general and administrative expense.



**GENERAL COMMUNICATION, INC. AND SUBSIDIARIES**  
**Condensed Notes to Interim Consolidated Financial Statements**  
**(Unaudited)**

The following table summarizes the impact of the VIEs consolidated as of September 30, 2013 and December 31, 2012 (amounts in thousands):

Assets		September 30, 2013		Equity	
Carrying Value	Classification	Carrying Value	Classification		
\$ 3,327	Restricted cash <sup>1</sup>	\$ 31,906	Non-controlling interests		
29,628	Net property and equipment	1,049	Retained earnings attributable to General Communication, Inc. common stockholders		
<u>\$ 32,955</u>		<u>\$ 32,955</u>			

Assets		December 31, 2012		Equity	
Carrying Value	Classification	Carrying Value	Classification		
\$ 22,348	Restricted cash <sup>1</sup>	\$ 32,258	Non-controlling interests		
10,607	Net property and equipment	697	Retained earnings attributable to General Communication, Inc. common stockholders		
<u>\$ 32,955</u>		<u>\$ 32,955</u>			

<sup>1</sup> An additional \$8.6 million in restricted cash is held at Unicom for use only on TERRA-NW.

(10) Commitments and Contingencies

Operating Leases as Lessee

We acquired a large number of operating leases as part of the AWN transaction resulting in a material increase to our existing operating leases. A summary of incremental future minimum lease payments resulting from that transaction follows (amounts in thousands):

Years ending December 31:	
2013	\$ 498
2014	3,520
2015	2,910
2016	1,970
2017	1,686
2018 and thereafter	1,664
Total minimum lease payments	<u>\$ 12,248</u>

TERRA-NW

As a requirement of NMTC #1, NMTC #2 and NMTC #3, we have guaranteed completion of TERRA-NW by December 31, 2014. We plan to fund an additional \$20.7 million for TERRA-NW. We began construction in 2012 and expect to complete all current phases of the project in 2014. We began offering service on Phase 1 of this new facility on January 3, 2013.

**GENERAL COMMUNICATION, INC. AND SUBSIDIARIES**  
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AWN Member Distribution Adjustment

As part of the AWN transaction, distributions to each member are subject to adjustment based on the number of ACS and GCI wireless subscribers, with the aggregate adjustment capped at \$21.8 million for each member over the Preference Period. See Note 1(d), "Acquisition" of this Form 10-Q for further discussion of the AWN transaction.

(11) Subsequent Events

Intelsat Lease Amendment

On October 17, 2013, through our subsidiary GCI Communication Corp. we amended our transponder capacity lease agreement with Intelsat, Ltd. ("Intelsat") to lease transponder capacity on Intelsat's Galaxy 18 spacecraft. As a result, we expect to increase our existing capital lease asset and liability by \$9.4 million during the three months ending December 31, 2013.

Denali Media Holdings

On November 1, 2013, we closed the transaction under the asset purchase agreements, pursuant to which Denali Media Holdings, Corp., a wholly owned subsidiary of GCI, through its wholly owned subsidiaries, Denali Media Anchorage, Corp. and Denali Media Southeast, Corp., agreed to purchase three Alaska broadcast stations: CBS affiliate KTVA-TV of Anchorage and NBC affiliates KATH-TV in Juneau and KSCT-TV of Sitka, for a total of \$7.6 million ("Media Agreements"). We are evaluating the accounting treatment for this transaction.

**Part I**

**Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**

In the following discussion, General Communication, Inc. ("GCI") and its direct and indirect subsidiaries are referred to as "we," "us" and "our."

Management's Discussion and Analysis of Financial Condition and Results of Operations discusses our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP"). The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. On an on-going basis, we evaluate our estimates and judgments, including those related to the allowance for doubtful receivables, unbilled revenues, accrual of the Universal Service Fund ("USF") high cost remote area program support, share-based compensation, inventory at lower of cost or market, reserve for future customer credits, liability for incurred but not reported medical insurance claims, valuation allowances for deferred income tax assets, depreciable and amortizable lives of assets, the carrying value of long-lived assets including goodwill, cable certificates and wireless licenses, our effective tax rate, purchase price allocations, deferred lease expense, asset retirement obligations, the accrual of cost of goods sold (exclusive of depreciation and amortization expense) ("Cost of Goods Sold"), depreciation, and accrual of contingencies and litigation. We base our estimates and judgments on historical experience and on various other factors that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. See also our "Cautionary Statement Regarding Forward-Looking Statements."

**General Overview**

Through our focus on long-term results, acquisitions, and strategic capital investments, we strive to consistently grow our revenues and expand our margins. We have historically met our cash needs for operations, regular capital expenditures and maintenance capital expenditures through our cash flows from operating activities. Historically, cash requirements for significant acquisitions and major capital expenditures have been provided largely through our financing activities.

As it has for the last several years the national economy continues to see persistent unemployment and slow economic growth and is not expected to return quickly to a period of strong growth. Automatic spending cuts enacted by Congress known as "sequestration" went into effect beginning March 1, 2013 and more are scheduled to take effect in January 2014. In addition, the federal government faces many challenges that may impact federal spending. We are not able to predict the effect that sequestration or any form of additional federal spending cuts or tax reform will have on the national or Alaska economy or on us. Should the national economy deteriorate further, it could lead to reductions in consumer spending which could impact our revenue growth.

We believe the Alaska economy continues to perform well compared to most other states at the current time. The State of Alaska has large cash reserves that should enable it to maintain its budget for at least the short-term. This cash reserve is important for Alaska's economy as the State is one of the largest employers and second largest source of gross state product. The majority of our revenue is driven by the strength of the Alaska economy which appears to have weathered the economic pressures relatively well to date. Nonetheless we cannot predict the impact the nation's or the state's future economic situation may have on us in the future.

Effective January 1, 2013, we refocused our business and now have two reportable segments, Wireless and Wireline. The Wireless segment's revenue is derived from wholesale wireless services. The Wireline segment's revenue includes all of our other revenue. This change reflects our plan to strategically focus on our wireless network and is how our chief operating decision maker now measures performance and makes resource allocation decisions. Prior to 2013, we had operated our business under five reportable segments – Consumer, Network Access, Commercial, Managed Broadband and Regulated Operations. The historical segment data has been reclassified to conform to the revised reportable segments.

On July 22, 2013, we closed the transactions under the Asset Purchase and Contribution Agreement ("Wireless Agreement") entered into on June 4, 2012 by and among Alaska Communications Systems Group, Inc. ("ACS"), GCI, ACS Wireless, Inc., a wholly owned subsidiary of ACS, GCI Wireless Holdings, LLC, a wholly owned subsidiary of GCI, and AWN, pursuant to which the parties agreed to contribute the respective wireless network assets of GCI, ACS and their affiliates to AWN. This transaction provides a statewide network with the spectrum mix, scale, advanced technology and cost structure necessary to compete with Verizon Wireless and AT&T Mobility in Alaska. AWN will provide wholesale services to GCI and ACS. GCI and ACS will use the AWN network in order to continue to sell services to their respective retail customers. GCI and ACS will continue to compete against each other and other wireless providers in the retail market.

Under the terms of the Wireless Agreement, we contributed our wireless network assets and certain rights to use capacity to AWN. Additionally, ACS contributed its wireless network assets and certain rights to use capacity to AWN. As consideration for the contributed business assets and liabilities, ACS received \$100.0 million in cash, a one-third ownership percentage in AWN and entitlements to receive preferential cash distributions totaling \$190.0 million over the first four years of AWN's operations ("Preference Period"). ACS's preferential cash distributions are expected to be higher than that which they would receive from their one-third interest. We received a two-third ownership percentage in AWN, as well as entitlements to receive all remaining cash distributions after ACS's preferential cash distributions during the Preference Period. The distributions to each member are subject to adjustment based on the number of ACS and GCI wireless subscribers, with the aggregate adjustment capped at \$21.8 million for each member over the Preference Period. Following the Preference Period, we and ACS will receive distributions proportional to our ownership interests. As part of closing, we borrowed \$100.0 million under our Amended Senior Credit Facility to fund the purchase of wireless network assets from ACS.

As an Eligible Telecommunications Carrier ("ETC"), we receive support from the Universal Service Fund ("USF") to support the provision of wireline local access and wireless service in high cost areas. On November 29, 2011, the FCC published a final rule to reform the methodology for distributing USF high cost support for voice and broadband services, as well as to the access charge regime for terminating traffic between carriers ("High Cost Order"). The High Cost Order defined the division of support to Alaska between Urban and Remote areas. Our Urban high cost support revenue recognition is dependent upon the timing of an operational successor funding mechanism and our estimate of such timing was refined during the third quarter of 2013. The change in estimate is expected to result in a \$0.6 million and \$0.7 million annual decrease in Wireless and Wireline segment revenue, respectively, from the amounts previously being recognized.

In November 2010, Verizon acquired a license for 22MHz of the 700 MHz wireless spectrum band covering Alaska. In June 2013, Verizon began providing service on its Long Term Evolution ("LTE") network in Anchorage, Fairbanks, Juneau and the Matanuska-Susitna Borough. The service provided by Verizon's LTE network is limited to data only. Verizon may begin providing voice over LTE in 2014 and we expect Verizon legacy CDMA voice roaming to continue with its existing Alaska roaming providers. We cannot predict the potential impact this new competition may have on us in the future.

## Results of Operations

The following table sets forth selected financial data as a percentage of total revenues for the periods indicated (underlying data rounded to the nearest thousand):

	Three Months Ended		Percentage	Nine Months Ended		Percentage
	September 30,	September 30,	Change <sup>1</sup>	September 30,	September 30,	Change <sup>1</sup>
	2013	2012	vs. 2012	2013	2012	vs. 2012
<b>Statements of Operations Data:</b>						
<b>Revenues:</b>						
Wireless segment	31%	18%	111%	23%	18%	49%
Wireline segment	69%	82%	4%	77%	82%	6%
Total revenues	100%	100%	23%	100%	100%	13%
Selling, general and administrative expenses	32%	33%	19%	33%	34%	9%
Depreciation and amortization expense	17%	18%	17%	18%	19%	8%
Operating income	18%	14%	52%	15%	13%	25%
Other expense, net	8%	9%	7%	9%	10%	3%
Income before income taxes	10%	5%	139%	6%	4%	86%
Net income	9%	2%	468%	5%	2%	217%
Net income (loss) attributable to the non-controlling interests	5%	—%	(6,375)%	2%	—%	(2,148)%
Net income attributable to GCI	4%	2%	141%	3%	2%	79%

<sup>1</sup>Percentage change in underlying data

We evaluate performance and allocate resources based on earnings before depreciation and amortization expense, net interest expense, income taxes, share-based compensation expense, accretion expense, income or loss attributable to non-controlling interest, non-cash right-to-use expense and non-cash contribution adjustment ("Adjusted EBITDA"). Management believes that this measure is useful to investors and other users of our financial information in evaluating operating profitability as an analytical indicator of income generated to service debt and fund capital expenditures. In addition, multiples of current or projected earnings before depreciation and amortization expense, net interest expense and income taxes ("EBITDA") are used to estimate current or prospective enterprise value. See note 7 in the "Condensed Notes to Interim Consolidated Financial Statements" included in Part I of this quarterly report on Form 10-Q for a reconciliation of consolidated Adjusted EBITDA, a non-GAAP financial measure, to consolidated income before income taxes.

### Overview of Revenues and Cost of Goods Sold

Total revenues increased 23% from \$178.5 million in the three months ended September 30, 2012 to \$220.4 million in the same period of 2013. Total revenues increased 13% from \$526.5 million in the nine months ended September 30, 2012 to \$596.3 million in the same period of 2013. Revenue increased in both of our segments for the three and nine months ended September 30, 2013 compared to the same periods in 2012. See the discussion below for more information by segment.

Total Cost of Goods Sold increased 19% from \$62.8 million in the three months ended September 30, 2012 to \$74.7 million in the same period of 2013. Total Cost of Goods Sold increased 15% from \$177.7 million in the nine months ended September 30, 2012 to \$205.0 million in the same period of 2013. Cost of Goods Sold increased in both of our segments for the three and nine months ended September 30, 2013 compared to the same periods in 2012. See the discussion below for more information by segment.

### Wireless Segment Overview

Wireless segment revenue, representing 31% and 23% of consolidated revenues; Wireless segment Cost of Goods Sold, representing 36% and 28% of consolidated Cost of Goods Sold; and, Wireless segment Adjusted EBITDA, representing 47% and 33% of consolidated Adjusted EBITDA for the three and nine months ended September 30, 2013, respectively, is as follows (amounts in thousands):

	Three Months Ended September 30,		Percentage Change	Nine Months Ended September 30,		Percentage Change
	2013	2012		2013	2012	
Revenue	\$ 68,097	32,262	111%	137,493	92,066	49%
Cost of Goods Sold	\$ 26,815	15,263	76%	57,800	41,804	38%
Adjusted EBITDA	\$ 37,260	13,194	182%	66,722	38,857	72%

See note 7 in the "Condensed Notes to Interim Consolidated Financial Statements" included in Part I of this quarterly report on Form 10-Q for a reconciliation of consolidated Adjusted EBITDA, a non-GAAP financial measure, to consolidated income before income taxes.

#### Wireless Segment Revenues

The increase in revenue is primarily due to the following:

- A \$15.8 million increase in roaming revenue for the three and nine months ended September 30, 2013 due to the July 22, 2013 consummation of the AWN transaction.
- A \$4.6 million and a \$10.7 million increase in roaming revenue for the three and nine months ended September 30, 2013 when compared to the same periods in 2012, respectively, is due to increased data usage by one of our roaming partners' customers.
- A \$7.9 million increase in non-Lifeline retail revenue for the three and nine months ended September 30, 2013 due to the July 22, 2013 consummation of the AWN transaction. The Wireless segment recognizes 70% of retail wireless plan fee revenue with the remaining 30% recognized in Wireline segment – Consumer or Wireline segment – Business Services depending on whether the revenue is generated by a residential or commercial subscriber, and
- A \$3.3 million increase in high cost support for the three and nine months ended September 30, 2013 due to the July 22, 2013 consummation of the AWN transaction.

#### Wireless Segment Cost of Goods Sold

The increase in Cost of Goods Sold is primarily due to the following:

- A \$5.2 million increase for the three and nine months ended September 30, 2013 primarily due to wireless handset equipment costs and roaming costs due to the July 22, 2013 consummation of the AWN transaction, and
- A \$1.1 million and a \$2.5 million increase for the three and nine months ended September 30, 2013 compared to the same periods in 2012, respectively, primarily due to wireless handset equipment costs. The Wireless segment provides a subsidy to Wireline segment – Consumer and Wireline segment – Business Services to offset the cost of handsets sold to retail wireless subscribers. Our wireless handset equipment costs have increased due to an increase in non-Lifeline wireless subscribers and due to a higher percentage of our handsets sold being premium smartphones which have a higher cost.

#### Wireless Segment Adjusted EBITDA

The increase in Adjusted EBITDA for the three and nine months ended September 30, 2013 when compared to the same periods in 2012 is primarily due to increased revenue as described above in "Wireless Segment Revenues." This increase was partially offset by increased Cost of Goods Sold as described above in "Wireless Segment Cost of Goods Sold" and an increase in selling, general and administrative expense.

#### Wireline Segment Overview

Our Wireline segment offers services and products under three major customer groups as follows:

Wireline Segment Services and Products	Customer Group		
	Consumer	Business Services	Managed Broadband
Retail wireless	X	X	
Data:			
Internet	X	X	X
Data networks		X	X
Managed services		X	X
Video	X	X	
Voice:			
Long-distance	X	X	X
Local access	X	X	X

- Consumer – we offer a full range of retail wireless, data, video and voice services to residential customers.
- Business Services - we offer a full range of retail wireless, data, video and voice services to local, national and global businesses, governmental entities and public and private educational institutions and wholesale data and voice services to other common carrier customers.
- Managed Broadband – we offer Internet, data network and managed services to rural schools and health organizations and regulated voice services to residential and commercial customers in 61 rural communities primarily in Southwest Alaska.

Wireline segment revenue represented 69% and 77% of consolidated revenues for the three and nine months ended September 30, 2013, respectively. The components of Wireline segment revenue are as follows (amounts in thousands):

	Three Months Ended September 30,		Percentage Change	Nine Months Ended September 30,		Percentage Change
	2013	2012		2013	2012	
<b>Consumer</b>						
Wireless	\$ 7,581	6,448	18 %	21,307	19,341	10 %
Data	24,981	21,379	17 %	73,450	63,351	16 %
Video	27,674	28,394	(3)%	83,375	86,651	(4)%
Voice	8,647	9,896	(13)%	27,318	31,555	(13)%
<b>Business Services</b>						
Wireless	785	688	14 %	2,228	2,142	4 %
Data	39,229	36,060	9 %	118,759	105,501	13 %
Video	3,705	3,142	18 %	10,297	9,498	8 %
Voice	9,952	12,221	(19)%	35,532	36,704	(3)%
<b>Managed Broadband</b>						
Data	24,544	22,685	8 %	70,594	63,431	11 %
Voice	5,232	5,319	(2)%	15,951	16,265	(2)%
Total Wireline segment revenue	\$ 152,330	146,232	4 %	458,811	434,439	6 %

Wireline segment Cost of Goods Sold represented 64% and 72% of consolidated Cost of Goods Sold for the three and nine months ended September 30, 2013, respectively. The components of Wireline segment Cost of Goods Sold are as follows (amounts in thousands):

	Three Months Ended September 30,		Percentage Change	Nine Months Ended September 30,		Percentage Change
	2013	2012		2013	2012	
Consumer	\$ 18,648	20,593	(9)%	58,275	58,392	— %
Business Services	21,041	19,972	5 %	69,118	58,248	19 %
Managed Broadband	8,226	6,926	19 %	19,846	19,243	3 %
Total Wireline segment Cost of Goods Sold	\$ 47,915	47,491	1 %	147,239	135,883	8 %

Wireline segment Adjusted EBITDA, which represented 53% and 67% of consolidated Adjusted EBITDA for the three and nine months ended September 30, 2013, respectively, is as follows (amounts in thousands):

	Three Months Ended September 30,		Percentage Change	Nine Months Ended September 30,		Percentage Change
	2013	2012		2013	2012	
Wireline segment Adjusted EBITDA	\$ 41,457	46,255	(10)%	\$ 132,783	134,842	(2)%

See note 7 in the "Condensed Notes to Interim Consolidated Financial Statements" included in Part I of this quarterly report on Form 10-Q for a reconciliation of consolidated Adjusted EBITDA, a non-GAAP financial measure, to consolidated income before income taxes.

Selected key performance indicators for our Wireline segment follow:

	September 30,		Percentage Change
	2013	2012	
<b>Consumer</b>			
Data:			
Cable modem subscribers <sup>1</sup>	114,800	113,100	2 %
Video:			
Basic subscribers <sup>2</sup>	118,400	122,200	(3)%
Digital programming tier subscribers <sup>3</sup>	68,100	72,000	(5)%
HD/DVR converter boxes <sup>4</sup>	92,100	89,200	3 %
Homes passed	246,600	242,400	2 %
Average monthly gross revenue per subscriber - quarter <sup>5</sup>	\$ 77.64	\$ 77.45	— %
Average monthly gross revenue per subscriber - year-to-date <sup>6</sup>	\$ 76.88	\$ 78.01	(1)%
Voice:			
Total local access lines in service <sup>7</sup>	62,800	71,900	(13)%
Local access lines in service on GCI facilities <sup>7</sup>	58,500	66,900	(13)%
<b>Business Services</b>			
Data:			
Cable modem subscribers <sup>1</sup>	14,000	11,600	21 %
Voice:			
Total local access lines in service <sup>7</sup>	49,400	51,800	(5)%
Local access lines in service on GCI facilities <sup>7</sup>	34,800	30,500	14 %
<b>Combined Consumer and Business Services</b>			
Wireless			
Consumer Lifeline wireless lines in service <sup>8</sup>	29,600	35,500	(17)%



Consumer Non-Lifeline wireless lines in service <sup>9</sup>	94,800	87,300	9 %
Business Services Non-Lifeline wireless lines in service <sup>9</sup>	17,900	16,600	8 %
Total wireless lines in service	142,300	139,400	2 %
Average monthly gross revenue per subscriber - quarter <sup>10</sup>	\$ 50.76	\$ 46.34	10 %
Average monthly gross revenue per subscriber - year-to-date <sup>11</sup>	\$ 50.03	\$ 46.73	7 %

<sup>1</sup> A cable modem subscriber is defined by the purchase of cable modem service regardless of the level of service purchased. If one entity purchases multiple cable modem service access points, each access point is counted as a subscriber. Cable modem subscribers may also be video basic subscribers though basic video service is not required to receive cable modem service.

<sup>2</sup> A basic subscriber is defined as one basic tier of service delivered to an address or separate subunits thereof regardless of the number of outlets purchased.

<sup>3</sup> A digital programming tier subscriber is defined as one digital programming tier of service delivered to an address or separate subunits thereof regardless of the number of outlets or digital programming tiers purchased. Digital programming tier subscribers are a subset of basic subscribers.

<sup>4</sup> A high-definition/digital video recorder ("HD/DVR") converter box is defined as one box rented by a digital programming or basic tier subscriber. A digital programming or basic tier subscriber is not required to rent an HD/DVR converter box to receive service.

<sup>5</sup> Applicable average monthly video revenues divided by the average number of basic subscribers at the beginning and end of each month in the period ("Video ARPU") for the three months ended September 30, 2013 and 2012.

<sup>6</sup> Video ARPU for the nine months ended September 30, 2013 and 2012.

<sup>7</sup> A local access line in service is defined as a revenue generating circuit or channel connecting a customer to the public switched telephone network.

<sup>8</sup> A Lifeline wireless line in service is defined as a revenue generating wireless device that is eligible for Lifeline support. The Universal Service Fund's Lifeline program is administered by the Universal Service Administrative Company and is designed to ensure that quality telecommunications services are available to low-income customers at affordable rates.

<sup>9</sup> A non-Lifeline wireless line in service is defined as a revenue generating wireless device that is not eligible for Lifeline support.

<sup>10</sup> Average monthly wireless revenues, excluding those from other common carrier customers, divided by the average of wireless subscribers at the beginning and end of each month in the period ("Wireless ARPU"). Revenue used for this calculation includes Wireline segment - Consumer - Wireless, Wireline segment - Business Services - Wireless and wholesale wireless revenues earned from GCI retail subscribers included in the Wireless segment for the three months ended September 30, 2013 and 2012.

<sup>11</sup> Wireless ARPU for the nine months ended September 30, 2013 and 2012. Revenue used for this calculation includes Wireline segment - Consumer - Wireless, Wireline segment - Business Services - Wireless and wholesale wireless revenues earned from GCI retail subscribers included in the Wireless segment.

## Wireline Segment Revenues

### Consumer

The increase in data revenue is primarily due to a \$3.1 million or 16% and \$9.5 million or 17% increase in cable modem revenue for the three and nine months ended September 30, 2013 when compared to the same periods in 2012, respectively, due to increased subscribers and our subscribers' selection of plans that offer higher speeds and higher usage limits.

### Business Services

Business Services data revenue is comprised of monthly recurring charges for data services and charges billed on a time and materials basis largely for personnel providing on-site customer support. This latter category can vary significantly based on project activity.

The increase in data revenue is primarily due to a \$1.4 million or 11% and \$13.1 million or 38% increase in managed services project revenue for the three and nine months ended September 30, 2013 when compared to the same periods in 2012, respectively, due to special project work.

### Managed Broadband

The increase in data revenue is primarily due to a \$1.9 million or 9% and \$9.4 million or 16% increase in monthly contract revenue for the three and nine months ended September 30, 2013 when compared to the same periods in 2012, respectively, due to new ConnectMD<sup>®</sup> and SchoolAccess<sup>®</sup> customers and increased data network capacity purchased by our existing ConnectMD<sup>®</sup> and SchoolAccess<sup>®</sup> customers. The increase in data revenue for the nine

months ended September 30, 2013 when compared to the same period in 2012 is partially offset by the absence of \$1.6 million in revenue that was recognized in the second quarter of 2012 as a result of the successful appeal of previously denied funding from USAC.

#### **Wireline Segment Cost of Goods Sold**

##### *Consumer*

The decrease in Cost of Goods Sold for the three and nine months ended September 30, 2013 when compared to the same periods in 2012 is primarily due to a decrease in subsidies for the purchase of wireless handsets partially offset by an increase in video Cost of Goods Sold primarily due to programming changes. Wireless subsidies are generally reported in our Wireless Segment Cost of Goods Sold, however, additional subsidies offered by Consumer or Business Services are recorded in that respective customer type's Cost of Goods Sold.

##### *Business Services*

The increase in Cost of Goods Sold is primarily due to a \$1.0 million or 11% and a \$12.0 million or 45% increase in managed services project Cost of Goods Sold for the three and nine months ended September 30, 2013 when compared to the same period in 2012, respectively, related to the increased special project work described above in "Wireline Segment Revenues – Business Services."

##### *Managed Broadband*

The increase in Cost of Goods Sold for the three months ended September 30, 2013 when compared to the same period in 2012 is primarily due to the increase in network capacity provided to new customers described above in "Wireline Segment Revenues - Managed Broadband."

#### **Wireline Segment Adjusted EBITDA**

The decrease in Adjusted EBITDA for the three and nine months ended September 30, 2013 when compared to the same periods in 2012 is primarily due to an increase in selling, general and administrative expense and Cost of Goods Sold as described above in "Wireline Segment Cost of Goods Sold" partially offset by increase in revenues as described above in "Wireline Segment Revenues."

#### **Selling, General and Administrative Expenses**

Selling, general and administrative expenses increased \$11.3 million to \$69.5 million for the three months ended September 30, 2013. Selling, general and administrative expenses increased \$16.7 million to \$198.0 million for the nine months ended September 30, 2013. Individually significant items contributing to the increase include:

- A \$2.7 million and \$5.7 million increase in labor costs for the three and nine months ended September 30, 2013, respectively, when compared to the same periods in 2012,
- A \$0.5 million and \$2.2 million increase in contract labor related to non-capitalizable network projects for our ConnectMD<sup>®</sup> and SchoolAccess<sup>®</sup> customers for the three and nine months ended September 30, 2013, respectively, when compared to the same periods in 2012,
- A \$3.0 million and \$2.4 million increase in our company-wide success sharing bonus accrual for the three and nine months ended September 30, 2013, respectively, when compared to the same periods in 2012,
- A \$0.9 million increase in health benefit costs for the three and nine months ended September 30, 2013 when compared to the same periods in 2012, and
- A \$0.4 million and a \$0.7 million increase in share-based compensation expense for the three and nine months ended September 30, 2013 when compared to the same periods in 2012.

Increases for the nine months ended September 30, 2013 were partially offset by a \$1.0 million decrease in contribution expense when compared to the same period in 2012 due to the absence of new donated services to the University of Alaska that had occurred in 2012.

As a percentage of total revenues, selling, general and administrative expenses decreased from 33% for the three months ended September 30, 2012 to 32% for the three months ended September 30, 2013. As a percentage of total revenues, selling, general and administrative expenses decreased from 34% for the nine months ended September 30, 2012 to 33% for the nine months ended September 30, 2013.

#### **Depreciation and Amortization Expense**

Depreciation and amortization expense increased \$5.3 million to \$37.5 million and \$8.0 million to \$105.9 million in the three and nine months ended September 30, 2013, respectively compared to the same periods in 2012. These

increases are primarily due to new assets placed in service in 2013 and in the last three months of 2012, partially offset by assets which became fully depreciated during the last three months of 2012 and in 2013.

#### **Other Expense, Net**

Other expense, net of other income, increased \$1.1 million to \$17.7 million and \$1.3 million to \$52.1 million in the three and nine months ended September 30, 2013, respectively. The increase for the three months ended September 30, 2013 is primarily due to increased interest expense attributable to increased borrowing on our Senior Credit Facility. The increase for the nine months ended September 30, 2013 is primarily due to a write-off of loan fees related to the refinancing of our Senior Credit Facility.

#### **Income Tax Expense**

Income tax expense totaled \$1.0 million and \$5.3 million in the three months ended September 30, 2013 and 2012, respectively. Our effective income tax rate was 5% and 60% in the three months ended September 30, 2013 and 2012, respectively. Income tax expense totaled \$8.2 million and \$10.4 million in the nine months ended September 30, 2013 and 2012, respectively. Our effective income tax rate was 23% and 55% in the nine months ended September 30, 2013 and 2012, respectively. Our effective income tax rate decreased due to the inclusion of income attributable to the non-controlling interest in AWN in income before income tax expense.

At September 30, 2013, we have income tax net operating loss carryforwards of \$273.2 million that will begin expiring in 2020 if not utilized, and alternative minimum tax credit carryforwards of \$1.9 million available to offset regular income taxes payable in future years.

We have recorded deferred tax assets of \$112.3 million associated with income tax net operating losses that were generated from 2000 to 2011 and that expire from 2020 to 2031, respectively, and with charitable contributions that were converted to net operating losses in 2004 through 2007, and that expire in 2024 through 2027, respectively.

Tax benefits associated with recorded deferred tax assets are considered to be more likely than not realizable through future reversals of existing taxable temporary differences and future taxable income exclusive of reversing temporary differences and carryforwards. The amount of deferred tax assets considered realizable, however, could be reduced if estimates of future taxable income during the carryforward period are reduced which would result in additional income tax expense. We estimate that our effective annual income tax rate for financial statement purposes will be 21% to 26% in the year ending December 31, 2013. The effective rate has decreased because, in general, as pretax income increases, the percentage of permanent differences as a percentage of pretax income decreases, and due to the fact that income taxes on income attributable to the non-controlling interest are not recorded in the consolidated financial statements.

#### **Liquidity and Capital Resources**

Our principal sources of current liquidity are cash and cash equivalents. We believe, but can provide no assurances, that we will be able to meet our current and long-term liquidity, capital requirements and fixed charges through our cash flows from operating activities, existing cash, cash equivalents, credit facilities, and other external financing and equity sources. Should operating cash flows be insufficient to support additional borrowings and principal payments scheduled under our existing credit facilities, capital expenditures will likely be reduced, which would likely reduce future revenues.

On April 30, 2013, GCI Holdings, Inc., a wholly owned subsidiary of GCI, entered into a Third Amended and Restated Credit and Guarantee Agreement with Credit Agricole Corporate and Investment Bank, as administrative agent ("Amended Senior Credit Facility"). The Amended Senior Credit Facility provides up to \$240.0 million in delayed draw term loans and a \$150.0 million revolving credit facility. The Amended Senior Credit Facility replaced the Senior Credit Facility described in Note 6(c) of our December 31, 2012 annual report on Form 10-K. The interest rate under the Amended Senior Credit Facility is London Interbank Offered Rate ("LIBOR") plus a margin dependent upon our Total Leverage Ratio ranging from 2% to 3%. The Amended Senior Credit Facility will mature on April 30, 2018. The terms of the Amended Senior Credit Facility include customary representations and warranties, customary affirmative and negative covenants and customary events of default. At any time after the occurrence of an event of default under the Amended Senior Credit Facility, the lenders may, among other options, declare any amounts outstanding under the Amended Senior Credit Facility immediately due and payable and terminate any commitment to make further loans under the Amended Senior Credit Facility. The obligations under the Amended Senior Credit Facility are secured by a security interest on substantially all of the assets of GCI Holdings, Inc. and the subsidiary guarantors, and on the stock of GCI Holdings, Inc.

As discussed in the General Overview section of this Item 2, on July 22, 2013, we closed the AWN transaction. Under the terms of the Wireless Agreement, we contributed our wireless network assets and certain rights to use capacity to AWN. Additionally, ACS contributed its wireless network assets and certain rights to use capacity to AWN. We funded the purchase by borrowing \$100.0 million under our Amended Senior Credit Facility on July 17, 2013. We have also agreed to provide AWN a \$50.0 million working capital line of credit.

We will manage AWN and receive a management fee of 4% of free cash flow as defined in the Wireless Agreement in the first two years of operations. The management fee will increase to 6% in the third and fourth years of the agreement and 8% after the fourth year of the agreement. The management fee will be paid before distributions to the owners.

We have entered into several financing arrangements under the New Markets Tax Credit ("NMTC") program which have provided a total of \$32.3 million in net cash to help fund the extension of terrestrial broadband service for the first time to rural Northwestern Alaska communities via a high capacity hybrid fiber optic and microwave network. When completed, the project, called TERRA-NW, will connect to our TERRA-Southwest network and provide a high capacity backbone connection from the served communities to the Internet. We began construction on TERRA-NW in 2012 and expect to complete all current phases of the project in 2014. We placed into service Phase 1 of the TERRA-NW project on January 3, 2013. The total net cash received under the NMTC program is recorded as Restricted Cash on our Consolidated Balance Sheets. We have used \$29.0 million of Restricted Cash to fund cumulative TERRA-NW capital expenditures through September 30, 2013. We plan to fund an additional \$20.7 million for TERRA-NW.

On November 1, 2013, we closed the transaction under the asset purchase agreements, pursuant to which Denali Media Holdings, Corp., a wholly owned subsidiary of GCI, through its wholly owned subsidiaries, Denali Media Anchorage, Corp. and Denali Media Southeast, Corp., agreed to purchase three Alaska broadcast stations for a total of \$7.6 million. We are evaluating the accounting treatment for this transaction.

While our short-term and long-term financing abilities are believed to be adequate as a supplement to internally generated cash flows to fund capital expenditures and acquisitions as opportunities arise, turmoil in the global financial markets may negatively impact our ability to further access the capital markets in a timely manner and on attractive terms, which may have a negative impact on our ability to grow our business.

We monitor the third-party depository institutions that hold our cash and cash equivalents. Our emphasis is primarily on safety of principal and secondarily on maximizing yield on those funds.

Our net cash flows provided by and (used for) operating, investing and financing activities, as reflected in the Consolidated Statements of Cash Flows for the nine months ended September 30, 2013 and 2012, are summarized as follows (amounts in thousands):

	Nine Months Ended September 30,	
	2013	2012
Operating activities	\$ 140,836	105,166
Investing activities	(216,826)	(97,135)
Financing activities	109,432	(9,863)
Net increase (decrease) in cash and cash equivalents	<u>\$ 33,442</u>	<u>(1,832)</u>

#### Operating Activities

The increase in cash flows provided by operating activities for the nine months ended September 30, 2013, as compared to the same period in 2012, is due to an increase in net income.

#### Investing Activities

Net cash used in investing activities consists primarily of cash paid for capital expenditures and \$100.0 million to purchase wireless network assets from ACS as part of the consummation of the AWN transaction. Our most significant recurring investing activity has been capital expenditures and we expect that this will continue in the future. A significant portion of our capital expenditures is based on the level of customer growth and the technology being deployed.

Our cash expenditures for property and equipment, including construction in progress, totaled \$136.5 million and \$104.4 million during the nine months ended September 30, 2013 and 2012, respectively. Depending on available opportunities and the amount of cash flow we generate during 2013, we expect our 2013 expenditures to total \$185.0 million including core and non-core operations. Additionally, we expect \$30.0 to \$35.0 million of additional capital expenditures funded primarily with cash raised from our NMTC transactions and an increase in our satellite transponder capital lease.

#### **Financing Activities**

Net cash provided by financing activities for the nine months ended September 30, 2013, consists primarily of proceeds from borrowing \$100.0 million under the term loan portion of our Amended Senior Credit Facility to fund the purchase of wireless network assets from ACS as part of the close of the AWN transaction and borrowings under the revolving portion of our Amended Senior Credit Facility. These proceeds were offset by repayments of Rural Utilities Service ("RUS") debt and repurchases of our common stock. Proceeds from borrowings fluctuate from year to year based on our liquidity needs. We may use excess cash to make optional repayments on our debt or repurchase our common stock depending on various factors, such as market conditions.

#### Available Borrowings Under Amended Senior Credit Facility

Our Amended Senior Credit Facility includes a \$240.0 million term loan and a \$150.0 million revolving credit facility with a \$25.0 million sublimit for letters of credit. We had \$200.0 million outstanding under the term loan at September 30, 2013. Under the revolving portion of the Amended Senior Credit Facility we have borrowed \$27.0 million and have \$0.5 million of letters of credit outstanding, which leaves \$162.5 million available for borrowing as of September 30, 2013. A total of \$227.0 million is outstanding as of September 30, 2013.

#### Debt Covenants

We are subject to covenants and restrictions applicable to our \$325.0 million in aggregate principal amount of 6.75% Senior Notes due 2021, our \$425.0 million in aggregate principal amount of 8.63% Senior Notes due 2019, our Amended Senior Credit Facility, our RUS loans, and our CoBank loans. We are in compliance with the covenants, and we believe that neither the covenants nor the restrictions in our indentures or loan documents will limit our ability to operate our business.

#### Share Repurchases

GCI's Board of Directors has authorized a common stock buyback program for the repurchase of GCI Class A and Class B common stock in order to reduce the outstanding shares of Class A and Class B common stock. Under this program, we are currently authorized to make up to \$101.2 million of repurchases as of September 30, 2013. We are authorized to increase our repurchase limit \$5.0 million per quarter indefinitely and to use stock option exercise proceeds to repurchase additional shares. If stock repurchases are less than the total approved quarterly amount the difference may be carried forward and applied against future stock repurchases. During the nine months ended September 30, 2013, we repurchased 1.7 million shares of GCI common stock under the stock buyback program at a cost of \$15.1 million. The common stock buyback program is expected to continue for an indefinite period dependent on leverage, liquidity, company performance, and market conditions and subject to continued oversight by GCI's Board of Directors. The open market repurchases have and will continue to comply with the restrictions of SEC Rule 10b-18.

#### **Critical Accounting Policies and Estimates**

Our accounting and reporting policies comply with GAAP. The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions. The financial position and results of operations can be affected by these estimates and assumptions, which are integral to understanding reported results. Critical accounting policies are those policies that management believes are the most important to the portrayal of our financial condition and results, and require management to make estimates that are difficult, subjective or complex. Most accounting policies are not considered by management to be critical accounting policies. Several factors are considered in determining whether or not a policy is critical in the preparation of financial statements. These factors include, among other things, whether the estimates are significant to the financial statements, the nature of the estimates, the ability to readily validate the estimates with other information including third parties or available prices, and sensitivity of the estimates to changes in economic conditions and whether alternative accounting methods may be utilized under GAAP. For all of these policies, management cautions that future events rarely develop exactly as forecast, and the best estimates routinely require adjustment. Management has discussed the development and the selection of critical accounting policies with our Audit Committee.

Those policies considered to be critical accounting policies for 2013 are revenue recognition related to revenues from the Remote high cost, rural health and schools and libraries USF programs, the allowance for doubtful

receivables, impairment and useful lives of intangible assets and the valuation allowance for net operating loss deferred tax assets. A complete discussion of our critical accounting policies can be found in Item 7 "Management's Discussion and Analysis of Financial Condition and Results of Operations" in our December 31, 2012 annual report on Form 10-K.

Other significant accounting policies, not involving the same level of measurement uncertainties as those discussed above, are nevertheless important to an understanding of the financial statements. A complete discussion of our significant accounting policies can be found in note 1 in the accompanying "Condensed Notes to Interim Consolidated Financial Statements" and in Part II of our December 31, 2012 annual report on Form 10-K.

**Item 3. Quantitative and Qualitative Disclosures about Market Risk**

We are exposed to various types of market risk in the normal course of business, including the impact of interest rate changes. Our Amended Senior Credit Facility carries interest rate risk. Amounts borrowed under our Amended Senior Credit Facility bear interest at LIBOR plus 3.0% or less depending upon our Total Leverage Ratio (as defined in the Amended Senior Credit Facility). Should the LIBOR rate change, our interest expense will increase or decrease accordingly. As of September 30, 2013, we have borrowed \$227.0 million subject to interest rate risk. On this amount, each 1% increase in the LIBOR interest rate would result in \$2.3 million of additional gross interest cost on an annualized basis. All of our other material borrowings have a fixed interest rate. We do not hold derivatives.

**Item 4. Controls and Procedures**

**Evaluation of Disclosure Controls and Procedures**

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed by us in reports that we file or submit under the Securities Exchange Act of 1934 ("Exchange Act") is recorded, processed, summarized, accumulated and communicated to our management, including our principal executive and financial officers, to allow timely decisions regarding required financial disclosure, and reported as specified in the SEC's rules and forms. As of the end of the period covered by this Quarterly Report on Form 10-Q, we carried out an evaluation of the effectiveness of the design and operation of our "disclosure controls and procedures" (as defined in Exchange Act Rule 13a - 15(e)) under the supervision and with the participation of our management, including our Chief Executive Officer and our Chief Financial Officer. Based on that evaluation and as described below under "Management's Report on Internal Control Over Financial Reporting", our management, including our Chief Executive Officer and our Chief Financial Officer, concluded that our disclosure controls and procedures were effective as of September 30, 2013.

The certifications attached as Exhibits 31 and 32 to this report should be read in conjunction with the disclosures set forth herein.

**Changes in Internal Control Over Financial Reporting**

There were no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) identified in connection with the evaluation of our controls performed during the quarter ended September 30, 2013, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

During the third quarter of 2013, we closed the transactions under the Wireless Agreement. As a result of these transactions, we are currently in the process of integrating new income streams. We are evaluating changes to processes, information technology systems and other components of internal controls over financial reporting as part of our ongoing integration activities, and as a result, controls will be changed as needed.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Internal control over financial reporting has inherent limitations. Internal control over financial reporting is a process that involves human diligence and compliance and is subject to lapses in judgment and breakdowns resulting from

human failures. Internal control over financial reporting also can be circumvented by collusion or improper management override. Because of such limitations, there is a risk that material misstatements will not be prevented or detected on a timely basis by internal control over financial reporting. However, these inherent limitations are known features of the financial reporting process. Therefore, it is possible to design into the process safeguards to reduce, though not eliminate, this risk.

We may enhance, modify, and supplement internal controls and disclosure controls and procedures based on experience.

## PART II. OTHER INFORMATION

### Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

- (a) Not applicable.
- (b) Not applicable.
- (c) The following table provides information about repurchases of shares of our Class A common stock during the quarter ended September 30, 2013:

	(a) Total Number of Shares Purchased <sup>1</sup>	(b) Average Price Paid per Share	(c) Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs <sup>2</sup>	(d) Maximum Number (or approximate Dollar Value) of Shares that May Yet Be Purchased Under the Plan or Programs <sup>3</sup>
July 1, 2013 to July 31, 2013	135,132	\$ 8.81	135,132	\$ 102,183,906
August 1, 2013 to August 31, 2013	86,462	\$ 8.99	86,462	\$ 101,414,924
September 1, 2013 to September 30, 2013	39,441	\$ 9.09	20,823	\$ 101,227,037
Total	261,035			

<sup>1</sup> Consists of 242,417 shares from open market purchases made under our publicly announced repurchase plan and 18,618 shares from private purchases made to settle the minimum statutory tax-withholding requirements pursuant to restricted stock award vesting.

<sup>2</sup> The repurchase plan was publicly announced on November 3, 2004. Our plan does not have an expiration date, however transactions pursuant to the plan are subject to periodic approval by our Board of Directors. We expect to continue the repurchases for an indefinite period dependent on leverage, liquidity, company performance, market conditions and subject to continued oversight by our Board of Directors.

<sup>3</sup> The total amount approved by our Board of Directors for repurchase under our publicly announced repurchase plan was \$332.6 million through September 30, 2013, consisting of \$327.6 million through June 30, 2013, and an additional \$5.0 million during the three months ended September 30, 2013. We have made total repurchases under the program of \$231.4 million through September 30, 2013. If stock repurchases are less than the total approved quarterly amount the difference may be carried forward and used to repurchase additional shares in future quarters, subject to board approval.

**Item 6. Exhibits**

Listed below are the exhibits that are filed as a part of this Report (according to the number assigned to them in Item 601 of Regulation S-K):

<b>Exhibit No.</b>	<b>Description</b>
10.201	Seventeenth Amendment to the Full-Time Transponder Capacity Agreement (Pre-Launch) between Intelsat Corporation, formerly known as PanAmSat Corporation and GCI Communication, Corp. dated June 4, 2013 # *
10.202	Eighteenth Amendment to the Full-Time Transponder Capacity Agreement (Pre-Launch) between Intelsat Corporation, formerly known as PanAmSat Corporation and GCI Communication, Corp. dated October 17, 2013 # *
10.203	First Amended and Restated Operating Agreement of The Alaska Wireless Network, LLC dated July 22, 2013 # *
10.204	First Amendment to Contract for Alaska Access Services between General Communication, Inc. and MCI Telecommunications Corporation dated March 1, 1996 *
10.205	Broadband Initiatives Program Loan/Grant and Security Agreement between United Utilities, Inc. and The United States of America dated June 1, 2010 *
31.1	Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 by our President and Director *
31.2	Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 by our Senior Vice President, Chief Financial Officer and Treasurer *
32.1	Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 by our President and Director *
32.2	Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 by our Senior Vice President, Chief Financial Officer and Treasurer *
101	The following materials from General Communication, Inc.'s Quarterly Report on Form 10-Q for the quarter ended September 30, 2013, formatted in XBRL (eXtensible Business Reporting Language): (i) Consolidated Balance Sheets; (ii) Consolidated Income Statements; (iii) Consolidated Statements of Stockholders' Equity; (iv) Consolidated Statements of Cash Flows; and (v) Condensed Notes to Interim Consolidated Financial Statements *
#	CONFIDENTIAL PORTION has been omitted pursuant to a request for confidential treatment by us to, and the material has been separately filed with, the SEC. Each omitted Confidential Portion is marked by three asterisks.
*	Filed herewith.



**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

**GENERAL COMMUNICATION, INC.**

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Ronald A. Duncan</u> Ronald A. Duncan	President and Director (Principal Executive Officer)	<u>November 7, 2013</u>
<u>/s/ John M. Lowber</u> John M. Lowber	Senior Vice President, Chief Financial Officer and Treasurer (Principal Financial Officer)	<u>November 7, 2013</u>
<u>/s/ Lynda L. Tarbath</u> Lynda L. Tarbath	Vice President, Chief Accounting Officer (Principal Accounting Officer)	<u>November 7, 2013</u>

\*\*\*\*CONFIDENTIAL PORTION has been omitted pursuant to a request for confidential treatment by the Company to, and the material has been separately filed with, the SEC. Each omitted Confidential Portion is marked by four asterisks.

SEVENTEENTH AMENDMENT TO THE FULL-TIME-TRANSPONDER CAPACITY AGREEMENT (PRE-LAUNCH)

This Seventeenth Amendment to the Full-Time Transponder Capacity Agreement (Pre-Launch) (the “Seventeenth Amendment”) is made and entered into as of this 4th day of June, 2013 by and between INTELSAT CORPORATION, formerly known as PanAmSat Corporation, a Delaware corporation (“Intelsat”), and GCI COMMUNICATION CORP., an Alaskan corporation (“Customer”).

RECITALS

WHEREAS, pursuant to that certain Full-Time Transponder Capacity Agreement (Pre-Launch) dated as of March 31, 2006, as amended (collectively, the “Agreement”) between Intelsat and Customer, Intelsat is providing Customer with \*\*\*\* transponders \*\*\*\* Galaxy 18; \*\*\*\* transponders \*\*\*\* Horizons 1; and \*\*\*\* Transponder \*\*\*\* Horizon-1;

WHEREAS, Customer and Intelsat wish to amend the terms of the Agreement to \*\*\*\* Transponder Capacity by \*\*\*\* Transponder \*\*\*\* satellite.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of mutual covenants and agreements hereinafter set forth, the sufficiency and receipt of which is hereby acknowledged, the parties agree as follows:

1. Except as specifically provided herein, all terms and provisions of the Agreement shall remain in full force and effect.
2. Section 1.1, Description of Capacity. This Section shall be deleted and replaced with the following:

Intelsat agrees to provide to Customer and Customer agrees to accept from Intelsat, \*\*\*\*), in \*\*\*\*, for the Capacity Term (as defined here), the \*\*\*\* Transponder Capacity (defined below) meeting the “Performance Specifications” set forth in the “Technical Appendix” attached hereto as Appendix B. For purposes of this Agreement, the “\*\*\*\* Transponder Capacity” or “\*\*\*\* Transponders” shall consist of (a) \*\*\*\* (as defined in Section 1.2, below) \*\*\*\* transponders (collectively, the “\*\*\*\* Transponders” and individually, the “\*\*\*\* Transponder”) from that certain U.S. domestic satellite referred to by Intelsat as “\*\*\*\*,” located in geostationary orbit at \*\*\*\* Longitude, (b) \*\*\*\* transponders from the \*\*\*\* of that certain satellite referred to by Intelsat as “\*\*\*\*” at \*\*\*\* Longitude (“\*\*\*\* Transponder”); (c) \*\*\*\* Transponder \*\*\*\* on \*\*\*\*; and (e) \*\*\*\* Transponder from that certain U.S. domestic satellite referred to by Intelsat as “\*\*\*\*” located in geostationary orbit at \*\*\*\* Longitude (the “\*\*\*\* Transponder”).

\*\*\*\*CONFIDENTIAL TREATMENT

A \*\*\*\* Transponder is a transponder \*\*\*\* to the \*\*\*\* Parties of \*\*\*\* Transponders \*\*\*\* of their \*\*\*\* Transponders. \*\*\*\* Transponders shall be \*\*\*\* the \*\*\*\* Parties of the \*\*\*\* Transponders (or such \*\*\*\* Party's \*\*\*\*) \*\*\*\* transponder \*\*\*\* agreement for such \*\*\*\* Transponders.

The transponders on the Satellite and the beams in which these transponders are grouped are referred to as "Transponder(s)" and the "Beam(s)," respectively. Galaxy 18, Galaxy 13 or Horizons 1 \*\*\*\* Customer \*\*\*\* hereunder, as applied in context herein, is referred to as the "Satellite." Intelsat shall \*\*\*\* the \*\*\*\* Transponder Capacity to \*\*\*\*, except as specifically permitted under this Agreement.

3. Capacity Term. The Capacity Term for the \*\*\*\* Transponder shall \*\*\*\* and shall \*\*\*\*.

4. \*\*\*\* Fee. The \*\*\*\* Fee for the \*\*\*\* Transponder shall \*\*\*\* US\$\*\*\*\* Fee of US\$\*\*\*\*; however, such rate \*\*\*\* US\$\*\*\*\* (\*\*\*\* Fee of US\$\*\*\*\*) effective \*\*\*\* in the event Customer \*\*\*\* with Intelsat \*\*\*\* transponders on the \*\*\*\* satellite to \*\*\*\* by \*\*\*\*.

5. Except as specifically set forth in this Amendment, all terms and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, each of the parties hereto has duly executed and delivered this Seventeenth Amendment as of the day and year above written.

INTELSAT CORPORATION

GCI COMMUNICATION CORP.

By: /s/ \_\_\_\_\_

By: /s/ \_\_\_\_\_

Name: Patricia A. Casey

Name: Jimmy Sipes

Title: SVP & Deputy General Counsel  
Engineer

Title: VP Network Services & Chief

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\*\*\*\*CONFIDENTIAL TREATMENT

APPENDIX B-1

TECHNICAL APPENDIX– GALAXY 18

[This appendix consists of technical engineering information and is not included in the filing of the amendment with the SEC as being not material to investor decisions.]

APPENDIX B-2

TECHNICAL APPENDIX– HORIZONS 1

[This appendix consists of technical engineering information and is not included in the filing of the amendment with the SEC as being not material to investor decisions.]

APPENDIX B-3

TECHNICAL APPENDIX– ENHANCED GALAXY REPLACEMENT

[This appendix consists of technical engineering information and is not included in the filing of the amendment with the SEC as being not material to investor decisions.]

\*\*\*\*CONFIDENTIAL PORTION has been omitted pursuant to a request for confidential treatment by the Company to, and the material has been separately filed with, the SEC. Each omitted Confidential Portion is marked by four asterisks.

EIGHTEENTH AMENDMENT TO THE  
FULL-TIME TRANSPONDER CAPACITY AGREEMENT (PRE-LAUNCH)

This Eighteenth Amendment to the Full-time Transponder Capacity Agreement (Pre-Launch) (the "Eighteenth Amendment") is made and entered into as of this 29th day of October, 2013 (the "Effective Date") by and between INTELSAT CORPORATION, a Delaware corporation ("Intelsat"), and GCI COMMUNICATIONS CORP., an Alaskan corporation ("Customer").

RECITALS

WHEREAS, pursuant to that certain Full-Time Transponder Capacity Agreement (Pre-Launch) dated as of March 31, 2006, as amended (collectively, the "Agreement") between Intelsat and Customer, Intelsat is providing Customer with \*\*\*\* transponders on Galaxy 18 (the "\*\*\*\* Transponders"); \*\*\*\* transponders on Galaxy 18 (the "\*\*\*\* Transponders"); \*\*\*\* transponders on Horizons 1 (the "\*\*\*\* Transponder"); and \*\*\*\* Transponder \*\*\*\* on Horizons 1 (the "Transponder \*\*\*\*");

WHEREAS, Customer and Intelsat wish to amend the terms of the Agreement \*\*\*\* Capacity Term and \*\*\*\* Customer \*\*\*\*, all of which is further defined below;

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of mutual covenants and agreements hereinafter set forth, the sufficiency and receipt of which is hereby acknowledged, the parties agree as follows:

1. Except as specifically provided herein, all terms and provisions of the Agreement shall remain in full force and effect.
  2. Article 2, Capacity Term. The Capacity Term for each component outlined here shall be: (i) for the \*\*\*\* Transponders \*\*\*\*; (ii) for the \*\*\*\* Transponders \*\*\*\*; (iii) for \*\*\*\* Transponders \*\*\*\*; (iv) for \*\*\*\* Transponders \*\*\*\*; and (v) for the Transponder \*\*\*\*.
  3. Section 3.1, \*\*\*\* Fee. Customer's \*\*\*\* Fee shall be as set forth in Appendix A attached hereto.
  4. \*\*\*\* and \*\*\*\* Transponder. Customer shall have \*\*\*\* the Capacity Term \*\*\*\* Transponders or the \*\*\*\* Transponders to the \*\*\*\* the Satellite at \*\*\*\*, in the event \*\*\*\* set forth herein.
  5. \*\*\*\* Transponder \*\*\*\*. At \*\*\*\* Effective Date \*\*\*\*, Customer shall have \*\*\*\* written notice, \*\*\*\* transponder \*\*\*\* on \*\*\*\* (the "\*\*\*\* Transponder \*\*\*\*") with \*\*\*\* a Capacity Term \*\*\*\* at the rate of \$\*\*\*\* inclusive of \*\*\*\* fees. Intelsat shall work with Customer \*\*\*\* the Capacity Term subject to \*\*\*\* and upon written notice.
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6. \*\*\*\* Transponder. Customer shall have the right, \*\*\*\* and \*\*\*\*, \*\*\*\* transponder on \*\*\*\* (the “\*\*\*\* Transponder”) by providing Intelsat \*\*\*\* written notice. The \*\*\*\* Transponder would have a Capacity Term \*\*\*\* and \*\*\*\* at the rate of \$\*\*\*\*.
7. \*\*\*\* Transponders. At \*\*\*\* the Effective Date of this Amendment to \*\*\*\*, Customer shall have the right, \*\*\*\* written notice, \*\*\*\* transponders on \*\*\*\* at the following rates:

<b>Term of Service</b>	<b>**** Fee Per Transponder</b>
> **** years	\$****
>**** years **** years	\$****
>**** years to **** years	\$****
> **** years to **** years	\$****
> **** years to **** years	\$****
**** year to **** years	\$****

8. \*\*\*\* Right. At \*\*\*\*, Customer shall have the right, in the event Customer’s \*\*\*\* with Customer and Customer provides written evidence \*\*\*\* Transponders (in \*\*\*\*) and \*\*\*\* Transponder, in which case Customer must provide Intelsat with \*\*\*\* written notice, and \*\*\*\*, Customer’s \*\*\*\* Fee for the \*\*\*\* Transponder \*\*\*\*\$\*\*\*\* and for the \*\*\*\* Transponder \*\*\*\* \$\*\*\*\*. Customer will \*\*\*\* fee for each transponder \*\*\*\* as follows:
-







Information indicated by [\*\*\*] in the text has been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for Confidential Treatment under Rule 24b-2 under the Securities Exchange Act of 1934.

**EXECUTION COPY**

**FIRST AMENDED AND RESTATED OPERATING AGREEMENT**

**OF**

**THE ALASKA WIRELESS NETWORK, LLC**

**July 22, 2013**

THE OWNERSHIP INTERESTS IN THIS LIMITED LIABILITY COMPANY HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR STATE SECURITIES AUTHORITIES AND MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND ANY APPLICABLE STATE SECURITIES LAWS OR AN OPINION OF COUNSEL REASONABLY ACCEPTABLE TO THE COMPANY THAT REGISTRATION IS NOT REQUIRED. THE SALE OR OTHER TRANSFER OF THE OWNERSHIP INTERESTS IS ALSO RESTRICTED BY CERTAIN PROVISIONS IN THIS AGREEMENT.

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## FIRST AMENDED AND RESTATED OPERATING AGREEMENT

OF

### THE ALASKA WIRELESS NETWORK, LLC

This **First Amended and Restated Operating Agreement** (the “**Agreement**”) of The Alaska Wireless Network, LLC, a Delaware limited liability company (the “**Company**”), is entered into as of July 22, 2013 (the “**Effective Date**”), by and among the Company, GCI Wireless Holdings, LLC, an Alaska limited liability company (the “**Initial GCI Member**”), and ACS Wireless, Inc., an Alaska corporation (the “**Initial ACS Member**”), and, solely for purposes of Sections 3.10[b], 6.5, 9.6, 14.10, 15, 16.8, 16.20, and 16.22, Alaska Communications Systems Group, Inc., a Delaware corporation, and, solely for purposes of Sections 3.10[b], 6.5, 9.6, 11.11, 14.10, 15, 16.8, 16.20, and 16.22, General Communication, Inc., an Alaska corporation.

In consideration of the mutual covenants set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Members (as defined below) hereby agree as follows:

#### **Article 1: FORMATION; DEFINITIONS; INTERPRETATION**

**1.1 Formation.** The Company was formed as a single member Delaware limited liability company on May 31, 2012, by filing a Certificate of Formation with the Delaware Secretary of State pursuant to the Act. A Certificate of Amendment changing the name of the Company was filed with the Delaware Secretary of State on June 1, 2012. This Agreement amends and restates in its entirety the original Operating Agreement of the Company dated as of May 31, 2012. Unless expressly provided otherwise in this Agreement, the rights, duties and liabilities of the Company and the Members will be as provided in this Agreement and the Act. If any provisions of the Act conflict with this Agreement, the provisions of this Agreement will control, and the conflicting provision of the Act will be deemed waived, in each case to the extent permitted by the Act.

**1.2 Name.** The name of the Company is The Alaska Wireless Network, LLC. The business of the Company will be conducted under such name, as well as any other name or names as the Company may from time to time determine, provided that no such name may suggest that the Company is an Affiliate of either the GCI Member or the ACS Member.

**1.3 Members.** Unless and until a Transferee is admitted as a Member pursuant to Section 14.6, the Initial GCI Member and the Initial ACS Member shall be the sole Members of the Company within the meaning of the Act. Except as otherwise expressly provided in this Agreement, no Member may be removed as a member of the Company without such Member’s prior written approval. The address of each Member is set forth on the attached **Exhibit A**, as it may be amended from time to time in accordance with this Agreement.

**1.4 Equity Interests.** The Members agree that, as of the Effective Date, the Ownership Interests of the Members in the equity of the Company based on the agreed Fair Market Value of

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the Initial Capital Contributions made by the Members, expressed as a percentage, are 66⅔% for the GCI Member and 33⅓% for the ACS Member (the “**Equity Interests**”).

**1.5 Registered Office and Agent.** The initial registered office of the Company in Delaware will be at 1209 Orange St., Wilmington, DE 19801, New Castle County, and its registered agent will be The Corporation Trust Company. The Company may change its registered office and registered agent in Delaware by filing the appropriate documents with the Secretary of State of Delaware in accordance with the Act.

**1.6 Principal Office.** The principal office of the Company where records of the Company will be maintained initially is the GCI Member’s principal place of business in Anchorage, Alaska. The Company may change its principal office, provided that such office may not be changed to a location outside Anchorage, Alaska without the affirmative Vote of all Members.

**1.7 Foreign Qualification.** The Company will qualify as a foreign limited liability company under the provisions of Alaska law and will maintain such status for so long as the Company owns any real property or otherwise transacts business in the State of Alaska. The Company will also apply for any required certificate of authority to do business in any other state or jurisdiction, as required or appropriate.

**1.8 Term.** The term of the Company as a limited liability company under the Act commenced on the date its Certificate was filed with the Delaware Secretary of State and will continue in perpetuity until a Dissolution occurs under Section 12.1 and a certificate of cancellation is filed with the Delaware Secretary of State pursuant to Section 13.6.

**1.9 Definitions.** The following capitalized terms, when used in this Agreement, have the meanings set forth below:

Accelerated Capital Investment: as defined in Section 9.1[a].

Accelerated Capital Investment Notice: as defined in Section 9.1[a].

ACI Purchase Price: as defined in Section 9.1[e].

ACS: Alaska Communications Systems Group, Inc., a Delaware corporation, the ultimate parent company of the Initial ACS Member.

ACS [\*\*\*] Connection Adjustment: as defined in Section 9.4[c][i].

ACS Actual Average Connections: as defined in Section 9.4[b].

ACS Annual Connection Shortfall Adjustment: as defined in Section 9.4[b].

ACS Connection Maintenance Adjustment: as defined in Section 9.5[a][iii].

ACS First Partial Preferred Distribution: if the Effective Date is not on the first day of a calendar quarter, an amount equal to \$12,500,000 multiplied by a

Information indicated by [\*\*\*] in the text has been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for Confidential Treatment under Rule 24b-2 under the Securities Exchange Act of 1934.

fraction [a] the numerator of which is the number of Preference Period Partial First Quarter Days and [b] the denominator of which is the number of days in the calendar quarter during which the first day of the Preference Period Partial First Quarter occurs.

ACS Forecast Average Connections: as defined in Section 9.4[a].

ACS Forecast Reduction Connections: an amount equal to the lesser of [a] [\*\*\*] and [b] the amount, if any, by which the ACS Forecast Average Connections for Fiscal Year 2014 exceeds the ACS Actual Average Connections for Fiscal Year 2014.

ACS Full Quarter Preferred Distributions: if the Effective Date is not on the first day of a calendar quarter, the following amounts: [a] an amount equal to \$12,500,000 with respect to each of the first seven full calendar quarters in the Preference Period Full Quarters; [b] with respect to the eighth full calendar quarter in the Preference Period Full Quarters, an amount equal to the sum of [i] \$12,500,000 minus the amount of the ACS First Partial Preferred Distribution, and [ii] \$11,250,000 multiplied by a fraction [A] the numerator of which is the number of Preference Period Partial First Quarter Days, and [B] the denominator of which is the number of days in the calendar quarter in which the Effective Date occurs; and [c] an amount equal to \$11,250,000 with respect to each of the last seven full calendar quarters in the Preference Period Full Quarters.

ACS Last Partial Preferred Distribution: if the Effective Date is not on the first day of a calendar quarter, an amount equal to \$190,000,000 minus the sum of [a] the ACS First Partial Preferred Distribution, and [b] the aggregate amount of the ACS Full Quarter Preferred Distributions.

ACS Member: initially, the Initial ACS Member, and shall include any successors thereto by merger or consolidation (or otherwise by operation of law), any assignees or transferees of all or substantially all the assets thereof, and any transferees of the Ownership Interests thereof, in each case upon such successor, assignee or transferee being admitted as a

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substitute Member in accordance with the terms of this Agreement.

ACS Preference Period Last Quarter Distribution: if the Effective Date is not on the first day of a calendar quarter, an amount equal to [a] the Equity Interest of the ACS Member, multiplied by [b] the product of [i] Adjusted FCF for the Preference Period Last Quarter, multiplied by [ii] a fraction [A] the numerator of which is the number of Preference Period Partial First Quarter Days, and [B] the denominator of which is the number of days in the Preference Period Last Quarter.

ACS Preferred Distributions: an aggregate amount equal to [a] if the Effective Date is on the first day of a calendar quarter, an amount equal to \$12,500,000 with respect to each of the first eight calendar quarters beginning on the Effective Date and \$11,250,000 with respect to each of the next eight calendar quarters thereafter, or [b] if the Effective Date is not on the first day of a calendar quarter, the sum of [i] the ACS First Partial Preferred Distribution, [ii] the ACS Full Quarter Preferred Distributions, and [iii] the ACS Last Partial Preferred Distribution.

ACS Services Agreement: the ACS Services Agreement between the Company and ACS Wireless, Inc. attached to this Agreement as **Exhibit O**.

ACS Transfer Date Connections: as defined in Section 9.5[a][i].

Act: the Delaware Limited Liability Company Act, as amended from time to time.

Additional Capital Contribution: means any Capital Contribution made to the Company by a Member in accordance with the terms of this Agreement other than an Initial Capital Contribution.

Additional Capacity Purchase Agreement: as defined in the Contribution Agreement.

Adjusted ACS Forecast Average Connections: as defined in Section 9.4[a].

Adjusted Capital Account Deficit: with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant taxable year, after giving effect to the following adjustments:

[a] credit to such Capital Account any amounts which such Member [i] is obligated to restore to the Company

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upon liquidation of such Member's interest in the Company (or which is so treated pursuant to Regulation § 1.704-1(b)(2)(ii)(c)) pursuant to the terms of this Agreement or under state law or [ii] is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations §§ 1.704-2(g)(1) and 1.704-2(i)(5); and

[b] debit to such Capital Account the items described in §§ 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), and 1.704-1(b)(2)(ii)(d)(6) of the Regulations.

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of § 1.704-1(b)(2)(ii)(d) of the Regulations and will be interpreted consistently with such section.

Adjusted FCF: FCF minus the sum of [a] the Consulting Fee and [b] payments required to be made in accordance with the terms of the Company Working Capital Loan or the GCI Working Capital Loan, other than, in the case of the GCI Working Capital Loan, payments financed pursuant to a refinancing of such loan.

Affiliate: 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, except that the Company shall not be deemed to be an Affiliate of any Member.

Affiliate Contracts: as defined in the Contribution Agreement.

Affiliate Transactions: as defined in Section 6.4[n].

Aggregate Purchase Price: as defined in Section 14.8[c].

Agreement: this First Amended and Restated Operating Agreement, also known as a limited liability company agreement under the Act, as amended from time to time.

Ancillary Agreements: as defined in the Contribution Agreement.

Annual Budgets: the then current Annual Cap Ex Budget or Annual Operating Budget or both, as applicable.

Annual Cap Ex Budget: the capital expenditures budget of the Company for a given Fiscal Year, each of which will be consistent with the Four Year

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Plan applicable for the given Fiscal Year and will be in the form of, and contain the same scope of information included in, the First Year Cap Ex Budget.

Annual Operating Budget: the operating budget of the Company for a given Fiscal Year, each of which will be consistent with the Four Year Plan applicable for the given Fiscal Year and will be in the form of, and contain the same scope of information included in, the First Year Operating Budget.

Approved Affiliate Transactions: the following agreements and transactions: [a] the Contribution Agreement, all Affiliate Contracts that are Assumed Contracts (as identified on the Schedules to the Contribution Agreement) to which the Company, on the one hand, and a Member or an Affiliate of a Member, on the other hand, are parties after the Effective Date, and all agreements entered into in connection with closing of the Contribution Agreement that are between a Member or an Affiliate of a Member and the Company, including all agreements related to the contribution of assets by the Members to the Company (and maintenance thereof) and the applicable Ancillary Agreements, [b] the GCI Services Agreement, subject to the terms of Section 6.4[n][x] and [y], respectively, in the case of Professional Services and Satellite Capacity Services provided under such agreement, [c] the ACS Services Agreement, [d] the Facilities and Network Use Agreement, [e] the GCI Working Capital Loan and [f] any other agreement or transaction that is approved by the unanimous Vote of the Members.

Arbitration Agreement: that certain Arbitration Agreement between the Company and the Members set forth as the attached **Exhibit E**, as it may be amended from time to time, and which is hereby incorporated into and made a part of this Agreement.

Arbitrator: as defined in the Arbitration Agreement.

Arbitrator's Expenses: as defined in the Arbitration Agreement.

ARPU: average revenue per unit, with a unit for this purpose meaning a Connection.

Assumed Contracts: as defined in the Contribution Agreement.

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Average Connections: with respect to ACS or GCI, as applicable, for any applicable Fiscal Year, the sum of [a] the number of its Connections, [\*\*\*] the number of [\*\*\*] the [\*\*\*] for the [\*\*\*] of [\*\*\*] that have [\*\*\*] of [\*\*\*], as applicable (as determined by [\*\*\*] such other [\*\*\*], as applicable, with respect to such Connections), and [b] the number of its [\*\*\*] that have [\*\*\*] of any [\*\*\*] the [\*\*\*] for the [\*\*\*] of [\*\*\*] (as determined by [\*\*\*] from [\*\*\*], to such other Person with respect to such Connections), in each case determined in accordance with standard industry practices and consistent with past practices, on the last day of each calendar month in such Fiscal Year divided by 12 (or divided by the number of calendar months in the applicable Fiscal Year if it is a Fiscal Year consisting of fewer than 12 months). For purposes of this definition, [i] an [\*\*\*] be deemed a [\*\*\*], [ii] any [\*\*\*] shall be deemed a [\*\*\*], [iii] an [\*\*\*] shall be deemed [\*\*\*], [iv] an [\*\*\*] shall be deemed a [\*\*\*], and [v] a [\*\*\*] deemed a [\*\*\*], however, that all determinations of [\*\*\*] shall be made without duplication [\*\*\*]

Bankruptcy Case: as defined in Section 14.6.

Bankruptcy Code: as defined in definition of Bankruptcy Event.

Bankruptcy Event: means, with respect to a Person, the commencement of occurrence of any of the following:

- [a] a voluntary or involuntary case under Title 11 of the U.S. Code (the “**Bankruptcy Code**”), as now constituted or hereafter amended, or under any other applicable federal, state or foreign bankruptcy or insolvency law or other similar law, in which such Person is a debtor; or
- [b] the appointment of (or a proceeding to appoint) a trustee or receiver for a substantial portion of such Person’s property or a custodian (as such term is defined in section 101 of the Bankruptcy Code); or
- [c] an attachment, execution or other judicial seizure of (or a proceeding to attach, execute or seize) a substantial property interest of such Person; or
- [d] a general assignment for the benefit of creditors.

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Board: as defined in Section 6.3[a].

Book Value: with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

[a] the initial Book Value of any asset contributed by a Member to the Company will be the asset's Fair Market Value at the time of the contribution, which shall be the amount set forth on **Exhibit B** for the Initial Capital Contributions made by the Initial ACS Member and the Initial GCI Member;

[b] the Book Value of all Company assets will be adjusted to equal their respective Fair Market Values, [i] as of [A] the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution, [B] the distribution by the Company to a Member of more than a de minimis amount of Company property as consideration for an interest in the Company, or [C] the issuance of an interest in return for services; and [ii] as of the liquidation of the Company within the meaning of Regulations § 1.704-1(b)(2)(ii)(g);

[c] the Book Value of any Company asset distributed to any Member will be the Fair Market Value of the asset on the date of Distribution; and

[d] the Book Values of Company assets will be increased or decreased to reflect any adjustment to the adjusted basis of the assets under Code §§ 734(b) or 743(b), but only to the extent that the adjustment is taken into account in determining Capital Accounts under Regulations § 1.704-1(b)(2)(iv)(m), but Book Values will not be adjusted pursuant to this provision to the extent that an adjustment under clause [b] is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment under this clause [d].

After the Book Value of any asset has been adjusted under clause [a], clause [b] or clause [d] above, Book Value will be adjusted by the Depreciation taken into account with respect to the asset for purposes of computing Net Income and Net Loss.



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Budget Objection Notice: as defined in Section 7.3[f].

Business Day: any day (other than a Saturday or Sunday) on which commercial banks are not required or authorized to close in New York City, New York or Anchorage, Alaska.

Capital Account: the capital account of a Member established and maintained in accordance with Section 3.2.

Capital Contribution: any contribution of money or property by a Member to the Company, which is either an Initial Capital Contribution or an Additional Capital Contribution.

Cause: the CEO [i] commits any act of fraud (including securities fraud), theft or willful misconduct relating to the Company or any of its Subsidiaries or any Member, or [ii] is convicted of, or pleads guilty or no contest to, a misdemeanor involving fraud, deceit or embezzlement which is either in relation to the Company or is reasonably likely to have a material adverse effect on the business or reputation of the Company, or any felony or [iii] violates any material federal or state securities law or other applicable material law or regulation in connection with activities directly related to the Company and its Subsidiaries, which violation is reasonably likely to have a material adverse effect on the business or reputation of the Company or its Subsidiaries or [iv] breaches his or her duty of loyalty to the Company.

CEO: as defined in Section 6.2[a].

Certificate: the Certificate of Formation of the Company, as amended from time to time.

[\*\*\*] [\*\*\*]

Challenged Aspects: as defined in Section 7.3[g].

Changing Market Conditions: includes material changes in market conditions that were not anticipated at the time the then-current Plans were adopted by the Company, including unanticipated (i) changes in subscriber demand, (ii) force majeure events, (iii) entrance of new competitors into the Wireless Business in Alaska and (iv) introduction of competitive technology.

Clawback Amount: as defined in Section 7.5[c].

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Code: the Internal Revenue Code of 1986, as amended from time to time (including corresponding provisions of subsequent revenue laws).

Commercially Sensitive Information Policies and Procedures: as set forth on **Exhibit L**.

Company: The Alaska Wireless Network, LLC, as formed under the Certificate and governed by this Agreement.

Company Asset Sale: as defined in Section 14.9[a].

Company Minimum Gain: the amount computed under Regulations § 1.704-2(d)(1) with respect to the Company's Nonrecourse Liabilities.

Company Network: as defined in the Facilities and Network Use Agreement.

Company Working Capital Loan: as defined in Section 3.10[b].

Connection: each Wireless Device having a discrete International Mobile Subscriber Identity (IMSI), including Wireless Devices provided by a Person [i] for use by its, or any of its Affiliate's, directors, officers, employees or consultants for business or personal use, [ii] for demonstration purposes in such Person's (or its Affiliate's) retail stores or [iii] for other internal uses or purposes of such Person or its Affiliates, that is connected to a network operated by the Company and covered by the Facilities and Network Use Agreement or an agreement between the Company and any other Person related to use of the Company's network for the provision of Wireless services, as the context requires.

Connection Maintenance Measurement Date: as defined in Section 9.5[a][iii].

Connection Maintenance Transfer: as defined in Section 9.5[a].

Connection Maintenance Transfer Date: as defined in Section 9.5[a].

Connection Termination Event: as defined in Section 14.10[a].

Connection Termination Date: the date on which a Connection Termination Event occurs.

Consulting Fee: as defined in Section 6.1[c].

Contributed Assets: as defined in the Contribution Agreement.

Contributed Asset Depreciation: any Depreciation arising from the Company's ownership of any Contributed Asset, provided, however, that  
Contributed

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Asset Depreciation shall not include any Depreciation attributable to an increase in the Book Value of any Contributed Asset pursuant to clause [b] of the definition of Book Value.

Contribution Agreement: the Asset Purchase and Contribution Agreement entered into by GCI, the Initial GCI Member, ACS, the Initial ACS Member and the Company dated June 4, 2012, as amended.

Control: (including the terms “Controlled by” and “under common Control with”) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

CTE Call Right: as defined in Section 14.10[b][ii].

CTE Notice: as defined in Section 14.10[b].

CTE Purchase Price: the price payable by [\*\*\*] pursuant to the exercise of the CTE Call Right or the CTE Put Right, which shall be either [a] the price negotiated by the Members pursuant to Section 14.10[b][ii] or [iii], as applicable, or [b] the [\*\*\*] of [\*\*\*] as of the [\*\*\*], as determined pursuant to [\*\*\*].

CTE Put Right: as defined in Section 14.10[b][iii].

Cure Date: as defined in Section 3.11[b].

Cure Offer: as defined in Section 3.11[a].

Cure Offer Period: as defined in Section 3.11[b].

Current Assets: the current assets of the Company, determined in accordance with GAAP.

Current Liabilities: the current liabilities of the Company, determined in accordance with GAAP.

Departing Member: as defined in Section 14.10[b].

Depreciation: for each taxable year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for the year or other period, except that if the Book Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of the year or other period, Depreciation will be an amount that bears the same ratio to the beginning Book Value as the federal income tax depreciation,

amortization or other cost recovery deduction for the year or other period bears to the beginning adjusted tax basis, but if the federal income tax depreciation, amortization, or other cost recovery deduction for the year or other period is zero, Depreciation will be determined with reference to the beginning Book Value using any reasonable method selected by the Tax Matters Partner and mutually agreed to by the Members; provided, however, that the Members will not unreasonably withhold approval of a reasonable method selected by the Tax Matters Partner so long as such method does not result in a disproportionate effect on any Member.

Designated Budget Dispute Arbitrator: as defined in the Arbitration Agreement.

Disclosing Party: as defined in Section 16.20.

Disputed Expense: as defined in Section 7.3[i].

Dissolution: the happening of any of the events set forth in Section 12.1.

Distribution: the amount of any money or the Fair Market Value of any property distributed by the Company to the Members as an operating or liquidating distribution in accordance with this Agreement.

Drag Along Election: as defined in Section 14.8[a].

Effective Date: as defined in the preamble, which will be the Closing Date as defined in the Contribution Agreement.

End User Data: as defined in the Facilities and Network Use Agreement.

Entire Company Assumed Purchase Price: as defined in Section 14.8[c][ii].

Equity Interests: as defined in Section 1.4.

Exchange Offer: as defined in Section 14.9[d].

Facilities and Network Use Agreement: as defined in Section 9.3.

Facilities and Network Use CTE: as defined in Section 14.10[b][iii].

Fair Market Value: the cash price at which a willing seller would sell and a willing buyer would buy, both having full knowledge of the relevant facts and being under no compulsion to buy or sell, in an

arm's-length transaction without time constraints, as determined by:

[a] the Members by unanimous Vote in the case of a determination of Fair Market Value pursuant to: clause [a] (except as otherwise provided therein with respect to the Fair Market Value of the Initial Capital Contributions), clause [b] and clause [c] of the definition of Book Value; the definition of Distribution; clause [c] of the definition of Income; clause [c] of the definition of Loss; Section 3.2[a][ii] (but only with respect to Additional Capital Contributions); Section 3.2[b][ii]; as provided in the penultimate paragraph of Section 3.2; Section 13.3; or the definition of CTE Purchase Price; provided, that if the Members do not unanimously agree on Fair Market Value in any such case within 15 days after a determination of Fair Market Value is required to be made (or such longer period as the Members may agree), then Fair Market Value shall be determined by an Independent Appraiser in accordance with Section 1.11 or Section 1.12, as applicable;

[b] as set forth on **Exhibit B** in the case of a determination of Fair Market Value pursuant to: Section 1.4; as provided in clause [a] of the definition of Book Value with respect to Initial Capital Contributions; or in Section 3.2[a][ii] with respect to Initial Capital Contributions; and

[c] by Majority Vote in all other instances;

provided, that the determination of the Fair Market Value of any Ownership Interest being valued pursuant to this Agreement for any purpose shall not be subject to any discount for lack of marketability or minority interest.

Fair Market Value Determination Date: as defined in Section 1.11.

FCF: means, for any period, the consolidated net income (or loss) of the Company and its Subsidiaries determined in accordance with GAAP ("FCF Income") plus (a) the amount of depreciation and amortization expense reducing FCF Income for such period, (b) the amount of interest expense reducing FCF Income for such period and (c) any non-

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cash items reducing FCF Income for such period, and minus (i) any non-cash items increasing FCF Income for such period, and (ii) any capital expenditures made in such period for tangible and intangible assets; provided, that the amount of any [\*\*\*] by the [\*\*\*] shall be excluded from the calculation of FCF for the purposes of determining whether any Plan is subject to unanimous Board approval pursuant to Section 7.4.

Final Adjusted ACS Forecast Average Connections: as defined in Section 9.4[a].

Financial Objectives: as defined in Section 7.1[b].

First Year Budgets: as defined in Section 7.2[b].

First Year Cap Ex Budget: as defined in Section 7.2[b].

First Year Operating Budget: as defined in Section 7.2[b].

Fiscal Year: as defined in Section 11.1.

Fixed Wireless Facility Investment: as defined in Section 9.7[a].

Fixed Wireless Facility Notice: as defined in Section 9.7[a].

Four Year Plan: the then current four year business plan of the Company, as the same may be revised pursuant to Article 7, each of which will be substantially in the form of, and contain the same scope of information included in, the Initial Four Year Plan.

FWF Option 2: as defined in Section 9.7[b].

FWF Option 3: as defined in Section 9.7[b].

FWF Purchase Price: as defined in Section 9.7[e].

GAAP: generally accepted accounting principles as in effect from time to time in the United States, consistently applied.

GCI: means General Communication, Inc., an Alaska corporation, the parent company of the Initial GCI Member.

GCI [\*\*\*] Connection Adjustment: as defined in Section 9.4[c][ii].

GCI Connection Maintenance Adjustment: as defined in Section 9.5[a][iv].

Information indicated by [\*\*\*] in the text has been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for Confidential Treatment under Rule 24b-2 under the Securities Exchange Act of 1934.

GCI Member: initially, the Initial GCI Member, and shall include any successors thereto by merger or consolidation (or otherwise by operation of law), any assignees or transferees of all or substantially all the assets thereof, and any transferees of the Ownership Interests thereof, in each case upon such successor, assignee or transferee being admitted as an additional or substitute Member in accordance with the terms of this Agreement.

GCI Preference Period Last Quarter Distribution: if the Effective Date is not on the first day of a calendar quarter, an amount equal to [a] 100% of Adjusted FCF for the Preference Period Last Quarter, minus [b] the sum of [i] the amount of any ACS Preferred Distributions made during the Preference Period Last Quarter, and [ii] the amount of the ACS Preference Period Last Quarter Distribution.

GCI Services Agreement: as defined in Section 6.2[c].

GCI Transfer Date Connections: as defined in Section 9.5[a][ii].

GCI Working Capital Loan: as defined in Section 3.10[a].

Governmental Authority: any government or any arbitrator, tribunal or court of competent jurisdiction, administrative agency, board, department or commission, legislative body or other governmental authority or instrumentality (in each case whether federal, state, local, foreign, international or multinational) or entity which lawfully assumes the powers and functions of the same (including any taxing or other revenue collecting authority or other body).

HSPA Services Agreement: the HSPA Services Agreement dated as of June 4, 2012 by and between GCICC and Initial ACS Member, which is being terminated on the Effective Date.

Income: for each Fiscal Year, each item of income and gain as determined, recognized and classified for federal income tax purposes, but [a] any income or gain that is exempt from federal income tax will be included as if it were an item of taxable income, [b] any income or gain attributable to the taxable disposition of any Company asset will be computed by the Company as if the adjusted basis of such asset as of the date of the disposition were equal in amount to the Company's Book Value with respect to such asset as of such date, [c] in the event of a Distribution of any

Company asset, whether or not in connection with a Liquidation of the Company, such event will for Capital Account purposes be a deemed taxable disposition of such Company asset immediately prior to such Distribution and income or gain will be computed and allocated among the Members in accordance with their Equity Interests as if such property were actually disposed of for an amount realized equal to the Fair Market Value of such asset and as if the adjusted basis of such asset was equal to its Book Value at such time, and [d] in the event the Book Value of any Company asset is adjusted upwards pursuant to the definition of Book Value, the amount of such adjustment will be taken into account for Capital Account purposes as income or gain from the disposition of such Company asset and allocated among the Members.

Indebtedness: with respect to a Person, without duplication, [i] all indebtedness for borrowed money, [ii] all indebtedness for the deferred purchase price of property or services (other than trade payables incurred in the ordinary course of business and other than expense accruals and deferred compensation items arising in the ordinary course of business), [iii] all obligations evidenced by notes, bonds, debentures or other similar instruments (other than performance, surety and appeal bonds arising in the ordinary course of business in respect of which such Person's liability remains contingent), [iv] all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), [v] all obligations under leases that have been or should be, in accordance with GAAP, recorded as capital leases, [vi] all reimbursement, payment or similar obligations, contingent or otherwise, under acceptance, letter of credit or similar facilities and [vii] any liability of others described in clauses [i] through [vi] above that the Person has guaranteed or that is otherwise its legal liability, and including in clauses [i] through [vi] above any accrued and unpaid interest or penalties thereon.

Indemnified Losses: losses, damages, expenses (including fees and expenses of attorneys and other advisors and court costs) and liabilities.



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Independent Appraiser: a nationally recognized third-party appraiser which, as of the date of appointment (or consideration for appointment), [i] shall be qualified to appraise businesses in the Wireless industry; [ii] shall have been engaged in the appraisal or business valuation business for not less than five years; and [iii] unless the Members otherwise agree, shall not be, and shall not have been at any time during the previous three years, engaged by the Company or either Member, or any of their respective Affiliates, to provide services to the Company, such Member or such Affiliate.

Individual Fees and Expenses: as defined in the Arbitration Agreement.

Initial ACS Member: as defined in the preamble.

Initial Capital Contribution: as defined in Section 3.1[a].

Initial Four Year Period: the period consisting of Fiscal Years 2013 through 2016.

Initial Four Year Plan: as defined in Section 7.2[a].

Initial GCI Member: as defined in the preamble.

Intentional Service Area Elimination: as defined in Section 9.4[d].

Investing Member: as defined in Section 9.1[a].

Investing Member's Cost: as defined in Section 9.1[c].

LIBOR: the three-month London Interbank Offered Rate of interest on the first day on which an applicable interest rate is to be determined, adjusted on the first day of each calendar quarter, for dollar deposits as published in *The Wall Street Journal* (Eastern Edition) under "Money Rates" from time to time, or if such rate does not so appear, in such other nationally recognized publication as the Members, by Majority Vote, may, from time to time, specify. On any day when such a rate is not reported, the most recently reported rate on a preceding day will be deemed the applicable rate.

Liquidation: the process of winding up and terminating the Company after its Dissolution.

Loss: for each Fiscal Year, each item of loss or deduction as determined, recognized and classified for federal income tax purposes, but [a] any Code § 705(a)(2)(B) expenditure will be included as if

it were a deductible expenditure, [b] any loss attributable to the taxable disposition of any Company asset will be computed by the Company as if the adjusted basis of such asset as of the date of the disposition were equal to the Company's Book Value with respect to such asset as of such date, [c] in the event of a Distribution of any Company asset, whether or not in connection with a Liquidation of the Company, such event will be a deemed taxable disposition of such asset immediately prior to such Distribution and any loss will be computed and allocated among the Members in accordance with their Equity Interests as if such property were actually disposed of for an amount realized equal to the Fair Market Value of such asset and as if the adjusted basis of such asset were equal to its Book Value at such time, [d] in the event the Book Value of any Company asset is adjusted downward pursuant to the definition of Book Value, the amount of such adjustment will be taken into account as a loss from the disposition of such asset and allocated among the Members, and [e] any deductions for Depreciation with respect to a Company asset will be determined as if the adjusted basis of such asset were equal to the Book Value of such asset pursuant to the methodology described in Regulations § 1.704-1(b)(2)(iv)(g)(3).

Majority Vote: the affirmative Vote of Members holding a majority of the outstanding Equity Interests.

Material Indebtedness: as defined in [Section 6.4\[c\]](#).

Maximum Rate: the maximum lawful rate of interest permitted by the State of Alaska.

Member: initially, each of the Initial GCI Member and the Initial ACS Member, and any other Person subsequently admitted to the Company as an additional or substitute member in accordance with the terms of this Agreement.

Member Approval Request: as defined in [Section 6.4](#).

Member Carrier: as defined in the Facilities and Network Use Agreement.

Member Carrier Customer: as defined in the Facilities and Network Use Agreement.

Member Network Capacity Purchases: as defined in [Section 9.6\[a\]](#).

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Member Nonrecourse Debt: any Nonrecourse Liability of the Company for which any Member or related Person bears the economic risk of loss under Regulations § 1.752-2 within the meaning of Regulations § 1.704-2(b)(4).

Member Nonrecourse Deductions: Company losses, deductions or Code § 705(a)(2)(B) expenditures attributable to a particular Member Nonrecourse Debt. The amount of Member Nonrecourse Deductions for any Fiscal Year or other period will be determined in accordance with the provisions of Regulations § 1.704-2(i)(2).

Member's Assumed Share: as defined in Section 14.8[c][ii].

Minimum Gain: the minimum gain attributable to Member Nonrecourse Debt as determined under Regulations § 1.704-2(i)(3).

Minimum Required FCF Projection: the minimum threshold amount of FCF that must be projected to be achieved in a given Plan in order for such Plan not to be subject to unanimous Board approval pursuant to any paragraph of Section 7.4.

Minimum Required FCF Results: the minimum threshold amount of FCF that must be achieved by the Company in a given period in order for a given Plan not to be subject to unanimous Board approval pursuant to any paragraph of Section 7.4.

Net ACS [\*\*\*] Connection Adjustment: as defined in Section 9.4[c][iii].

Net ACS Connection Maintenance Adjustment: as defined in Section 9.5[a][v].

Net GCI [\*\*\*] Connection Adjustment: as defined in Section 9.4[c][iv].

Net GCI Connection Maintenance Adjustment: as defined in Section 9.5[a][vi].

Net Income and Net Loss: for each Fiscal Year, [i] the excess of the Income for such period over the Loss for such period, or [ii] the excess of the Loss for such period over the Income for such period, respectively, but Net Income and Net Loss for a Fiscal Year will be computed by excluding from such computation any Income or Loss specially allocated under Sections 4.2 through 4.12 (including, for the avoidance of doubt, Contributed Asset Depreciation), any Nonrecourse Deductions, and any Member Nonrecourse Deductions.

Information indicated by [\*\*\*] in the text has been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for Confidential Treatment under Rule 24b-2 under the Securities Exchange Act of 1934.

Network Access Agreement: the Network Access Agreement dated as of June 4, 2012 by and between the Initial ACS Member and GCICC, which is being terminated on the Effective Date.

Non-Investing Member: as defined in Section 9.1[d].

Nonrecourse Deductions: Losses, deductions or Code § 705(a)(2)(B) expenditures attributable to Nonrecourse Liabilities of the Company. The amount of Nonrecourse Deductions for any Fiscal Year or other period will be determined in accordance with the provisions of Regulations § 1.704-2(c).

Nonrecourse Liability: a nonrecourse liability as defined in Regulations § 1.752-1(a)(2) and referred to in Regulations § 1.704-2(b)(3).

Non-Requesting Member: as defined in Section 9.7[d].

Notice: as defined in Section 16.12.

Offer: as defined in Section 14.9[b].

Officers: as defined in Section 6.2[b].

Option 2: as defined in Section 9.1[b].

Ownership Interest: with respect to any Person, all of the limited liability company interests of the Company owned by such Person, including an interest in the Income and Losses of the Company, a Capital Account interest, and all management rights, voting rights, rights to consent and other rights of such Person in and to the Company as provided in this Agreement and the Act, together with all obligations of such Person to comply with the terms of this Agreement and the Act.

Permitted Transferee: a Person described in Section 14.3 to whom an Ownership Interest may be Transferred.

Person: an individual, corporation, partnership, limited liability company, trust, unincorporated organization, association or other entity.

Plan(s): one or more of an Annual Budget, Four Year Plan or Revised Four Plan, as applicable.

Preference Period: [a] if the Effective Date is on the first day of a calendar quarter, the 16 calendar quarters beginning on the Effective Date, and [b] if the Effective Date is not on the first day of a calendar quarter, the Preference Period Partial First

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Quarter, the Preference Period Full Quarters and the Preference Period Last Quarter, collectively.

Preference Period Full Quarters: if the Effective Date is not on the first day of a calendar quarter, the 15 full calendar quarters beginning on (and including) the first day of the first full calendar quarter beginning after the Effective Date and ending on (but excluding) the first day of the Preference Period Last Quarter.

Preference Period Last Quarter: if the Effective Date is not on the first day of a calendar quarter, the calendar quarter beginning on the first day of the calendar quarter after the end of the last Preference Period Full Quarter.

Preference Period Partial First Quarter: if the Effective Date is not on the first day of a calendar quarter, the period of time beginning on (and including) the Effective Date and ending on (but excluding) the first day of the first calendar quarter after the Effective Date.

Preference Period Partial First Quarter Days the number of days in the Preference Period Partial First Quarter.

Private WiFi: any WiFi service that is not Public WiFi.

Proceeding: any suit, action, proceeding, arbitration, audit, hearing, or investigation (in each case, whether civil, criminal, administrative, investigative, or informal) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority.

Professional Services: as defined in the GCI Services Agreement.

Professional Services Guidelines: the terms and conditions on which GCI Communication Corp. is permitted to provide Professional Services to the Company, as set forth on Exhibit C to the GCI Services Agreement.

Public WiFi: any WiFi service established and owned by the Company that is provided to the Member Carriers for use by the Member Carrier Customers on their Wireless Devices, and is password protected or has other secure authentication protocols established and managed by the Company.

Purchasing Member: as defined in [Section 14.9\[c\]](#).

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Reallocated Actual FCF Amount: as defined in [Section 7.5\[b\]](#).

Reallocated Amount: as defined in [Section 7.5\[b\]](#).

Reallocated Projected FCF Amount: as defined in [Section 7.5\[a\]](#).

Receiving Party: as defined in [Section 16.20](#).

Recommended Changes: as defined in the Arbitration Agreement.

Redetermined Recommended Changes: as defined in the Arbitration Agreement.

Regulations: the Treasury Regulations (including temporary or proposed regulations) promulgated under the Code, as amended from time to time (including corresponding provisions of succeeding regulations).

Related Party: as defined in [Section 7.3\[d\]](#).

Remaining Member: as defined in [Section 14.10\[b\]](#).

Requesting Member: as defined in [Section 9.7\[a\]](#).

Requesting Member's Cost: as defined in [Section 9.7\[c\]](#).

Required 704(b) Adjustment Notice: as defined in [Section 3.4](#).

Restricted Wireless Business: the business of [a] engineering, operating and maintaining competitive Wireless network(s) in Alaska, and [b] providing Wireless products (including Wireless Devices) and services in the State of Alaska on any basis, including entering into Wireless roaming agreements. For the avoidance of doubt, the Restricted Wireless Business does not include engineering, providing and maintaining competitive Wireless Backhaul and Transport services for the benefit of Wireless carriers serving the Alaska market, or providing competitive cell site leases.

Revised Four Year Plan: as defined in [Section 7.3\[b\]\[ii\]](#).

Right of First Offer: as defined in [Section 14.9\[b\]](#).

ROFO Assets: as defined in [Section 14.9\[a\]](#).

ROFO Notice: as defined in [Section 14.9\[a\]](#).

ROFO Period: as defined in [Section 14.9\[b\]](#).

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SAE Cure Period: as defined in Section 9.4[d].

Sale Notice: as defined in Section 14.8[a].

Satellite Capacity Services: as defined in the GCI Services Agreement.

Satellite Capacity Services Guidelines: the terms and conditions on which GCI Communication Corp. is permitted to provide Satellite Capacity Services to the Company, as set forth on Exhibit D to the GCI Services Agreement.

Second Four Year Plan: as defined in Section 7.3[c].

Service Area Elimination: any Intentional Service Area Elimination or Unintentional Service Area Elimination.

Service Area Elimination Company Notice: as defined in Section 9.4[d].

Service Area Elimination Member Notice: as defined in Section 9.4[d].

Service Area Elimination Percentage: as defined in Section 9.4[d].

Standard of Care: as defined in Section 10.5[a].

Subsidiary: of any Person means another Person, an amount of the voting securities, other voting ownership or voting partnership interests of which is sufficient to elect at least a majority of its board of directors or other governing body (or, if there are no such voting interests, 50% or more of the equity interests of which) is owned directly or indirectly by such first Person or by another Subsidiary of such first Person.

Tag Along Notice: as defined in Section 14.8[a].

Tag Along Right: as defined in Section 14.8[a].

Tag/Drag Sale: as defined in Section 14.8[a].

Tax Matters Partner: as defined in Section 11.9.

Third Party: a Person that is not a Member, the Company, an Affiliate of either, or an officer or director of any of the foregoing.

Third Party Purchaser: as defined in Section 14.8[a].

Third Party Purchaser Sale Period: as defined in Section 14.9[d].

Information indicated by [\*\*\*] in the text has been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for Confidential Treatment under Rule 24b-2 under the Securities Exchange Act of 1934.

Transaction Agreements: as defined in Section 16.22[a].

Transfer: a direct or indirect sale, exchange, assignment, transfer, transfer upon or in lieu of foreclosure, or other disposition (whether voluntary, involuntary or by operation of law, including pursuant to a merger of the Company), and includes any transaction that results directly or indirectly in a change in Control of a Member or a transfer of more than 50% of the direct or indirect beneficial ownership of a Member to a Person that is not an Affiliate of such Member, including a spin-off or split-off, however structured; provided, however, that in no event shall any issuance, transfer, conversion or exchange of ACS or GCI securities (other than a tracking stock, spin-off or split-off that directly or indirectly separates the Equity Interests from any substantial portion of the other assets and liabilities of ACS or GCI) or any change in Control of ACS or GCI, in each case by merger, consolidation or otherwise, be a "Transfer" for purposes of this Agreement.

Transferee: a Person to whom an Ownership Interest is Transferred in compliance with this Agreement, who will have the rights specified in Section 14.5.

Transferor: a Person who Transfers an Ownership Interest in compliance with this Agreement.

Unintentional Service Area Elimination: as defined in Section 9.4[d].

Unpaid ACS Preferred Distribution Amount: as defined in Section 14.8[c][i].

Vote: an action of the Company by the Members in accordance with Article 8.

WiFi: any wireless local area network technology that is based on the Institute of Electrical and Electronics Engineers' (IEEE) 8.02.11 standards.

Wireless: [i] Commercial Mobile Radio Services (as defined by the Communications Act and the rules and regulations thereunder), [ii] Public WiFi and [iii] any additional mobile voice, text messaging and data products and services provided over wireless spectrum licensed or authorized for use by the FCC other than, in the case of clause [iii], any such products or services provided by satellite directly to Wireless Devices.



Information indicated by [\*\*\*] in the text has been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for Confidential Treatment under Rule 24b-2 under the Securities Exchange Act of 1934.

Wireless Backhaul and Transport: capacity to carry and support voice and data traffic between [i] a cell site and [ii] a switch and a Wireless network (for voice) or the nearest Internet peering point (for data) to a carrier of Wireless service.

Wireless Business: as defined in Section 2.1[a].

Wireless Device: Wireless phones, Wireless iPads and similar Wireless tablet devices, Wireless routers and other devices used to transmit and receive voice, data and text by means of Wireless services.

Wireless Parent: in relation to the Initial ACS Member, ACS, in relation to the Initial GCI Member, GCI, and in relation to any other Person, the Person that controls such Person's and its Affiliates' provision of Wireless products (including Wireless Devices) and services in the State of Alaska.

Withdrawal: the occurrence of an event that terminates membership in the Company, as provided in Section 12.2.

Working Capital: Current Assets minus Current Liabilities.

**1.10 Interpretation.** For purposes of this Agreement, [a] the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; [b] the word "or" has the inclusive meaning of "and/or"; and [c] the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. The definitions given for any defined terms in this Agreement shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. Unless the context otherwise requires, references herein: [x] to Articles, Sections, Exhibits and Schedules mean the Articles and Sections of, and Exhibits and Schedules attached to, this Agreement; [y] to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and [z] to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Exhibits and Schedules referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

#### **1.11 General Appraisal Procedures.**

[a] For purposes of determining Fair Market Value under subparagraph [a] of the definition of Fair Market Value[\*\*\*], within ten days following the end of the 15-day period specified in subparagraph [a] of the definition of Fair Market Value for the Members to agree on a determination of Fair Market Value (a "**Fair Market Value Determination**")

**Date**”), the Members shall appoint an Independent Appraiser mutually acceptable to the Members. If the Members are unable to mutually agree on an Independent Appraiser within ten days following a Fair Market Value Determination Date, then within five Business Days thereafter each of the GCI Member and the ACS Member shall submit a list of two names of qualified appraisers as such Member’s nominees for the Independent Appraiser. If either the GCI Member or the ACS Member does not submit a list of nominees for the Independent Appraiser within the required time period, then the Member that did not submit a list on a timely basis may select the Independent Appraiser from the list submitted by the other Member within five Business Days after such list is submitted and if that does not occur within the required time period, then the Member that submitted its list on a timely basis may select the Independent Appraiser from its list. If both the GCI Member and the ACS Member submit their lists within the required time period and the same name appears on both lists, that Person shall become the Independent Appraiser. If two names are common to both lists, and the Members are unable to agree as between such designees within five Business Days after such lists are submitted, the Members shall request that the Chief Executive Officer of the American Society of Appraisers (the “**ASA**”) make such selection, which will be binding on the Members. If no Person is named on both lists, either Member can notify the other Member within five Business Days after such lists are submitted that it is willing to select a Person named on the other’s list, in which case the first such Person selected becomes the Independent Appraiser. If no Independent Appraiser is selected by this process, each of the GCI Member and the ACS Member shall submit a new list of two names of qualified appraisers (without duplication of a name identified on the prior list submitted by such Member) as its nominees, which second list shall be submitted on the date that is not more than ten Business Days after the original submission date. If either the GCI Member or the ACS Member does not submit its second list within the required time period, then the same process shall apply as would apply if a Member did not submit its initial list in a timely manner. If no common name appears on such second lists and neither Member notifies the other that a name on the other’s list is acceptable to it within five Business Days after such second lists are submitted, each Member shall designate one name from the other Member’s list to be removed from consideration within five Business Days after such second lists are submitted and the Members shall request the ASA to select the Independent Appraiser from the remaining two names, which selection shall be binding on the Members. If the Independent Appraiser selected by this process is unwilling or unable to proceed, then the Members will repeat the foregoing process until an Independent Appraiser who is willing to act is selected.

- [b] Within 30 days following such appointment, the Independent Appraiser shall determine Fair Market Value utilizing commonly used valuation methods and practices. The decision of the Independent Appraiser shall be binding and conclusive on the Members and the Company. The GCI Member on the one hand, and the ACS Member, on the other hand, shall each pay 50% of the fees and expenses of the Independent Appraiser.

#### **1.12 Put Right/Call Right Appraisal Procedures.**

- [a] For purposes of determining Fair Market Value under this Agreement for purposes of determining the [\*\*\*], within ten days following the end of the Fair Market Value Determination Date, each Member shall select an Independent Appraiser and notify the other Member of its selection. If a Member fails to so appoint an Independent Appraiser within such time period, the Independent Appraiser appointed by the other Member will determine Fair Market Value, utilizing commonly used valuation methods and practices, which determination will be binding and conclusive on the Members.
- [b] If both the GCI Member and the ACS Member timely appoint an Independent Appraiser pursuant to Section 1.12[a], each of the GCI Member and the ACS Member shall cause its selected Independent Appraiser to deliver to the parties within 30 days of its selection its determination of Fair Market Value utilizing commonly used valuation methods and practices. If the lower valuation is at least 90% of the higher valuation, then the Fair Market Value, which will be binding and conclusive on the Members, will be the average of the two valuations.
- [c] If the lower valuation is less than 90% of the higher valuation, and if neither Member objects in writing to the other's valuation within 5 Business Days of delivery of the determination of Fair Market Value by each Independent Appraiser pursuant to Section 1.12[b], then the Fair Market Value will be the average of the two valuations. If the lower valuation is less than 90% of the higher valuation and if either Member objects in writing to the other's valuation within the five Business Day period referenced in the preceding sentence, then the GCI Member and the ACS Member will request their respective Independent Appraiser to jointly appoint a third Independent Appraiser. If the first two Independent Appraisers cannot agree on a third Independent Appraiser within ten Business Days after being requested to do so, then either Member may request the ASA to make the selection, which will be binding on the Members.
- [d] Within 15 days after the appointment of the third Independent Appraiser, the third Independent Appraiser will deliver its determination of Fair Market Value, and the Fair Market Value will be the valuation determined by one of the first two Independent Appraisers that is closest to the valuation determined by the third Independent Appraiser, which will be binding and conclusive on the Members.
- [e] Each of the GCI Member, on the one hand, and the ACS Member, on the other hand, shall pay [i] all of the fees and expenses of the Independent Appraiser selected by it pursuant to Section 1.12[a] and [ii] 50% of the fees and expenses of the third Independent Appraiser selected pursuant to Section 1.12[c].

## **Article 2: PURPOSES AND POWERS**

### **2.1 Principal Purpose.**

- [a] Subject to the provisions of this Agreement, the business and sole purpose of the Company is to [i] own and operate the assets contributed to the Company by the Initial GCI Member and the Initial ACS Member pursuant to the Contribution Agreement,

Information indicated by [\*\*\*] in the text has been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for Confidential Treatment under Rule 24b-2 under the Securities Exchange Act of 1934.

[ii] engineer, operate and maintain competitive Wireless network(s) in Alaska, [iii] design and implement competitive plans for the provision of Wireless products (including procuring and reselling Wireless Devices) and services, and provide such plans to Wireless carriers on a wholesale basis as provided in this Agreement, that permit the Members to compete with other facilities-based Wireless carriers in providing voice, data and text services, [iv] engineer, provision and maintain competitive Wireless Backhaul and Transport services for the benefit of the Company and other Wireless carriers serving the Alaska market solely for Wireless Devices, [v] provide competitive cell site leases, [vi] enter into Wireless roaming agreements, [vii] support the Members in maintaining their respective eligible telecommunications carrier designations, and [viii] to the extent related to the foregoing, support the Members and their Affiliates in complying with their regulatory obligations (collectively, the “**Wireless Business**”). Except as otherwise provided in Section 2.1[b], the Company will not engage in any activity or business other than the Wireless Business.

- [b] The Company may engage in any business or investment activity not provided in Section 2.1[a] subject to [i] obtaining the affirmative Vote of all Members and unanimous approval of the Board, and [ii] any limitations in the Act on the businesses in which a limited liability company may engage.

**2.2 Powers.** The Company has all of the powers granted to a limited liability company under the Act, as well as all powers necessary or convenient to achieve its purposes and to further its business.

### **Article 3: CAPITAL OF THE COMPANY**

#### **3.1 Capital Contributions.**

- [a] On the Effective Date, the Members have made the Capital Contributions to the Company set forth on the attached **Exhibit B** (each, an “**Initial Capital Contribution**”).
- [b] No Member will be required, and no Member will have any right, except as provided in Section 3.11, to make any Additional Capital Contribution at any time, except as may be required by law [\*\*\*].

**3.2 Capital Accounts.** A Capital Account will be maintained for each Member and credited, charged and otherwise adjusted as required by § 704(b) of the Code and the § 704(b) Regulations. Each Member’s Capital Account will be:

- [a] Credited with [i] the amount of money contributed by the Member as an Initial Capital Contribution or Additional Capital Contribution, [ii] the Fair Market Value of property contributed by the Member as an Initial Capital Contribution or Additional Capital Contribution (net of liabilities that the Company assumes or takes property subject to), [iii] the Member’s allocable share of Net Income, and [iv] all other items properly credited to such Capital Account, including any Income or items thereof allocated to such Member under Sections 4.2 through 4.12;

- [b] Charged with [i] the amount of money distributed to the Member by the Company, [ii] the Fair Market Value of property distributed to the Member by the Company (net of liabilities that the Member assumes or takes subject to), [iii] the Member's allocable share of Net Losses, and [iv] all other items properly charged to such Capital Account, including any Losses or deductions specially allocated to such Member under Sections 4.2 through 4.12; and
- [c] Otherwise adjusted as required by the § 704(b) Regulations.

Any unrealized appreciation or depreciation with respect to any asset distributed in kind will be allocated among the Members in accordance with the provisions of Article 4 as though such asset had been sold on the date of Distribution for its Fair Market Value as of such date, and the Members' Capital Accounts will be adjusted to reflect both the deemed realization of such appreciation or depreciation and the Distribution of such property.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of the Capital Accounts are intended to comply with the § 704(b) Regulations and will be interpreted and applied in a manner consistent with such Regulations and any amendment or successor provision thereto. The Tax Matters Partner also will make any appropriate modifications if unanticipated events might otherwise cause this Agreement not to comply with the Regulations, so long as such changes would not cause a material change in the relative economic benefits of the Members under this Agreement.

**3.3 Transfer.** If all or any part of an Ownership Interest is Transferred in accordance with this Agreement, the Capital Account of the Transferor that is attributable to the Transferred Ownership Interest will carry over to the Transferee.

**3.4 Adjustments.** The Members intend to comply with the § 704(b) Regulations in all respects, and the Tax Matters Partner is authorized and directed to adjust the Capital Accounts of the Members to the full extent that the § 704(b) Regulations may apply (including applying the concepts of qualified income offsets and minimum gain chargebacks). To this end, the Tax Matters Partner may make any Capital Account adjustment that it determines to be necessary or appropriate to maintain equality between the aggregate Capital Accounts of the Members and the amount of Company capital reflected on the Company's balance sheet (as computed for book purposes), as long as such adjustments are consistent with the underlying economic arrangement of the Members and are based, wherever practicable, on federal tax accounting principles. The Tax Matters Partner will provide written notice to the Members of any material, discretionary adjustment that is made pursuant to this Section 3.4 (a "**Required 704(b) Adjustment Notice**"). A Member may provide written notice to the Tax Matters Partner of any objection such Member has to an adjustment that is the subject of a Required 704(b) Adjustment Notice, which notice must be delivered within ten Business Days following the Tax Matters Partner's delivery of a Required 704(b) Adjustment Notice regarding such adjustment. The Tax Matters Partner and the Members shall promptly meet to discuss and resolve any such dispute. If resolution cannot be reached and upon written request by the disputing Member, the Tax Matters Partner shall retain a national accounting firm (other than the Company's regular accounting firm) to determine whether such adjustment should be made. The cost of such accounting firm shall be paid by the

disputing Member if such firm agrees with the adjustments made by the Tax Matters Partner or by the Tax Matters Partner if such firm agrees with the disputing Member.

**3.5 Market Value Adjustments.** The Tax Matters Partner is authorized and directed to make appropriate Capital Account adjustments upon any Transfer of an Ownership Interest made in accordance with this Agreement in accordance with the § 704(b) Regulations. If optional basis adjustments are made under § 734 or § 743 of the Code, the Tax Matters Partner is authorized to make appropriate Capital Account adjustments as required by the § 704(b) Regulations.

**3.6 No Withdrawal of Capital.** Except as specifically provided in this Agreement, no Member will be entitled to withdraw all or any part of such Member's Capital Contribution from the Company prior to the Company's Dissolution and Liquidation, or, when such withdrawal of capital is permitted, to demand a distribution of property other than money or as otherwise provided in this Agreement.

**3.7 No Interest on Capital.** No Member will be entitled to receive interest on such Person's Capital Account or Capital Contribution.

**3.8 No Drawing Accounts.** The Company will not maintain a drawing account for any Member. All Distributions to Members will be governed by Article 5 (relating to Distributions not in Liquidation of the Company) and by Article 13 (relating to Distributions in Liquidation of the Company).

**3.9 No Salary or Other Compensation.** Except for the Consulting Fee to be paid pursuant to Section 6.1[d], or as otherwise permitted by or approved pursuant to this Agreement, no Member or Affiliate of a Member will be entitled to any salary or other form of compensation paid by the Company for services rendered to the Company.

**3.10 Working Capital.**

- [a] On the Effective Date, GCI and the Company are entering into a Working Capital Loan Agreement in the form attached to the Contribution Agreement as Exhibit B (the "**GCI Working Capital Loan**").
- [b] The Company shall, and ACS, GCI and the Members shall cause the Company to, use its reasonable best efforts to obtain a senior revolving credit facility from a third-party lender (that is not an Affiliate of any Member) to be in place at the start of the Amortization Period on commercially reasonable terms, in the principal amount of up to \$50 million, which will be used solely to fund the Company's ongoing Working Capital needs and to repay the GCI Working Capital Loan (the "**Company Working Capital Loan**"). Upon closing the Company Working Capital Loan, the Company will draw down funding on the Company Working Capital Loan in an amount sufficient to repay the GCI Working Capital Loan in full.

**3.11 Member Cure Rights on GCI Working Capital Loan.**

- [a] Upon delivery of any Exercise Notice (as defined in the GCI Working Capital Loan) to the Members, each Member may offer to make a capital contribution to the Company as set forth in Section 3.11[b] to cure the Event of Default (under and as defined in the GCI Working Capital Loan) by sending a written notice (a “**Cure Offer**”) to the Company and the Lender (under and as defined in the GCI Working Capital Loan) no later than 15 Business Days after receipt of the Exercise Notice (the “**Cure Offer Period**”). Cure Offers shall be irrevocable, and, to the extent such Cure Offers are accepted by the Company pursuant to Section 3.11[b], the Members shall be bound and obligated to make the capital contributions as set forth in Section 3.11[b].
- [b] If both Members deliver a Cure Offer during the Cure Offer Period, the Company will promptly provide written acceptance to the Members of the Cure Offers, and ACS Member will make a cash contribution to the Company on or prior to the twentieth Business Day following delivery of the Exercise Notice (the “**Cure Date**”) equal to one-third of the Company’s outstanding obligations under the GCI Working Capital Loan as of the Cure Date by paying such amount to the Lender on behalf of the Company by wire transfer of immediately available funds to the Lender. On the Cure Date, subject to receipt by the Lender of such payment by the ACS Member on behalf of the Company on or prior to the Cure Date, the remaining obligations of the Company under the GCI Working Capital Loan will be forgiven in a deemed capital contribution by the GCI Member equal to two thirds of the outstanding obligations under the GCI Working Capital Loan as of the Cure Date.
- [c] If one or both Members do not deliver a Cure Offer during the Cure Offer Period, the Company will promptly provide written rejection of any Cure Offer made, no capital contributions will be payable or permitted to be made by the Members under this Section 3.11, and the rights of the Members under this Section 3.11 to cure the related Event of Default under the GCI Working Capital Loan will be deemed waived. Nothing in this Section 3.11[c] shall be deemed to waive any of the ACS Member’s rights under Section 6.5(c) of the GCI Working Capital Loan.

#### **Article 4: INCOME AND LOSSES**

**4.1 Allocation of Net Income and Net Loss.** The Company’s Net Income or Net Loss, as the case may be, and each item of income, gain, loss and deduction entering into the computation thereof, for each Fiscal Year will be allocated as follows:

- [a] Net Income for such Fiscal Year will be allocated as follows:
  - [i] first, an amount of Net Income equal, and in proportion, to the Distributions made to each Member pursuant to Section 5.1 with respect to such Fiscal Year will be allocated to such Member; and
  - [ii] second, any remaining Net Income will be allocated to the Members in proportion to their Equity Interests.

- [b] Net Loss for such Fiscal Year will be allocated to the Members in proportion to their Equity Interests.
- [c] Notwithstanding anything in this Agreement to the contrary, any Income or Loss arising from an adjustment to the Book Value of the Company assets under clause [b] of the definition of Book Value shall be allocated among the Members in accordance with Section 4.1[a][ii].

**4.2 Company Minimum Gain Chargeback.** Notwithstanding any other provision of this Agreement to the contrary, if in any Fiscal Year or other period there is a net decrease in the amount of the Company Minimum Gain, then each Member will first be allocated items of Income for such year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in such Minimum Gain during such year (as determined under Regulations § 1.704-2(g)(2)), but if there is insufficient Income in a year to make the allocation specified above for all Members for such year, the Income will be allocated among the Members in proportion to the respective amounts they would have been allocated had there been an unlimited amount of Income for such year.

**4.3 Minimum Gain Chargeback for Member Nonrecourse Debt.** Notwithstanding any other provision of this Agreement to the contrary other than Section 4.2, if in any Fiscal Year or other period there is a net decrease in the amount of the Member Nonrecourse Debt Minimum Gain, then each Member will first be allocated items of Income for such year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in such Minimum Gain during such year (as determined under Regulations § 1.704-2(i)(4)), but if there is insufficient Income in a year to make the allocation specified above for all Members for such year, the Income will be allocated among the Members in proportion to the respective amounts they would have been allocated had there been an unlimited amount of Income for such year.

**4.4 Qualified Income Offset.** Notwithstanding any other provision of this Agreement to the contrary (except Sections 4.2 and 4.3 which will be applied first), if in any Fiscal Year or other period a Member unexpectedly receives an adjustment, allocation or distribution described in Regulations § 1.704-1(b)(2)(ii)(d)(4), (5) or (6), such Member will be specially allocated items of Income in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible.

**4.5 Limit on Net Loss Allocations.** Notwithstanding the provisions of Section 4.1, or any other provision of this Agreement to the contrary, Net Loss will not be allocated to a Member if such allocation would cause or increase such Member's Adjusted Capital Account Deficit and will be reallocated to the other Members, subject to the limitations of this Section 4.5.

**4.6 Loss from Member Nonrecourse Debt.** Any Loss attributable to Member Nonrecourse Debt will be allocated to the Member who bears the economic risk of loss with respect to such debt.

**4.7 Nonrecourse Deductions.** Nonrecourse Deductions for any Fiscal Year or other period will be allocated to the Members in proportion to their Equity Interests.



**4.8 § 754 Adjustments.** The Company shall make an election under Section 754 of the Code upon the written request of any Member. To the extent an adjustment to the adjusted tax basis of any Company asset under §§ 734(b) or 743(b) of the Code is required to be taken into account in determining Capital Accounts under Regulations § 1.704-1(b)(2)(iv)(m), the amount of the adjustment to the Capital Accounts will be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis), and the gain or loss will be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted under Regulations § 1.704-1(b)(2)(iv)(m).

**4.9 Reversal of Mandatory Allocations.** In the event that any Income, Loss or Net Loss is allocated pursuant to Sections 4.2 through 4.7, subsequent Income, Loss or Net Loss (or items thereof) will first be allocated (subject to Sections 4.2 through 4.7) to the Members in a manner which will result in each Member having a Capital Account balance equal to that which would have resulted had the original allocation of Income, Loss, or Net Loss (or items thereof) pursuant to Sections 4.2 through 4.7 not occurred.

**4.10 Compliance with Code.** The foregoing provisions of this Article 4 relating to the allocation of Income, Net Income, Loss and Net Loss are intended to comply with Regulations under § 704(b) of the Code and will be interpreted and applied in a manner consistent with such Regulations.

**4.11 Tax Allocations — § 704(c).** In accordance with § 704(c) of the Code and the related Regulations, income, gain, loss and deduction with respect to any property contributed to the capital of the Company, solely for tax purposes, will be allocated among the Members so as to take account of any variation between the adjusted basis to the Company of the property for federal income tax purposes and the initial Book Value of the property. For the avoidance of doubt, as a result of the allocation of Contributed Asset Depreciation described in Section 4.12, all allocations of depreciation, amortization or other cost recovery deductions with respect to a Contributed Asset shall be made solely to the relevant Member who contributed such Contributed Asset. Allocations under this Section 4.11 are solely for purposes of federal, state and local taxes and will not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Income, Loss, Net Income, Net Loss or other items or distributions under any provision of this Agreement.

**4.12 Special Allocation of Contributed Asset Depreciation.** Notwithstanding anything in this Agreement to the contrary, any Contributed Asset Depreciation arising from the Company's ownership of any Contributed Asset will be allocated entirely to the Member who contributed such Contributed Asset.

**4.13 Allocation on Transfer.** If any Ownership Interest in the Company is transferred, or is increased or decreased by reason of the admission of a new Member or otherwise, during any Fiscal Year, the Company will allocate Net Income or Net Loss or items thereof to the Persons who were the holders of such Ownership Interest during such Fiscal Year in proportion to the number of days that each such holder was recognized as the owner of such Ownership Interest during such Fiscal Year or, if the Members agree otherwise by unanimous Vote, in any other proportion permitted by the Code and in accordance with this Agreement, but in any event

without regard to the results of Company operations during the period in which each such holder was recognized as the owner of such Ownership Interest during such Fiscal Year, and without regard to the date, amount, or recipient of any Distributions that may have been made with respect to such Ownership Interest.

## Article 5: DISTRIBUTIONS

**5.1 Distributions Generally.** Subject to Sections 5.3, 5.4 and 5.5, the Company will distribute in cash all its preliminary Adjusted FCF on a quarterly basis as promptly as practicable, but in no event later than 12 Business Days after the end of each quarter; provided that subsequent quarterly Distributions pursuant to this Section 5.1 will be trued up to reflect any increases or decreases necessary such that an amount equal to all Adjusted FCF, as finally calculated with respect to the preceding quarter, has been distributed in cash on a cumulative basis. All Distributions (other than Distributions made upon the Liquidation of the Company, which will be made in accordance with the provisions of Article 13) will be made to the Members in the following order and priority:

- [a] First, subject to Section 5.5, to the ACS Member, an amount equal to the excess of [i] the cumulative amount of the ACS Preferred Distributions for the period beginning on the Effective Date and ending on the last day of such calendar quarter over [ii] all Distributions previously made to the ACS Member pursuant to this Section 5.1[a], subject to adjustment pursuant to Section 9.4;
- [b] Second, to the GCI Member, an amount equal to 100% of Adjusted FCF for such calendar quarter in excess of amounts distributed to the ACS Member for such calendar quarter pursuant to Section 5.1[a] (including any Distributions made in accordance with Section 5.5) for each calendar quarter (including the Preference Period Partial First Quarter, if any) during the Preference Period (but excluding the Preference Period Last Quarter, if any), subject to adjustment pursuant to Section 9.4;
- [c] Third, for the Preference Period Last Quarter, if any (and, for the avoidance of doubt, after any Distributions for the Preference Period Last Quarter to be made to the ACS Member pursuant to Section 5.1[a] are made), an amount equal to the ACS Preference Period Last Quarter Distribution to the ACS Member and an amount equal to the GCI Preference Period Last Quarter Distribution to the GCI Member, in each case, if any, and subject to adjustment pursuant to Section 9.4;
- [d] Fourth, to the ACS Member, an amount equal to the excess of [i] the cumulative amount of the Reallocated Amount as of the date of such Distribution over [ii] all Distributions previously made to the ACS Member pursuant to this Section 5.1[d];
- [e] Fifth, to the GCI Member, an amount equal to the excess of [i] the excess of [x] the aggregate Clawback Amount over [y] [1] the Minimum Required FCF Results for such Fiscal Year divided by four, multiplied by [2] the Equity Interest of the ACS Member over [ii] all Distributions previously made to the GCI Member pursuant to this Section 5.1[e]; and

[f] Sixth, to the Members in accordance with their respective Equity Interests, subject to adjustment pursuant to Section 9.4 or Section 9.5.

**5.2 Payment.** All Distributions will be made to Members owning Ownership Interests on the date of record, such date being the last day of the calendar month preceding the date of Distribution, as reflected on the books of the Company.

**5.3 Withholding.** If required by the Code or by state or local law, the Company will withhold any required amount from Distributions to a Member for payment to the appropriate taxing authority. Any amount so withheld from a Member will be treated as a Distribution by the Company to such Member. Each Member agrees to file timely any agreement that is required by any taxing authority in order to avoid any withholding obligation that would otherwise be imposed on the Company. If the amount required to be withheld with respect to a Member exceeds the amount of Distributions payable to such Member, such excess will be set off against any future Distributions to which such Member otherwise would have been entitled. Upon the reasonable written request of a Member that is subject to any withholding by the Company under this Section 5.3, the Company shall contest or not withhold such amounts that the Member does not believe are legally required to be withheld; provided, that such Member shall indemnify, defend and hold the Company harmless from any losses, damages, expenses or liabilities incurred by the Company in connection with such contest or failure to withhold.

**5.4 Distribution Limitations.** Notwithstanding any other provision of this Agreement, the Company will not make any Distribution to the Members to the extent making such Distribution would violate the Act or other applicable law. A Member's right to receive Distributions is subject in all respects to the provisions of Section 16.22.

**5.5 Interim Monthly Distributions to ACS Member During Preference Period.**

[a] With respect to quarterly Distributions to be made to the ACS Member pursuant to Section 5.1[a], the Company will make interim monthly Distributions to the ACS Member within 12 Business Days after the end of each full or partial calendar month during that quarter (other than the last calendar month during that quarter, which is covered in Section 5.1[b] below). The interim monthly Distributions shall be equal to

[i] in the case of any complete month in a complete calendar quarter, one-third of the amount of the anticipated Distribution to be made to the ACS Member under Section 5.1[a] for that quarter and

[ii] in the case of any complete or partial month in a partial calendar quarter, in an amount equal to the amount of the anticipated Distribution to be made to the ACS Member under Section 5.1[a] for that quarter (including any ACS First Partial Preferred Distribution, if applicable) multiplied by a fraction the numerator of which is the actual number of days during that complete or partial calendar month and the denominator of which is the actual number of days during that partial calendar quarter.

- [b] The amount of the quarterly Distribution to be made to the ACS Member pursuant to Section 5.1[a] at the end of that quarter will be an amount equal to the full amount of the Distribution to be made to the ACS Member pursuant to Section 5.1[a] reduced by the sum of the amount of the interim monthly Distributions made to the ACS Member during that quarter pursuant to Section 5.5[a].
- [c] By way of example of Section 5.5[a] and [b], if the Effective Date were to occur on July 19, 2013, the Distributions to be made to the ACS Member for the Preference Period Partial First Quarter (the period from (and including) the Effective Date through September 30, 2013) would be \$10,054,348 (which would be the amount of the ACS First Partial Preferred Distribution assuming that Adjusted FCF for the Preference Period Partial First Quarter equals or exceeds that amount), which Distributions would be made \$1,766,304 with respect to the partial month of July 2013 ( $\$10,054,348 * 13/74$ ), \$4,211,957 with respect to August 2013 ( $\$10,054,348 * 31/74$ ), and \$4,076,087 with respect to September 2013 ( $\$10,054,348 - \$5,978,261$ ).
- [d] For purposes of determining the amount of the interim Distributions under Section 5.5[a] for any quarter, the Company [I] will assume that Adjusted FCF for that quarter will equal or exceed the amount of the ACS Preferred Distribution for that quarter, and [II] will be permitted to reduce those interim Distributions to reflect any excess Distributions to the ACS Member in the immediately preceding quarter (or any other earlier quarter to the extent not previously adjusted for) as determined based upon the final calculation of Adjusted FCF for that preceding or other applicable quarter as provided in Section 5.1. Each interim monthly Distribution made to the ACS Member pursuant to this Section 5.5 will be deemed to be a partial payment of the ACS Preferred Distributions for all purposes of this Agreement and will be deemed to be a partial payment of the quarterly Distributions to be made to the ACS Member for all purposes of this Agreement.

## **Article 6: MANAGEMENT**

### **6.1 Management; Consulting Fee.**

- [a] Except as otherwise expressly provided in this Agreement, the powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of, the Members.
- [b] Subject to the provisions of the Act and the obligations and limitations imposed upon it by this Agreement, and except as otherwise provided in this Agreement (including Sections 6.3 and 6.4) and in the applicable Plans adopted pursuant to this Agreement, the Members by Majority Vote have the right, power and authority to do (or cause to be done) any and all things necessary, proper, convenient or advisable to administer and carry on the business, properties and activities of the Company in their discretion. Except as otherwise provided in this Agreement, no Person dealing with the Company will be required to inquire into the authority of the Members by Majority Vote to take any action or make any decision. Except as specifically provided for in this Agreement, no Member will have the power to sign documents for or otherwise bind the Company, which power

to sign documents for or otherwise bind the Company shall be vested solely in, and shall be exercised solely by, the CEO and the Officers.

- [c] The GCI Member shall cause its senior executive officers to provide consulting services to the CEO and other senior Officers of the Company with respect to high-level strategy decisions regarding legal, regulatory and finance matters. In exchange for such services (which, for the avoidance of doubt, will not be billed pursuant to the GCI Services Agreement), the Company will pay a consulting fee to the GCI Member (the “**Consulting Fee**”). The Consulting Fee will be paid quarterly, in arrears, in the following amounts (it being understood that the Consulting Fee will be pro rated for any calendar quarter in which the GCI Member does not own any Equity Interests or provide such services for the whole calendar quarter; provided that with respect to any stub period in respect of which the GCI Member shall have provided such services, the Consulting Fee shall not be prorated so long as the GCI Member shall have provided such services for the entire stub period:

[i]4% of FCF from the Effective Date through the second anniversary of the Effective Date;

[ii]6% of FCF after the second anniversary of the Effective Date through the fourth anniversary of the Effective Date; and

[iii]8% of FCF after the fourth anniversary of the Effective Date.

- [d] The Consulting Fee will be paid concurrently with the Distributions to the Members as provided in Section 5.1 (without taking into account any interim monthly Distributions made to the ACS Member pursuant to Section 5.5) and will be trued up each quarter to reflect any adjustments made to FCF with respect to any calendar quarter after the Consulting Fee related to such quarter has been paid. The Consulting Fee will be paid prior to making any Distributions to the Members pursuant to Article 5, other than any interim monthly Distributions to be made to the ACS Member pursuant to Section 5.5.

- [e] The Company will treat the Consulting Fee for federal income tax purposes as a guaranteed payment under § 707(c) of the Code.

## **6.2 CEO; Other Officers; GCI Services Agreement; Employee Matters.**

- [a] The responsibility for the day-to-day operations of the Wireless Business is hereby delegated, subject to the ultimate control of the Members (including Sections 6.3 and 6.4), and in accordance with the applicable Plans adopted pursuant to this Agreement, to a Chief Executive Officer (the “**CEO**”). The initial CEO will be Wilson Hughes. The CEO will serve at the pleasure of the Members and may be removed at any time, with or without Cause, by Majority Vote. If the ACS Member reasonably believes that Cause to remove the CEO exists and the CEO has not been removed, the ACS Member may send written notice to the GCI Member specifying in reasonable detail the basis for which the ACS Member believes that Cause exists and the Members shall, by Majority Vote,

remove the CEO if it is finally determined either by Majority Vote or pursuant to the dispute resolution provisions provided for in Article 15 that Cause to remove the CEO exists. As specified in Section 11 of the Arbitration Agreement, if the Arbitrator determines in a proceeding initiated by the ACS Member that [i] Cause to remove the CEO does not exist, the ACS Member will pay the Company's and the GCI Member's Individual Fees and Expenses and any Arbitrator's Expenses paid by such Persons in connection with such claim or [ii] Cause to remove the CEO does exist, the GCI Member will pay the Company's and the ACS Member's Individual Fees and Expenses and any Arbitrator's Expenses paid by such Persons in connection with such claim. Any successor CEO to be appointed as a result of the resignation or removal of the CEO will be appointed by Majority Vote, subject to the approval rights set forth in Section 6.4[k]. The CEO will devote the CEO's full business time, attention and effort to the affairs of the Company and its Subsidiaries.

- [b] The CEO may from time to time appoint officers of the Company (the "**Officers**") and delegate to them the authority and duties to manage the day-to-day operations of the Wireless Business under the supervision of the CEO, subject to Sections 6.3 and 6.4, in accordance with the applicable Plans. Each Officer shall have such duties that are delegated to the Officer by the CEO. Such Officers will take all actions that are necessary and appropriate to conduct the day-to-day operations of the Wireless Business under the supervision of the CEO, subject to the provisions of this Agreement. Each Officer will devote its full business time, attention and effort to the affairs of the Company and its Subsidiaries. Each Officer will serve at the pleasure of the CEO, until such Officer's resignation or removal or until his or her successor has been duly appointed and qualified.
- [c] On the Effective Date, the Company will enter into a Services Agreement with GCI Communication Corp. (the "**GCI Services Agreement**"), substantially in the form of attached **Exhibit I**, pursuant to which GCI Communication Corp. will provide the Company with specified services.
- [d] Any performance based compensation for any Dedicated Employees (as defined in the GCI Services Agreement) shall be based solely on the performance of the Company, and not the performance of the GCI Member or any of their Affiliates except for any grants of GCI equity awards to Dedicated Employees for employee retention programs in accordance with the terms of the GCI Services Agreement. GCI shall provide to the ACS Member a written description of any such performance based compensation. The Company's management incentive plan will be designed to maximize the Company's competitiveness and meet the Company's Financial Objectives, and any costs or expenses of the Company thereunder shall be set forth in the applicable Plans of the Company.
- [e] The Company shall be liable for any severance obligations owed by a Member to any employee of such Member who devotes all or substantially all of his or her business time to providing services to the Company and its Subsidiaries pursuant to an agreement between the Company and such Member; provided that with respect to any such

employee who was employed by a Member or its Affiliates immediately prior to the Effective Date, any severance obligations to such employee that include service credit for any period prior to the Effective Date will be shared pro rata by such Member and the Company based on the number of days such Person was an employee of such Member prior to and after the Effective Date. The Company shall not be liable for any severance obligations owed by a Member to any other employee of such Member (regardless of whether such employee provides services to the Company or any of its Subsidiaries).

### **6.3 Executive Board.**

- [a] The Company will be governed by a three member executive board (the “**Board**”) consisting of the Chief Executive Officer of GCI or the GCI Member’s then current Wireless Parent, the Chief Executive Officer of ACS or the ACS Member’s then current Wireless Parent, and the CEO of the Company. By written notice to the Company and the other Member given at least one Business Day prior to a Board meeting, a Board member may designate an alternate Person to participate in a given Board meeting in such Board Member’s stead.
- [b] The primary function of the Board will be to review and approve the Plans in accordance with the provisions of Article 7 and the other business and technology plans of the Company and its Subsidiaries. In addition, the Board may consider other matters as specifically set forth in this Agreement or as requested by any member of the Board; provided, however, that it is intended that all day-to-day operations of the Company will be carried out by the CEO and the other Officers of the Company. Any member of the Board may request meetings of the Board; provided that the Board is not required to meet more frequently than once during each calendar quarter except in connection with the review and approval of the Plans. At any meeting of the Board, the CEO and other appropriate Officers shall notify and update the Board with respect to the business and affairs of the Company, including any material developments in the business and activities of the Company since the last Board meeting at which such an update was given, and shall notify and update the Board with respect to any major decisions under consideration or expected to be made by the Company.

**6.4 Unanimous Vote of Members.** The following actions or decisions by (or affecting) the Company or any of its Subsidiaries may be taken or made only upon receipt of the affirmative Vote of all Members and neither the Members nor the CEO or other Officers of the Company or any of its Subsidiaries will have the power or authority to take any such actions or make any such decisions without the affirmative Vote of all Members; provided, that if a Member does not respond to a written request by the Company for approval of a proposal pursuant to this Section 6.4 (a “**Member Approval Request**”) within ten days following its receipt of such request, such Member will be deemed to have Voted in favor of such proposal:

- [a] A change in the lines of business of the Company or any of its Subsidiaries beyond, or the expansion of the business of the Company or any of its Subsidiaries beyond, the Wireless Business and related or incidental activities;

- [b] The admission of an additional Member to the Company, other than a Permitted Transferee of a Member in accordance with Article 14, or a change to the initial Members' Equity Interests;
- [c] Incurring, or permitting to exist at any time, any Indebtedness in excess of \$5 million in the aggregate (or in any amount from any Member) ("**Material Indebtedness**"), the granting of a mortgage, deed of trust, pledge or other lien on or security interest in all or any portion of the assets of the Company or any its Subsidiaries to secure the obligations of the Company and its Subsidiaries as debtor under any Material Indebtedness, or guaranteeing the obligations of any other Person other than in the ordinary course of business; provided, however, that [i] the GCI Working Capital Loan and the Company Working Capital Loan shall be deemed to have been approved by the affirmative Vote of all Members and shall not require any additional Vote of the Members (but any material amendments or modifications thereof and any termination thereof that is not in accordance with the terms of the applicable loan agreement shall require the affirmative Vote of all Members in accordance with this Section 6.4), [ii] incurrence of Indebtedness in the ordinary course of business (including vendor financing in connection with purchases of products or construction of facilities) not in excess of \$10 million in the aggregate shall not be considered Material Indebtedness requiring the affirmative Vote of all Members, and [iii] incurrence of Indebtedness not in excess of \$10 million in the aggregate with a term of less than one year and granting any liens or security interests on any of the Company's assets in connection therewith shall not be considered Material Indebtedness requiring the affirmative Vote of all Members regardless of amount so long as [x] the Company does not enter into any borrowing arrangement with the intent or expectation that the term of such Indebtedness will be extended, and [y] the Company and its Subsidiaries shall not extend the term of any such Indebtedness beyond one year without obtaining the affirmative Vote of all Members with respect thereto;
- [d] The sale, exchange or other disposition of all or substantially all the consolidated assets of the Company and its Subsidiaries in any transaction or series of related transactions, or any sale of assets of the Company or any of its Subsidiaries, in one transaction or a series of related transactions, [i] having a Fair Market Value in excess of \$5 million in the aggregate in any twelve month period or [ii] that would impair any Member's ability to meet its carrier of last resort regulatory obligations applicable to local exchange carriers under Alaska law in those exchanges identified by community on **Exhibit N-1**, with respect to the ACS Member, or **Exhibit N-2**, with respect to the GCI Member, in the case of each of clauses [i] and [ii] other than the disposition of obsolete assets in the ordinary course of business and other than the sale of IRU and other network capacity, including for Wireless Backhaul and Transport, in the ordinary course of the Wireless Business, it being understood that separate sales of assets shall be aggregated and viewed as a single transaction for purposes of this clause [d] to the extent necessary to effectuate the intent and purpose of this clause [d];
- [e] The Company or any of its Subsidiaries entering into any facilities use agreement, reseller agreement, distribution agreement, MVNO agreement or similar agreement



Information indicated by [\*\*\*] in the text has been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for Confidential Treatment under Rule 24b-2 under the Securities Exchange Act of 1934.

pursuant to which the Company or its Subsidiaries will provide Wireless services or plans to any Person, in each case other than the Members pursuant to the Facilities and Network Use Agreement; provided, that the consent of the ACS Member will not be unreasonably withheld, delayed or conditioned with respect to any of the foregoing;

- [f] Any action (including the filing of a U.S. Treasury Form 8832 Entity Classification Election) that would cause the Company to be characterized as an entity other than a partnership for federal income tax purposes or making any other tax elections that would have a material adverse effect on, or affect the tax status of, any Member;
- [g] The voluntary Dissolution of the Company or any of its Subsidiaries (other than a wholly-owned Subsidiary) or the Distribution of assets in kind to any Member upon Liquidation;
- [h] The filing of a voluntary petition that results in a Bankruptcy Event for the Company or any of its Subsidiaries;
- [i] Amending the Certificate or any organizational documents of any Subsidiary of the Company (other than to make any ministerial or administrative changes that would not have a material adverse effect on any Member, such as changing the registered agent or registered office of the Company);
- [j] The merger, conversion, consolidation or other combination of the Company or any of its Subsidiaries with another Person other than the merger of a wholly-owned Subsidiary of the Company with the Company or another wholly-owned Subsidiary of the Company;
- [k] The appointment of any successor CEO; provided, however, that the ACS Member agrees to approve at least one individual from a list of three or more qualified individuals with appropriate experience (any or all of whom may be GCI employees) proposed by the GCI Member to be appointed as the successor CEO;
- [l] Commencing or settling litigation or arbitration that individually, or together with any other related litigation or reasonably foreseeable claim, involves an amount in excess of \$5 million, except with respect to a claim by the Company or any of its Subsidiaries against a Member, or entering any plea of guilty or nolo contendere on behalf of the Company or any of its Subsidiaries in any criminal matter;
- [m] Making any [\*\*\*] that do not comply with [\*\*\*];
- [n] [i] Entering into any agreement or transaction with GCI or ACS or any of their respective Affiliates (“**Affiliate Transactions**”), other than [v] as specifically set forth in this Agreement, [w] Approved Affiliate Transactions, [x] transactions involving the provision of Professional Services to the Company in accordance with the Professional Services Guidelines and capacity purchases made by the Company from GCI pursuant to the Additional Capacity Purchase Agreement, pursuant to which in the aggregate the Company will pay GCI or its Affiliates \$10 million or less in the aggregate in any Fiscal

Year; provided, that ACS will not unreasonably withhold its consent to the Company making any additional capacity purchases from GCI pursuant to the Additional Capacity Purchase Agreement, [y] transactions involving the provision of Satellite Capacity Services to the Company in accordance with the Satellite Capacity Services Guidelines, and [z] including the Company in a third-party master services agreement or master purchase agreement or similar contract to which GCI or an Affiliate thereof is also a party, but pursuant to which the Company is treated on an equal basis with GCI or its applicable Affiliates who are party thereto, or [ii] terminating any Affiliate Transaction except in accordance with the terms thereof, or modifying or waiving any material provision of any Affiliate Transaction in a manner that is adverse to the Company;

- [o] Making any decisions regarding major technology upgrade plans to be implemented by the Company or any of its Subsidiaries in connection with the Wireless Business; provided, however, that the consent of the ACS Member with respect to any major technology upgrade plan related to the Wireless Business of the Company and its Subsidiaries will not be unreasonably withheld, delayed or conditioned;
- [p] Authorizing, creating, allocating, reserving, issuing or selling any limited liability company interests or any other equity interests or securities, or requesting or accepting any capital contributions in respect of any limited liability company interests or any other equity interests or securities, other than as contemplated by Sections 1.4 and 3.1[a];
- [q] Redeeming or repurchasing any limited liability company interests or any other equity interests or securities of the Company;
- [r] Creating any Subsidiary of the Company other than a wholly-owned Subsidiary, or transferring any assets of the Company to any Subsidiary other than a wholly-owned Subsidiary, or entering into any joint venture arrangement;
- [s] Changing the name of the Company;
- [t] Lending by the Company, other than supplier and trade receivables in the ordinary course of business;
- [u] [Intentionally omitted];
- [v] As provided in the definition of Fair Market Value;
- [w] Entering into or terminating (except in accordance with the terms of the applicable contract or agreement), or waiving or modifying any material provision of, any contract or agreement to which the Company or any Subsidiary is (intends to become) a party (i) that is not consistent with the Plans in all material respects, or (ii) that includes a financial commitment by the Company or its Subsidiaries in excess of \$10 million that would be payable during a period after the end of the current Four Year Plan, in each case excluding backhaul and roaming agreements;

- [x] Entering into or terminating (except in accordance with the terms thereof), or waiving or modifying any material provision of, the Company Working Capital Loan; provided that such consent shall not be required so long as the Company Working Capital Loan: [1] is secured only by collateral permitted by each Member's lenders, [2] does not contain any provision that would reasonably be expected to affect the timing or amount of any ACS Preferred Distribution other than restrictions upon the payment of such Distributions upon an event of default under the Company Working Capital Loan; and [3] contains financial covenants that are commercially reasonable;
- [y] Declaring or paying any non-cash dividend or other Distribution to Members except as specifically set forth in this Agreement; and
- [z] As provided in Sections 1.6, 2.1[b], 4.13, 7.1[b], 8.1[a], 11.3, 12.1, 13.3 or 14.1[b].

Except as set forth in the preceding provisions of this Section 6.4, all actions by the Members shall be taken by Majority Vote. Each Member is entitled to act in its own best interest (and in its capacity as a member of the Board, the Chief Executive Officer of each such Member is entitled to act in the best interest of the Member of which it is the Chief Executive Officer) with respect to any decisions related to the Company or its Subsidiaries that are to be made by the Members or the Board, including pursuant to this Section 6.4 or pursuant to Section 6.3. Without limiting the foregoing, but subject in the case of the GCI Member to the Standard of Care and in the case of the ACS Member to the implied contractual covenant of good faith and fair dealing, [i] neither the Members in their capacity as such nor their respective Chief Executive Officers in their capacity as members of the Board have any express or implied fiduciary duties to the Company, the other Members or the Board, including that there are no express or implied fiduciary duties based on a Member's status as a majority owner of the Company; and [ii] the corporate law concepts of the duty of loyalty and the duty of care applicable to officers and directors of a corporation, as well as the partnership law duties that a general partner owes to a partnership and its other partners, do not apply to the Members in their capacity as such or to their respective Chief Executive Officers in their capacity as members of the Board.

#### **6.5 Other Activities.**

- [a] Except as otherwise provided in Sections 6.5[a], [b] and [c], each Member, and any Affiliate of any Member may engage in (or own interests in) other business ventures of any nature and description, independently or with others, and neither the Company nor any other Member will have any right by virtue of this Agreement in such business venture or its profits, even if such business venture is in direct competition with the Wireless Business of the Company, and no Member or Affiliate of a Member will have any duty or obligation to bring any such opportunities to the Company or any Member or to inform the Company or any Member regarding any such business venture.
- [b] Member, ACS and GCI each agrees to exclusively use, and ACS and GCI each agree to cause their respective controlled Affiliates to exclusively use, the services of the Company to provide Wireless service to any Wireless Device in the State of Alaska. Unless earlier terminated pursuant to the last sentence of this Section 6.5[b], such

obligation will continue in the case of the ACS Member, ACS and any controlled Affiliate of ACS, for so long as an Affiliate of ACS is a Member or Transferee. Unless earlier terminated pursuant to the last sentence of this Section 6.5[b], such obligation will continue in the case of the GCI Member, GCI and any controlled Affiliate of GCI, for so long as an Affiliate of GCI is a Member or Transferee. The obligations under this Section 6.5[b] will terminate as to both Members, ACS, GCI and their respective Affiliates [\*\*\*]. This Section 6.5[b] shall not apply to ACS or any of its Affiliates with respect to any [\*\*\*] in respect of which the Company has exercised [\*\*\*].

- [c] Following the Transfer of a Member's or Transferee's Ownership Interest, such Member or Transferee agrees that neither it nor its Affiliates (which in the case of the Initial ACS Member includes ACS and its Affiliates and in the case of the Initial GCI Member includes GCI and its Affiliates) [\*\*\*] in the State of Alaska for a period of [\*\*\*] after the date of such Transfer (other than as required to meet [\*\*\*] of such Person applicable to [\*\*\*]). Notwithstanding the foregoing, if the Transfer of an Ownership Interest is made [i] pursuant to a [\*\*\*] in which the GCI Member has exercised its [\*\*\*], the foregoing restriction in this clause [c] shall apply for the lesser of [\*\*\*] by such restrictions for the benefit of the [\*\*\*] or [ii] pursuant to the exercise of a CTE Put Right, the foregoing restriction in this clause [c] shall not apply to either Member following exercise of such CTE Put Right.
- [d] Nothing in this Agreement, including this Section 6.5, shall prevent ACS or GCI, or any of their respective Affiliates, from providing Private WiFi or wireless internet service provider (WISP) services.

## **Article 7: ANNUAL BUDGETS AND FOUR YEAR PLANS**

### **7.1 Operation in Accordance with Annual Budgets and Four Year Plans; Financial Objectives.**

- [a] To the maximum extent feasible in light of Changing Market Conditions, the Company will be operated in accordance with its Annual Budgets and Four Year Plan or Revised Four Year Plan.
- [b] The Company will take into account the objectives described in this Section 7.1[b] (the "**Financial Objectives**") in connection with its adoption of Annual Budgets, Four Year Plans and Revised Four Year Plans. The Company will seek to maximize the total value of the Company as measured by the [\*\*\*] of its [\*\*\*]. To the extent possible, the Company will strive to achieve this objective while providing [\*\*\*] and [\*\*\*] for [\*\*\*] to [\*\*\*] Members. The Company will recognize that the [\*\*\*] of the Company's [\*\*\*] available for [\*\*\*] Members is important and, while not an absolute requirement, the Company will seek to avoid making total [\*\*\*] in any Fiscal Year that suppress the Company's [\*\*\*] by more than [\*\*\*]% without the unanimous Vote of the Members. To the extent that alternative Four Year Plans would provide [\*\*\*], the Company will prefer the Plan that provides the Company [\*\*\*] and/or more [\*\*\*] near term [\*\*\*].

## **7.2 Initial Four Year Plan and First Year Budgets.**

- [a] The Four Year Plan for Fiscal Years 2013 through 2016 is attached to this Agreement as **Exhibit F** (as the same may be revised pursuant to Article 7, the “**Initial Four Year Plan**”).
- [b] The Annual Cap Ex Budget for Fiscal Year 2013 is attached to this Agreement as **Exhibit G** (the “**First Year Cap Ex Budget**”), and the Annual Operating Budget for Fiscal Year 2013 is attached to this Agreement as **Exhibit H** (the “**First Year Operating Budget**” and, together with the First Year Cap Ex Budget, the “**First Year Budgets**”).
- [c] If the Effective Date occurs prior to January 1, 2013, the CEO will prepare operating and capital expenditures budgets for the remainder of Fiscal Year 2012, which budgets will be generally consistent with the Plans attached to this Agreement as **Exhibits F, G and H**, taking into account that the operations of the Company have been accelerated to start in Fiscal Year 2012.
- [d] If the Effective Date occurs after January 1, 2013 but during Fiscal Year 2013, the CEO will prepare a revised Initial Four Year Plan so that it covers the period from the Effective Date through December 31, 2016 and will prepare revised First Year Budgets so that they cover the period from the Effective Date through December 31, 2013, which revised Plans will be generally consistent with the Plans attached to this Agreement as **Exhibits F, G and H**, taking into account that Fiscal Year 2013 will be a partial year.

## **7.3 Adoption of Annual Budgets, Revised Four Year Plans and Subsequent Four Year Plans.**

- [a] Not later than June 1 of each Fiscal Year, beginning with June 1, 2013, the Company will provide each Member with a projection of products and services it plans to provide in the next Fiscal Year, including any underlying assumptions. Not later than July 1 of each Fiscal Year, beginning with July 1, 2013, each Member will provide the Company with its projection determined in good faith and on a reasonable basis of its Connections and ARPUs for the following Fiscal Year in sufficient detail to allow the Company to incorporate such information into its Annual Budgets for the following Fiscal Year.
- [b] The Company will prepare, in consultation with the Board, and deliver to the Board not later than July 15 of each Fiscal Year beginning with July 15, 2013:
  - [i] an Annual Operating Budget and an Annual Cap Ex Budget for the following Fiscal Year, based on the projections of Connections and ARPUs for such Fiscal Year submitted by the Members; and
  - [ii] a revised Four Year Plan (including any revised Initial Four Year Plan, a “**Revised Four Year Plan**”) that reflects appropriate revisions based on such proposed Annual Budgets and Changing Market Conditions.

- [c] On July 15, 2016 and on each four year anniversary of such date, the Company will also prepare and deliver to the Board a new Four Year Plan that begins with the following Fiscal Year, which will be based on past performance of the Company, any projections of Connections and ARPU's submitted by the Members and market conditions. For example, on July 15, 2016 the Company will prepare and deliver to the Board a Four Year Plan that covers Fiscal Years 2017 through 2020 (the "**Second Four Year Plan**") and on July 15, 2020, the Company will prepare and deliver to the Board a Four Year Plan that covers Fiscal Years 2021 through 2024.
- [d] Board members may consult with any employee or agent of their respective Affiliates (including such Affiliates, a "**Related Party**") in connection with such Board member's review and consideration of any proposed Plan and may request additional information from the Company in connection with such review and consideration. The provision by a Board member of Company information to a Related Party in connection with the Board member's review and consideration of any proposed Plan is subject to the Commercially Sensitive Information Policies and Procedures and such Related Party must treat all information provided to it as confidential information that is subject to the provisions of Section 16.20. The GCI Member will be responsible for any breach of Section 16.20 by one of its Related Parties in relation to information provided to it pursuant to this Section 7.3[d], and the ACS Member will be responsible for any breach of Section 16.20 by one of its Related Parties in relation to information provided to it pursuant to this Section 7.3[d].
- [e] Except as provided in Section 7.4, no Plan (other than the Initial Four Year Plan and the First Year Budgets) will become effective unless and until it is approved by majority vote of the Board. The Board will hold a meeting no later than November 1 of each Fiscal Year for the purpose of voting on each Plan proposed by the Company during such Fiscal Year pursuant to Section 7.3[b] or Section 7.3[c].
- [f] If pursuant to Section 7.4 the unanimous approval of the Board is required with respect to any proposed Plan, any Board member may deliver Notice to the Company and each other Board member (a "**Budget Objection Notice**") no later than August 1 of the Fiscal Year in which it received such Plan, which Notice will specify in reasonable detail the objections that such Board member has, including such Board member's basis for determining that the disputed Plan does not meet the Financial Objectives. If no Budget Objection Notice is timely delivered with respect to a given Plan, such Plan will be deemed to have been unanimously approved by the Board.
- [g] If a Budget Objection Notice is timely delivered, the Board members (in consultation with any Officers of the Company as determined by the CEO) will negotiate in good faith to resolve any objections to the Plans specified in such Budget Objection Notice and to revise the disputed Plans in such manner so that they can be adopted by unanimous approval of the Board. If the Board members do not unanimously approve any Plan that is subject to a Budget Objection Notice by August 31 of the Fiscal Year during which such Budget Objection Notice was delivered, then on September 1 the Company will

submit all Plans that remain in dispute to the Designated Budget Dispute Arbitrator for determination in accordance with the terms and procedures specified in the Arbitration Agreement with respect to each aspect of the disputed Plans challenged in a Budget Objection Notice (the “**Challenged Aspects**”) as to whether such Challenged Aspect is inconsistent with the Financial Objectives, taking into account the disputed Plans as a whole, with instructions to the Designated Budget Dispute Arbitrator to make its determination no later than December 1.

- [h] If the Designated Budget Dispute Arbitrator makes a final determination pursuant to the Arbitration Agreement that one or more Challenged Aspects are inconsistent with the Financial Objectives, taking into account the disputed Plans as a whole, and the Board by majority vote adopts the Designated Budget Dispute Arbitrator’s Recommended Changes, the disputed Plans that included such Challenged Aspects, as revised to fully reflect all the Recommended Changes, shall be deemed approved by unanimous vote of the Board for all purposes of this Agreement. To the extent the Recommended Changes are not made by the Company, then within 30 days following the Designated Budget Dispute Arbitrator’s final determination the Company will revise the disputed Plan and submit the revised Plan to the Board for unanimous approval; provided that if the basis on which a Budget Objection Notice was delivered no longer exists (e.g., a revised Plan meets the Minimum Required FCF Projection) and there exist no other circumstances that would require unanimous Board approval pursuant to Section 7.4, such revised Plan may be approved by majority vote of the Board. If the Designated Budget Dispute Arbitrator issues any Redetermined Recommended Changes pursuant to Section 10(f)(iii) of the Arbitration Agreement, the Company shall make such Redetermined Recommended Changes.
- [i] If an Annual Operating Budget, Four Year Plan or Revised Four Year Plan is not approved pursuant to this Section 7.3 on or before December 31 of the Fiscal Year during which it was provided to the Board, the Company will conduct operations during the following Fiscal Year in accordance with the Annual Operating Budget, Four Year Plan or Revised Four Year Plan, as applicable, proposed by the Company for such Fiscal Year until such time as a new Annual Operating Budget, Four Year Plan or Revised Four Year Plan, as applicable, is approved; provided, however, that any Member may request that the Designated Budget Dispute Arbitrator determine, within 14 days following such request, if any one-time expense item included in the proposed Annual Operating Budget, Four Year Plan or Revised Four Year Plan, as applicable (a “**Disputed Expense**”), that has not been approved is unreasonable. Pending the Designated Budget Dispute Arbitrator’s decision, the Company will not incur the Disputed Expense; following such decision, the Company will operate in accordance with the Designated Budget Dispute Arbitrator’s decision regarding the Disputed Expense until such time as a new Annual Operating Budget, Four Year Plan or Revised Four Year Plan, as applicable, is approved. If an Annual Cap Ex Budget is not approved pursuant to this Section 7.3 on or before December 31 of the Fiscal Year during which it was provided to the Board, then until such time as a new Annual Cap Ex Budget is approved, the Company will conduct

operations during the following Fiscal Year in accordance with the Annual Cap Ex Budget for the prior Fiscal Year, less extraordinary one-time items.

**7.4 Circumstances Requiring Unanimous Board Approval of Annual Budgets, Four Year Plans and Revised Four Year Plans.**

[a] Years 1-4 (Fiscal Years 2013-2016)

[i] Unanimous approval of the Board is required with respect to any revised Initial Four Year Plan and any Annual Budget for Fiscal Years 2014 through 2016 if such revised Initial Four Year Plan or Annual Budget provides for a [\*\*\*] of the Company of [\*\*\*] in any single Fiscal Year covered by the Initial Four Year Plan or of [\*\*\*] the [\*\*\*] over the entire period covered by the Initial Four Year Plan.

[b] Years 5-8 (Fiscal Years 2017-2020)

[i] Subject to Section 7.5, unanimous approval of the Board is required with respect to an Annual Budget for any of Fiscal Years 2017 through 2020 if such Annual Budget forecasts [\*\*\*] for such Fiscal Year that is [\*\*\*] the [\*\*\*] for the last [\*\*\*] Fiscal Years of the Initial Four Year Period [\*\*\*] by [\*\*\*]% per year.

[ii] Subject to Section 7.5, unanimous approval of the Board is required with respect to the Second Four Year Plan or any revised Second Four Year Plan if the Second Four Year Plan or such revised Second Four Year Plan forecasts [\*\*\*] the [\*\*\*] for the last [\*\*\*] Fiscal Years of the Initial Four Year Period [\*\*\*] by [\*\*\*]% per year.

[iii] Subject to Section 7.5, if [\*\*\*] for any of Fiscal Years 2017 through 2020 is less than [\*\*\*] for the last [\*\*\*] years of the Initial Four Year Period [\*\*\*] by [\*\*\*]% per year, then the subsequent Fiscal Year's Annual Budgets and any revisions to the Second Four Year Plan proposed in connection with such Annual Budgets will require unanimous Board approval.

[c] Years 9 and Thereafter (Fiscal Years 2021 and Thereafter)

[i] Subject to Section 7.5, if the Annual Budgets proposed by the Company for Fiscal Year 2021 or any Fiscal Year thereafter forecasts [\*\*\*] that is less than [\*\*\*]% of the [\*\*\*] for the last [\*\*\*] years of the most recent Four Year Plan that does not include such Fiscal Year (e.g., for the Fiscal Year 2021 the applicable Four Year Plan would be the Second Four Year Plan), then such Annual Budgets will require unanimous Board approval.

[ii] Subject to Section 7.5, if the Four Year Plan (including any revised Four Year Plan) proposed by the Company for any four year period after the period covered by the Second Four Year Plan forecasts [\*\*\*] that is less than [\*\*\*]% of the [\*\*\*] for the last [\*\*\*] years of the period covered by the immediately preceding Four



Year Plan (e.g., for the four year period from Fiscal Year 2012 through Fiscal Year 2024 the applicable Four Year Plan would be the Second Four Year Plan), then such Four Year Plan (including any revisions thereto) will require unanimous Board approval.

[iii] Subject to Section 7.5, if actual FCF for Fiscal Year 2021 or any Fiscal Year thereafter is less than [\*\*\*]% of the [\*\*\*] for the last [\*\*\*] years of the period covered by the immediately preceding Four Year Plan (e.g., for the four year period from Fiscal Year 2021 through Fiscal Year 2024 the applicable Four Year Plan would be the Second Four Year Plan), then the Annual Budgets for the following Fiscal Year and any revision to the then current Four Year Plan will be subject to unanimous Board approval.

#### **7.5 GCI Member Right to [\*\*\*] FCF [\*\*\*].**

- [a] If unanimous approval of the Board is required with respect to a proposed Plan on the basis that such Plan does not meet the [\*\*\*], the GCI Member will have the option at any time prior to final approval of such Plan (including after such Plan has been submitted to the Designated Budget Dispute Arbitrator) to agree to [\*\*\*] of its [\*\*\*] for each Fiscal Year covered by such Plan that does not include the [\*\*\*] to the [\*\*\*] so that the [\*\*\*] for each Fiscal Year covered by such Plan that does not meet the [\*\*\*] will be not less than the [\*\*\*] of [\*\*\*] that the [\*\*\*] would receive if FCF for such Fiscal Year were equal to [\*\*\*] (the “[\*\*\*]”). However, the GCI Member may exercise this option only if the [\*\*\*] for such Fiscal Year, [\*\*\*] the [\*\*\*], would be \$[\*\*\*] or [\*\*\*] below the [\*\*\*] of [\*\*\*] that it would receive if the [\*\*\*]. The option provided for in this Section 7.5[a] is exercisable by the GCI Member delivering to the ACS Member and the Company, at any time prior to final approval of such Plan, an instrument in writing setting forth in reasonable detail its agreement [\*\*\*] the [\*\*\*] the [\*\*\*], and the Company shall honor and make Distributions consistent with such agreement. If the GCI Member exercises the option provided for in this Section 7.5[a], the Company will be deemed to have met the applicable [\*\*\*] so that unanimous approval of the Board will not be required with respect to the proposed Plan and such Plan will be deemed to have been approved by majority vote of the Board.
- [b] If unanimous approval of the Board is required with respect to a proposed Plan on the basis that the Company did not meet the [\*\*\*] for the preceding Fiscal Year, the GCI Member will have the option at any time prior to approval of such Plan (including after such Plan has been submitted to the Designated Budget Dispute Arbitrator) to agree to [\*\*\*] a [\*\*\*] of its [\*\*\*] for the current Fiscal Year to the [\*\*\*] so that the [\*\*\*] for the current Fiscal Year will be increased by an amount equal to the [\*\*\*] the [\*\*\*] of the [\*\*\*] the [\*\*\*] for the preceding Fiscal Year and the [\*\*\*] of [\*\*\*] that the [\*\*\*] would have received if [\*\*\*] had been equal to the [\*\*\*] for such preceding Fiscal Year (the “[\*\*\*]” and together with the [\*\*\*], the “[\*\*\*]”). However, the GCI Member may exercise this option only if the [\*\*\*] for the preceding Fiscal Year, [\*\*\*] the [\*\*\*], were \$[\*\*\*] or [\*\*\*] below the [\*\*\*] of [\*\*\*] that it would have received if the [\*\*\*] had

Information indicated by [\*\*\*] in the text has been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for Confidential Treatment under Rule 24b-2 under the Securities Exchange Act of 1934.

[\*\*\*]. The option provided for in this Section 7.5[b] is exercisable by the GCI Member delivering to the ACS Member and the Company, at any time prior to final approval of such Plan, an instrument in writing setting forth in reasonable detail its agreement [\*\*\*] the ACS Member the applicable [\*\*\*], and the Company shall honor and make [\*\*\*] with such agreement. If the GCI Member exercises the option provided for in this Section 7.5[b], the Company will be deemed to have met the applicable [\*\*\*] for the preceding Fiscal Year so that unanimous approval of the Board will not be required with respect to the proposed Plan and such Plan will be deemed to have been approved by majority vote of the Board.

- [c] To the extent [\*\*\*] are [\*\*\*] to the ACS Member pursuant to this Section 7.5, the [\*\*\*] the [\*\*\*] (“[\*\*\*]”) the [\*\*\*] of the [\*\*\*] plus [\*\*\*] at an [\*\*\*] of [i] [\*\*\*] and [ii] the [\*\*\*] the [\*\*\*] from [\*\*\*] the date a [\*\*\*] of [\*\*\*] is made to the [\*\*\*] to (but not including) the date a [\*\*\*] to the [\*\*\*] (the “[\*\*\*]”) in [\*\*\*] to the extent [\*\*\*] the [\*\*\*] that would be required with respect to such Fiscal Year in order for unanimous approval of the Board not to be required pursuant to Section 7.4.

## **Article 8: MEETINGS OF MEMBERS; MEETINGS OF THE BOARD**

**8.1 Meetings of Members.** Meetings of the Members, for any purpose or purposes, may be, but are not required to be, called by Members holding more than 50% of the Equity Interests. Without limiting the foregoing, meetings of the Members with respect to those matters that require the affirmative Vote of all Members pursuant to Section 6.4 are not required if the GCI Member or the CEO sends a Member Approval Request to the Members with respect to such matter.

- [a] The CEO may designate any place within Anchorage, Alaska, or such other city as the Members unanimously agree, as the place for any meeting of the Members.
- [b] Notice of any meeting of the Members must be given not less than five Business Days nor more than 30 days before the date of the meeting. Such Notice must state the place, day, and hour of the meeting and the purpose for which the meeting is called. Any Member may waive, in writing, any Notice of a meeting of the Members required to be given to such Member, whether before or after the time stated in such Notice. Any Member who signs minutes of action (or written consent or agreement) will be deemed to have waived any required Notice with respect to such action. For the purpose of determining Members entitled to Notice of or to Vote at any meeting of Members, the date on which Notice of the meeting is first given will be the record date for the determination of Members. Any such determination of Members entitled to Vote at any meeting of Members will apply to any adjournment of a meeting.
- [c] A quorum at any meeting of Members will consist of Members owning more than 75% of the Equity Interests held by all Members. Any meeting of Members at which a quorum is not present may adjourn the meeting to a place, day and hour without further Notice, provided that at such adjourned meeting, the only business that may be conducted are the matters that were set forth in the Notice for the original meeting.

- [d] If a quorum is present at any meeting of the Members, the affirmative Vote of Members holding a majority of the Equity Interests will be the act of the Members, except with respect to those matters set forth in this Agreement that specifically require the unanimous Vote of the Members; provided that in the case of actions requiring the unanimous Vote of the Members, such act is evidenced by a written consent describing the action taken, signed by all Members.
- [e] At any meeting of Members, a Member may Vote in person or by written proxy given to another Person. Such proxy must be signed by the Member or by a duly authorized attorney-in-fact and filed with the Company before or at the time of the meeting. No proxy will be valid after 11 months from the date of its signing unless otherwise provided in the proxy. Attendance at the meeting by the Member giving the proxy will revoke the proxy during the period of attendance.
- [f] The Members may participate in a meeting by means of conference telephone or similar communications equipment by which all Members participating in the meeting can hear each other at the same time. Such participation will constitute presence in person at the meeting and waiver of any required Notice, except when the Member so participates for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.
- [g] Any action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by Members owning total Equity Interests sufficient for the particular action as set forth in Article 6 or as set forth elsewhere in this Agreement. Action so taken is effective when sufficient Members approving the action have signed the consent, unless the consent specifies a later effective date.
- [h] Except as expressly provided elsewhere in this Agreement, with respect to any action or decision with respect to the Company or its Subsidiaries that does not expressly require the unanimous Vote of the Members in accordance with this Agreement, the GCI Member may make such decision or Vote in favor of or cause such action to be taken without notice, without calling a meeting of the Members and without evidencing such action in a written consent or other writing.

**8.2 Board Meetings.** Meetings of the Board, for any purpose or purposes, may be called by any member of the Board, subject to the limitation set forth in Section 6.3[b].

- [a] Meetings of the Board will be held at the Company's principal place of business or such other place as all of the members of the Board may agree.
- [b] Notice of any meeting must be given not less than five Business Days nor more than 30 days before the date of the meeting; provided that the Person calling the meeting reasonably takes into consideration the personal schedules of Board members when scheduling meetings. Such Notice must state the place, day, and hour of the meeting and the purpose for which the meeting is called.

- [c] Any member of the Board may waive, in writing, any Notice required to be given to such individual, whether before or after the time stated in such Notice. Any member of the Board who signs minutes of action (or written consent or agreement) will be deemed to have waived any required Notice with respect to such action.
- [d] A quorum at any meeting of the Board will consist of all three members of the Board. All members of the Board will act in good faith and use all reasonable efforts to attend meetings of the Board and to find alternative dates that would allow all members of the Board to participate in a meeting of the Board in order to meet the quorum requirement. Any meeting of the Board at which a quorum is not present may adjourn the meeting to a place, day and hour without further Notice, provided that at such adjourned meeting, the only business that may be conducted are the matters that were set forth in the Notice for the original meeting. If a quorum is present at any meeting of the Board, the affirmative vote of a majority of the members of the Board will be the act of the Board, provided that such act is evidenced by a written consent describing the action taken, signed by a majority of the members of the Board, unless unanimous approval of all members of the Board is required in Article 7 or elsewhere in this Agreement, in which case the affirmative vote of all of the members of the Board will be the act of the Board, provided that such act is evidenced by a written consent describing the action taken, signed by all members of the Board.
- [e] The members of the Board may participate in a meeting by means of conference telephone or similar communications equipment by which all members of the Board participating in the meeting can hear each other at the same time. Such participation will constitute presence in person at the meeting and waiver of any required Notice, except when the Board member so participates for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.
- [f] Any action required or permitted to be taken at a meeting of the Board may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by all members of the Board.

## **Article 9: OPERATIONAL MATTERS**

### **9.1 Option to Accelerate Capital Investment.**

- [a] If a Member desires the Company to make a capital investment the cost of which is \$[\*\*\*] or less, such Member (the “**Investing Member**”) will have the option to send Notice to the Company and the other Member (an “**Accelerated Capital Investment Notice**”) that it desires the Company to make such capital investment (the “**Accelerated Capital Investment**”) and specifying its proposed time period and other material terms and conditions for the Accelerated Capital Investment to be made. In [\*\*\*] a [\*\*\*] Accelerated Capital Investment Notice [\*\*\*].

- [b] Within 30 days following its receipt of an Accelerated Capital Investment Notice, the Company will send Notice to the Investing Member stating either [i] that the Company will make the Accelerated Capital Investment on its own behalf within the time period proposed and on the other material terms and conditions set forth in such Accelerated Capital Investment Notice, or [ii] that the Company will not make the Accelerated Capital Investment within the time period proposed in such Notice but consents to the Investing Member making such Accelerated Capital Investment in accordance with this Section 9.1 (“**Option 2**”), or [iii] that the Company will not make the Accelerated Capital Investment but does not consent to the Investing Member making such Accelerated Capital Investment; provided, that the Company’s consent pursuant to this Section 9.1[b][iii] may be not be unreasonably withheld; provided further that, without limitation, [x] it will not be unreasonable for the Company to withhold its consent to a proposed Accelerated Capital Investment if such investment is inconsistent with the technology standards or the manufacturer selections of the Company and [y] it will be unreasonable for the Company to withhold its consent to a proposed Accelerated Capital Investment solely on the basis that such investment is not provided in the Plan or has costs that are included in the Investing Member’s Cost.
- [c] If Option 2 is exercised by the Company, the Investing Member and the Company will enter into an agreement pursuant to which the Company will design, install, integrate and operate the Accelerated Capital Investment at the Investing Member’s expense (the amount so paid by the Investing Member, the “**Investing Member’s Cost**”), on the terms and conditions set forth in the Accelerated Capital Investment Notice.
- [d] At any time following completion of an Accelerated Capital Investment pursuant to Section 9.1[c], the non-investing Member (the “**Non-Investing Member**”) may send Notice to the Investing Member and the Company that the Non-Investing Member also desires to use the Accelerated Capital Investment. If the Non-Investing Member sends such a Notice, the Investing Member and the Non-Investing Member will negotiate in good faith to reach agreement on a reasonable monthly user fee and other terms for access by the Non-Investing Member to the Accelerated Capital Investment. For the avoidance of doubt, the use of any Accelerated Capital Investment by the Investing Member or the Non-Investing Member is subject to the provisions of Section 6.5.
- [e] The Company will have the exclusive option at any time, exercisable by sending Notice to both Members, to acquire the Accelerated Capital Investment at an amount equal to the [\*\*\*] at [\*\*\*] of the [\*\*\*] of [i] [\*\*\*] and [ii] the [\*\*\*] or, if the Company and the Investing Member reach agreement on a different price within 15 days following the Company’s exercise of such option, at such agreed price (as applicable, the “**ACI Purchase Price**”); provided, that if the Investing Member and the Non-Investing Member enter into an agreement pursuant to Section 9.1[d], the Company will be obligated to acquire the Accelerated Capital Investment at the ACI Purchase Price within [\*\*\*] years from the date the Accelerated Capital Investment is placed in service or the date that the Non Investing Member begins using the Accelerated Capital Investment,

whichever is later, with the [\*\*\*] period referenced above beginning on the date that the Company sends Notice it is acquiring the Accelerated Capital Investment.

- [f] A Member's right to use an Accelerated Capital Investment for its individual benefit will terminate at such time as the Company acquires such investment.

## **9.2 Request for Wireless Device Approval.**

- [a] At any time after the Effective Date, either Member may send Notice to the Company and the other Member requesting the Company to approve, in accordance with the Company's reasonable written Wireless Device approval standards, a Wireless Device that the Company has otherwise elected not to consider for approval or has not yet approved.
- [b] The Company shall not be required to change its written Wireless Device approval standards when considering a request for Wireless Device approval; however, such approval shall not be unreasonably withheld.
- [c] The Member that makes a request pursuant to Section 9.2[a] will reimburse the Company for the Company's reasonable costs associated with considering approval of the Wireless Device, whether or not the Wireless Device is approved, with the Company's costs for this purpose being an amount equal to the Company's direct out-of-pocket costs incurred in connection with such approval process plus the fully loaded labor costs per hour of those employees of the Company engaged in such approval process; provided, that if the Wireless Device is approved pursuant to this Section 9.2 and the non-requesting Member also subsequently sells such Wireless Device, it shall so notify the Company and the requesting Member, and the Company shall then reimburse the requesting Member for the approval costs it previously paid to the Company.

**9.3 Facilities and Network Use Agreement.** On the Effective Date, the Company will enter into a contract with ACS and GCI in the form attached hereto as **Exhibit J** (the "**Facilities and Network Use Agreement**"). Neither Member is authorized to use the Company Network except in accordance with the Facilities and Network Use Agreement.

## **9.4 Connection Attrition Adjustments.**

- [a] The forecast of the Average Connections of ACS covered by the Facilities and Network Use Agreement during each of the Fiscal Years set forth below in this Section 9.4[a] (the "**ACS Forecast Average Connections**") is as follows:

<u>Fiscal Year</u>	<u>Average Connections</u>
2014	[***]
2015	[***]
2016	[***]
2017	[***]

; in each case, less an amount equal to the ACS Forecast Reduction Connections (as so adjusted, the “**Adjusted ACS Forecast Average Connections**”), and in each case the Adjusted ACS Forecast Average Connections will be [\*\*\*] by the applicable Service Area [\*\*\*] (as so adjusted, the “**Final Adjusted ACS Forecast Average Connections**”).

[b] If the actual Average Connections of ACS under the Facilities and Network Use Agreement for any Fiscal Year set forth in Section 9.4[a] (the “**ACS Actual Average Connections**”) are less than the Final Adjusted ACS Forecast Average Connections for such Fiscal Year, then the Distributions to be made to the ACS Member under Section 5.1 will be reduced by an amount (the “**ACS Annual Connection Shortfall Adjustment**”) equal to the [\*\*\*] [i] \$21,800,000 and [ii] [A] the difference between [x] [\*\*\*] for such Fiscal Year, and [y] the ACS Actual Average Connections for such Fiscal Year, multiplied by [B] \$[\*\*\*]. [\*\*\*] of the amount of any reduction to the Distributions to be made to the ACS Member pursuant to the immediately preceding sentence plus [\*\*\*] on such amount at the [\*\*\*] of the [\*\*\*] will be made to the Distributions to be made under Section 5.1[a] or Section 5.1[c] for the next succeeding four quarters after the ACS Annual Connection Shortfall Adjustment is determined until the Distributions made to the ACS Member under Section 5.1[a] or Section 5.1[c] have been [\*\*\*] the [\*\*\*] of each ACS Annual Connection Shortfall Adjustment [\*\*\*] the [\*\*\*]. If, at the end of the Preference Period, the Distributions to be made to the ACS Member under Section 5.1[a] or Section 5.1[c] have not been reduced by the cumulative amount of all ACS Annual Connection Shortfall Adjustments, then any Distributions to be made to the ACS Member under Section 5.1[f] will be reduced by the remaining cumulative amount of all ACS Annual Connection Shortfall Adjustments.

[c] In addition to any ACS Annual Connection Shortfall Adjustments made under Section 9.4[b], a [\*\*\*] and [\*\*\*] will be made with respect to ACS Average Connections and GCI Average Connections for [\*\*\*] in accordance with the following provisions:

[i] An amount (the “**ACS [\*\*\*] Connection Adjustment**”) equal to the excess of [A] the Final Adjusted ACS Forecast Average Connections for Fiscal Year [\*\*\*], over [B] the ACS Actual Average Connections for Fiscal Year [\*\*\*], if any, will be multiplied by \$[\*\*\*], provided that (for the avoidance of doubt) if the excess of [A] over [B] is zero or a negative number, then the ACS [\*\*\*] Connection Adjustment will be zero and provided further that if the aggregate amount of all ACS Annual Connection Shortfall Adjustments and the ACS [\*\*\*] Connection Adjustment would exceed \$21,800,000, then the ACS [\*\*\*] Connection

Adjustment will be an amount equal to \$21,800,000 minus the sum of all ACS Annual Connection Shortfall Adjustments.

- [ii] An amount (the “**GCI [\*\*\*] Connection Adjustment**”) equal to the excess of [A] an amount equal to [x] [1] [\*\*\*] (which is the forecast of the Average Connections of GCI under the Facilities and Network Use Agreement for Fiscal Year [\*\*\*]), minus [2] the aggregate number of ACS Forecast Reduction Connections, [\*\*\*] [y] the applicable [\*\*\*], over [B] the actual Average Connections of GCI under the Facilities and Network Use Agreement for Fiscal Year [\*\*\*], if any, will be multiplied by \$[\*\*\*], provided that (for the avoidance of doubt) if the excess of [A] over [B] is zero or a negative number, then the GCI [\*\*\*] Connection Adjustment will be zero and provided further that the maximum amount of the GCI [\*\*\*] Connection Adjustment will be \$21,800,000.
- [iii] If the ACS [\*\*\*] Connection Adjustment is greater than the GCI [\*\*\*] Connection Adjustment, then the Distributions to be made to the ACS Member under Section 5.1 will be reduced by an amount equal to the difference between the ACS [\*\*\*] Connection Adjustment and the GCI [\*\*\*] Connection Adjustment (the “**Net ACS [\*\*\*] Connection Adjustment**”). Any reduction to the Distributions to be made to the ACS Member pursuant to the immediately preceding sentence will be made to the Distributions to be made under Section 5.1[f] for the next succeeding quarter or quarters after the Net ACS [\*\*\*] Connection Adjustment is determined until the Distributions made to the ACS Member under Section 5.1[f] have been reduced by the full amount of the Net ACS [\*\*\*] Connection Adjustment, and any reduction to the Distributions to be made to the ACS Member under Section 5.1[f] will be added to and will increase the Distributions to be made to the GCI Member under Section 5.1[f].
- [iv] If the GCI [\*\*\*] Connection Adjustment is greater than the ACS [\*\*\*] Connection Adjustment, then the Distributions to be made to the GCI Member under Section 5.1 will be reduced by an amount equal to the difference between the GCI [\*\*\*] Connection Adjustment and the ACS [\*\*\*] Connection Adjustment (the “**Net GCI [\*\*\*] Connection Adjustment**”). Any reduction to the Distributions to be made to the GCI Member pursuant to the immediately preceding sentence will be made to the Distributions to be made under Section 5.1[f] for the next succeeding quarter or quarters after the Net GCI [\*\*\*] Connection Adjustment is determined until the Distributions made to the GCI Member under Section 5.1[f] have been reduced by the full amount of the Net GCI [\*\*\*] Connection Adjustment, and any reduction to the Distributions to be made to the GCI Member under Section 5.1[f] will be added to and will increase the Distributions to be made to the ACS Member under Section 5.1[f].
- [d] If the Company intends to take any action in connection with managing its network (including any network integration or call site rationalization) that the Company knows or reasonably anticipates will result in Wireless service being permanently eliminated in a



particular geographic service area that was served by any Connections to the Company's network immediately prior to such action (an **"Intentional Service Area Elimination"**), the Company will notify each Member in writing at least 30 days prior to such Intentional Service Area Elimination (a **"Service Area Elimination Company Notice"**). Any Member may contact the Company to discuss potential alternatives to avoid any planned Intentional Service Area Elimination. If the Company and the Members do not mutually agree on an alternative to avoid any planned Intentional Service Area Elimination within 30 days, the Company will agree to extend the date on which the planned Intentional Service Area Elimination will occur for a period of up to ten Business Days if requested by any Member to provide such Member an opportunity to notify affected customers. If the Company takes any action in connection with managing its network that results in Wireless service being permanently eliminated in a particular geographic service area that was served by the Company's network immediately prior to such action that results in Connections unintentionally losing Wireless service (an **"Unintentional Service Area Elimination"**), any Member may notify the Company in writing that such Unintentional Service Area Elimination has resulted in some of its Connections losing Wireless service (a **"Service Area Elimination Member Notice"**). The Company will have 30 days after receipt of a Service Area Elimination Member Notice to take actions necessary to restore Wireless service to all or any part of the geographic service area that was affected by an Unintentional Service Area Elimination (the **"SAE Cure Period"**). To the extent that the Company does not restore Wireless service to any geographic service area affected by an Unintentional Service Area Elimination during the SAE Cure Period or if the Company implements an Intentional Service Area Elimination, the Company will calculate the proportionate decrease in the population served by the Company's network as a result of each Service Area Elimination, which will [\*\*\*] [i] [\*\*\*] will [\*\*\*] [A] the reported population in all geographic service areas covered by the Company's network immediately prior to such Service Area Elimination [\*\*\*] [B] the reported population in any geographic service area to which Wireless service was eliminated as a result of such Service Area Elimination and not restored during the SAE Cure Period, if applicable, and [ii] [\*\*\*] will be the reported population in all geographic service areas covered by the Company's network immediately prior to such Service Area Elimination (the "Service Area [\*\*\*]"). The Company will calculate the Service Area [\*\*\*] on a cumulative basis on the date each Intentional Service Area Elimination occurs, or at the end of each SAE Cure Period, as applicable, if more than one Service Area Elimination occurs. The Company will notify each Member in writing of the applicable Service Area [\*\*\*] within ten Business Days after the date on which any Intentional Service Area Elimination occurs or the end of each SAE Cure Period, as applicable. The Company will not be required to calculate a Service Area Elimination Percentage at any time after the later of [i] the Connection Maintenance Measurement Date, and [ii] [\*\*\*].

- [e] From the Effective Date until the fourth anniversary of the Effective Date, each of ACS and GCI agrees that it will, and will cause its applicable Affiliates to, continue conducting reasonable marketing and sales efforts with respect to the operation of such Person's retail Wireless service offerings in a manner consistent with the Four Year Plan.

- [f] Example calculations of the connection attrition adjustments set forth in this Section 9.4 are set forth on **Exhibit M** for illustrative purposes only.

#### **9.5 Connection Maintenance Adjustments.**

- [a] If a Transfer of an Ownership Interest occurs prior to the [\*\*\*] of the Effective Date other than a Transfer pursuant to Section 14.3[a] or [b] (such Transfer being a “**Connection Maintenance Transfer**” and the effective date of such Transfer as determined pursuant to Section 14.4 being the “**Connection Maintenance Transfer Date**”), a one-time calculation and adjustment will be made with respect to ACS Connections and GCI Connections in accordance with the following provisions; provided, however, that if more than one Transfer occurs that would constitute a Connection Maintenance Transfer, the provisions of this Section 9.5 will apply only with respect to the first Connection Maintenance Transfer that occurs.
- [i] The Connections of ACS under the Facilities and Network Use Agreement as of the last day of the calendar month immediately preceding the Connection Maintenance Transfer Date will be multiplied by [\*\*\*]%, and such amount will then be multiplied by the applicable Service Area [\*\*\*] (the “**ACS Transfer Date Connections**”).
- [ii] The Connections of GCI under the Facilities and Network Use Agreement as of the last day of the calendar month immediately preceding the Connection Maintenance Transfer Date will be multiplied by [\*\*\*]%, and such amount will then be multiplied by the applicable Service Area [\*\*\*] (the “**GCI Transfer Date Connections**”).
- [iii] The excess of [A] the ACS Transfer Date Connections, over [B] Connections of ACS under the Facilities and Network Use Agreement (which shall refer to the successor to the Connections of ACS under the Facilities and Network Use Agreement if the ACS Member is the Transferor in the Connection Maintenance Transfer) on the earlier of [X] the last day of the calendar month immediately preceding [\*\*\*] of the [\*\*\*] and [Y] the last day of the calendar month immediately preceding the [\*\*\*] of the Effective Date (the earlier of [X] and [Y] being the “**Connection Maintenance Measurement Date**”), if any, will be multiplied by \$[\*\*\*] (the “**ACS Connection Maintenance Adjustment**”); provided that (for the avoidance of doubt) if the excess of [A] over [B] is zero or a negative number, then the ACS Connection Maintenance Adjustment will be zero and provided further that the maximum amount of the ACS Connection Maintenance Adjustment will be \$[\*\*\*].
- [iv] The excess of [A] the GCI Transfer Date Connections over [B] the Connections of GCI under the Facilities and Network Use Agreement (which shall refer to the successor to the Connections of GCI under the Facilities and Network Use Agreement if the GCI Member is the Transferor in the Connection Maintenance Transfer) on the Connection Maintenance Measurement Date, if any, will be

multiplied by \$[\*\*\*] (the “**GCI Connection Maintenance Adjustment**”); provided that (for the avoidance of doubt) if the excess of [A] over [B] is zero or a negative number, then the GCI Connection Maintenance Adjustment will be zero and provided further that the maximum amount of the GCI Connection Maintenance Adjustment will be \$[\*\*\*].

[v] If the ACS Connection Maintenance Adjustment is greater than the GCI Connection Maintenance Adjustment, then the Distributions to be made to the ACS Member (or the Transferee of the ACS Member, if applicable) under Section 5.1[f] will be reduced by an amount equal to the difference between the ACS Connection Maintenance Adjustment and the GCI Connection Maintenance Adjustment (the “**Net ACS Connection Maintenance Adjustment**”), and the amount of the Net ACS Connection Maintenance Adjustment will be added to and will increase the Distributions to be made to the GCI Member (or the Transferee of the GCI Member, if applicable) under Section 5.1[f]. Any reduction to the Distributions to be made to the ACS Member (or its Transferee, as applicable), and any corresponding increases to Distributions to be made to the GCI Member (or its Transferee, as applicable), pursuant to the immediately preceding sentence will be made to the Distributions to be made under Section 5.1[f] for the next succeeding quarter or quarters after the Net ACS Connection Maintenance Adjustment is determined until the Distributions made to the ACS Member (or its Transferee, as applicable) under Section 5.1[f] have been reduced by the full amount of the Net ACS Connection Maintenance Adjustment.

[vi] If the GCI Connection Maintenance Adjustment is greater than the ACS Connection Maintenance Adjustment, then the Distributions to be made to the GCI Member (or the Transferee of the GCI Member, if applicable) under Section 5.1[f] will be reduced by an amount equal to the difference between the GCI Connection Maintenance Adjustment and the ACS Connection Maintenance Adjustment (the “**Net GCI Connection Maintenance Adjustment**”), and the amount of the Net GCI Connection Maintenance Adjustment will be added to and will increase the Distributions to be made to the ACS Member (or the Transferee of the ACS Member, if applicable) under Section 5.1[f]. Any reduction to the Distributions to be made to the GCI Member (or its Transferee, as applicable), and any corresponding increases to Distributions to be made to the ACS Member (or its Transferee, as applicable), pursuant to the immediately preceding sentence will be made to the Distributions to be made under Section 5.1[f] for the next succeeding quarter or quarters after the Net GCI Connection Maintenance Adjustment is determined until the Distributions made to the GCI Member (or its Transferee, as applicable) under Section 5.1[f] have been reduced by the full amount of the Net GCI Connection Maintenance Adjustment.

## 9.6 Network Capacity Purchases.

- [a] The Company will purchase network capacity from ACS and GCI as required for the operation of the Company's network for its Wireless Business ("**Member Network Capacity Purchases**"). Member Network Capacity Purchases may be made at any time. All Member Network Capacity Purchases will be subject to the Acceptable Use Policy attached hereto as **Exhibit K**.
- [b] [\*\*\*] will [\*\*\*] the [\*\*\*] with the [\*\*\*] for [\*\*\*] as [\*\*\*] to any [\*\*\*] that [\*\*\*] from [\*\*\*] of a [\*\*\*] and [\*\*\*]. ACS will provide to the Company, on June 30 and December 31 of each year, a certificate signed by its chief financial officer certifying that [\*\*\*] at [\*\*\*] it [\*\*\*] to [\*\*\*] with this [\*\*\*] at [\*\*\*] the [\*\*\*].
- [c] [\*\*\*] will [\*\*\*] the [\*\*\*] with the [\*\*\*] for [\*\*\*] as [\*\*\*] to any [\*\*\*] that [\*\*\*] from [\*\*\*] of a [\*\*\*] and [\*\*\*]. GCI will provide to the Company, on June 30 and December 31 of each year, a certificate signed by its chief financial officer certifying that [\*\*\*] at [\*\*\*] it [\*\*\*] to [\*\*\*] with this [\*\*\*] at [\*\*\*] the [\*\*\*].
- [d] Member Network Capacity Purchases will be made by the Company in accordance with the terms and provisions of the Additional Capacity Purchase Agreement and will be subject to Section 6.4[n][x].
- [e] Either ACS or GCI can decline to accept a proposed Member Network Capacity Purchase available to the Company along a requested route due to network capacity limitations.

## 9.7 Option Regarding Fixed Wireless Facilities.

- [a] If a Member desires the Company to construct a fixed Wireless facility that would support a fixed Wireless service to qualify for [\*\*\*] or [\*\*\*] or [\*\*\*], the cost of which is \$[\*\*\*] or [\*\*\*], such Member (the "**Requesting Member**") will have the option to send Notice to the Company and the other Member (a "**Fixed Wireless Facility Notice**") that it desires the Company to construct such facility (the "**Fixed Wireless Facility Investment**") and specifying its proposed time period and other material terms and conditions for the Fixed Wireless Facility Investment to be made. In no event may a Member send more than [\*\*\*] Fixed Wireless Facility Investment during any [\*\*\*] period.
- [b] Within 30 days following its receipt of a Fixed Wireless Facility Notice, the Company will send Notice to the Requesting Member stating either [i] that the Company will make the Fixed Wireless Facility Investment on its own behalf within the time period proposed and on the other material terms and conditions set forth in such Fixed Wireless Facility Notice, or [ii] that the Company will not make the Fixed Wireless Facility Investment within the time period proposed in such Notice but consents to the Requesting Member making such Fixed Wireless Facility Investment in accordance with this Section 9.7 ("**FWF Option 2**"), or [iii] that the Company will not make the Fixed Wireless Facility Investment but does not consent to the Requesting Member making such Fixed Wireless

Facility Investment (“**FWF Option 3**”); provided, that the Company’s consent pursuant to this Section 9.7[b][iii] may be not be unreasonably withheld; provided further that, without limitation, [x] it will not be unreasonable for the Company to withhold its consent to a proposed Fixed Wireless Facility Investment if such investment would be disruptive to the Company, is inconsistent with the technology standards or the manufacturer selections of the Company, or the services to be offered in connection with the Fixed Wireless Facility Investment would not allow the Company to recover its operating costs associated with the Fixed Wireless Facility Investment, and [y] it will be unreasonable for the Company to withhold its consent to a proposed Fixed Wireless Facility Investment solely on the basis that such investment is not provided in the Plan or has costs that are included in the Requesting Member’s Cost.

- [c] If FWF Option 2 is exercised by the Company, the Requesting Member and the Company will enter into an agreement pursuant to which the Company will design, install, integrate and operate the Fixed Wireless Facility Investment at the Requesting Member’s expense (the amount so paid by the Requesting Member, the “**Requesting Member’s Cost**”), on the terms and conditions set forth in the Fixed Wireless Facility Notice.
- [d] At any time following completion of a Fixed Wireless Facility Investment pursuant to Section 9.7[c], the non-requesting Member (the “**Non-Requesting Member**”) may send Notice to the Requesting Member and the Company that the Non-Requesting Member also desires to use the Fixed Wireless Facility Investment. If the Non-Requesting Member sends such a Notice, the Requesting Member and the Non-Requesting Member will negotiate in good faith to reach agreement on a reasonable monthly user fee and other terms for access by the Non-Requesting Member to the Fixed Wireless Facility Investment. For the avoidance of doubt, the use of any Fixed Wireless Facility Investment by the Requesting Member or the Non-Requesting Member is subject to the provisions of Section 6.5.
- [e] The Company will have the exclusive option at any time, exercisable by sending Notice to both Members, to acquire the Fixed Wireless Facility Investment at an amount equal to the [\*\*\*] plus [\*\*\*] at an [\*\*\*] the [\*\*\*] of [i] [\*\*\*] and [ii] [\*\*\*] or, if the Company and the Requesting Member reach agreement on a different price within 15 days following the Company’s exercise of such option, at such agreed price (as applicable, the “**FWF Purchase Price**”); provided, that if the Requesting Member and the Non-Requesting Member enter into an agreement pursuant to Section 9.7[d], the Company will be obligated to acquire the Fixed Wireless Facility Investment at the FWF Purchase Price within [\*\*\*] from the date the Fixed Wireless Facility Investment is placed in service or the date that the Non Requesting Member begins using the Fixed Wireless Facility Investment, whichever is later, with the [\*\*\*] period referenced above beginning on the date that the Company sends Notice it is acquiring the Fixed Wireless Facility Investment.
- [f] A Member’s right to use a Fixed Wireless Facility Investment for its individual benefit will terminate at such time as the Company acquires such investment.

## **Article 10: LIABILITY OF A MEMBER; STANDARD OF CARE; INDEMNIFICATION; AND EXCULPATION**

**10.1 Limited Liability.** Except as otherwise provided in the Act, the debts, obligations and liabilities of the Company (whether arising in contract, tort or otherwise) will be solely the debts, obligations and liabilities of the Company, no Member (including any Person who formerly held such status) is liable or will be obligated personally for any such debt, obligation or liability of the Company solely by reason of such status, and the Company will indemnify each of the foregoing Persons with respect to Indemnified Losses incurred by such Person in connection with any Proceeding to which such Person is made a party or is threatened to be made a party based solely on such status. No individual trustee, officer, director, shareholder, member, partner, manager, employee, agent or attorney of any entity Member, in its individual capacity as such, will have any personal liability for the performance of any obligation of such Member under this Agreement solely by reason of such status.

**10.2 Capital Contributions.** Each Member is liable to the Company for any Capital Contribution or Distribution that has been wrongfully or erroneously returned or made to such Person in violation of the Act, the Certificate or this Agreement.

**10.3 Capital Return.** If any Member receives a Distribution that was wrongfully or erroneously made by the Company, the Member will have no liability under the Act or other applicable law for the amount of the Distribution after the expiration of three years from the date of the Distribution, unless an action to recover the Distribution from the Member is commenced within the period provided for in the Act and an adjudication of liability against the Member is made in such action. The amount of any Distribution returned to the Company by a Member or paid by a Member for the account of the Company or to a creditor of the Company will be added to the account or accounts from which it was subtracted when it was distributed to the Member.

**10.4 Reliance.** Each Member will be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements by [a] any of the Company's other Members, employees or committees or [b] any other Person who has been selected with reasonable care as to matters that such Person reasonably believes are within such other Person's professional or expert competence. Matters as to which such reliance may be made include the value and amount of assets, liabilities, Income and Losses of the Company, as well as other facts pertinent to the existence and amount of assets from which Distributions to Members might properly be made.

### **10.5 Standard of Care.**

[a] The only duty owed by the GCI Member to the Company and the ACS Member is to refrain in managing the business and affairs of the Company (to the extent not delegated to the CEO or requiring approval by the unanimous Vote of the Members) and winding up the business and affairs of the Company from engaging in grossly negligent or reckless conduct, intentional misconduct, a knowing violation of the law or a transaction in which GCI or its Affiliates knowingly receive an improper benefit that is to the detriment of the Company and to refrain from breaching the implied contractual covenant

of good faith and fair dealing (the “**Standard of Care**”). It is expressly acknowledged by the Company and the Members that all other express or implied fiduciary duties of the GCI Member to the Company and/or to the ACS Member are expressly disclaimed to the maximum extent permitted by law, and that the GCI Member does not violate the Standard of Care solely because the GCI Member’s conduct furthers the GCI Member’s own interest. Without limiting the foregoing, in no event will the following be deemed to be a violation of the Standard of Care by the GCI Member: [i] the good faith exercise by the GCI Member or any of its Affiliates of their rights under any Approved Affiliate Transaction or other transaction permitted by Section 6.4[n], or the performance by them of their obligations in relation to such agreements or transactions, or [ii] the good faith exercise by the GCI Member or any of its Affiliates of their rights under this Agreement (including the taking of any action that is permitted by Section 6.5), the Contribution Agreement or any Ancillary Agreement or [iii] any action that is authorized by the unanimous Vote of the Members following full disclosure.

- [b] No Member owes duties of any nature to any Transferee who is not admitted as a Member.
- [c] If the ACS Member reasonably believes that the GCI Member has breached the Standard of Care in relation to the Company and the Company has not brought a claim against the GCI Member with respect to such breach, the ACS Member may send written notice to the CEO specifying in reasonable detail the alleged breach of the Standard of Care and if the CEO does not subsequently agree to cause the Company to bring such claim, the ACS Member may, on behalf of the Company, bring such claim against the GCI Member pursuant to the dispute resolution provisions provided for in Article 15. As specified in Section 11 of the Arbitration Agreement, if the Arbitrator determines in a proceeding initiated by the ACS Member that [i] the GCI Member has not breached the Standard of Care, the ACS Member will pay the Company’s and the GCI Member’s Individual Fees and Expenses and any Arbitrator’s Expenses paid by such Persons in connection with such claim or [ii] the GCI Member has breached the Standard of Care, the GCI Member will pay the Company’s and the ACS Member’s Individual Fees and Expenses and any Arbitrator’s Expenses paid by such Persons in connection with such claim.
- [d] The CEO and each Officer shall be a fiduciary and shall have the same fiduciary duties to the Members and the Company as the chief executive officer and other officers of a Delaware corporation have to the corporation and its stockholders under the Delaware General Corporation Law.
- [e] Neither Member, in its capacity as such, shall exercise its voting rights pursuant to this Agreement in favor of any action that would reasonably be expected to result in the Company breaching any of its obligations under this Agreement; it being acknowledged that the foregoing is not intended to make either Member a guarantor of the Company’s obligations under this Agreement.

**10.6 Exculpation.** Neither Member will be liable to the Company or to any other Member or Transferee for any losses, damages, expenses or liabilities on account of any act or omission,

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unless such act or omission [a] in the case of the GCI Member, constitutes a breach of the Standard of Care or [b] in the case of any Member, a violation of the implied contractual covenant of good faith and fair dealing.

**10.7 Indemnification.** The Company will indemnify the Members from and against all Indemnified Losses incurred by such Member in connection with any Proceeding to which such Member is made a party or is threatened to be made a party because such Person was a Member or acted or failed to act with respect to the business or affairs of the Company, to the extent that [a] such action or failure did not constitute a violation of the implied contractual covenant of good faith and fair dealing and [b] with respect to the GCI Member, the GCI Member, in such action or failure to act, did not breach the Standard of Care.

**10.8 Expense Advancement.** With respect to the reasonable expenses incurred by a Member when such Member is a party to a Proceeding, the Company will provide funds to such Member in advance of the final disposition of the Proceeding if [a] in the case of the GCI Member, the GCI Member furnishes the Company with the GCI Member's written affirmation of a good faith belief that it has met the Standard of Care and in the case of the ACS Member, the ACS Member furnishes the Company with the ACS Member's written affirmation of a good faith belief that it has not breached the implied contractual covenant of good faith and fair dealing, and [b] in the case of the GCI Member, the GCI Member agrees in writing to repay the advance if it is determined in an arbitration under the Arbitration Agreement that it has not met the Standard of Care, and in the case of the ACS Member, the ACS Member agrees in writing to repay the advance if it is determined in an arbitration under the Arbitration Agreement that it has breached the implied contractual covenant of good faith and fair dealing.

**10.9 Insurance.** The indemnification provisions of this Article do not limit Member's or any other Person's right to recover under any insurance policy maintained by the Company. If, with respect to any loss, damage, expense or liability described in [Section 10.7](#), a Member or any other Person receives an insurance policy indemnification payment, which, together with any indemnification payment made by the Company, exceeds the amount of such loss, damage, expense or liability, then the Member or such other Person will immediately repay such excess to the Company.

**10.10 Indemnification of Others.** The Company shall indemnify and advance expenses to each member of the Board and each manager, member, partner, owner, officer, employee or agent of the Members to the same extent as the Company is obligated to indemnify and advance expenses to the Members. The Company may also indemnify and advance expenses to any Officer, employee or agent of the Company to the same extent as (or to a greater or lesser extent than) the Company is obligated to indemnify and advance expenses to the Members.

## **Article 11: ACCOUNTING AND REPORTING**

**11.1 Fiscal Year.** For income tax and accounting purposes, the fiscal year of the Company (the "Fiscal Year") is the period commencing on January 1 of each year and ending on



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December 31 of such year (unless otherwise required by the Code), but the first Fiscal Year will begin on the Effective Date and the last Fiscal Year will end on the date on which the Company is terminated.

**11.2 Accounting Method.** For both book accounting and income tax purposes, the Company will use the accrual method of accounting (unless otherwise required by the Code). The Company will prepare and maintain its financial books and records in accordance with GAAP.

**11.3 Tax Classification.** Notwithstanding any other provision of this Agreement, neither the Company nor any Member may take any action (including the filing of a U.S. Treasury Form 8832 Entity Classification Election) that would cause the Company to be characterized as an entity other than a partnership for federal income tax purposes without the affirmative unanimous Vote of the Members.

**11.4 Tax Filings.** The Company will use all reasonable efforts to cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code, as well as all other tax returns required in each jurisdiction in which the Company does business, and will cause all tax information related to the Company required by a Member in order to file its own tax returns to be provided to such Member in a timely manner. The Company will provide draft copies of all such income tax returns of the Company to each Member at least 30 days prior to filing, taking into account any extensions of the Company's obligation to file. In the event that a Member has any questions or objections to the draft income tax returns, it shall provide such questions or objections to the Company in writing and in reasonable detail within ten days following its receipt of such returns and the Company shall provide each Member with any additional information reasonably requested by such Member. One or more knowledgeable representatives of the Company and each Member shall promptly discuss any objections to reach a consensus on the filing of such tax return. The Company shall file for any available extension provided by law for the filing of the Company's return to permit time to reach a resolution of any such dispute. Upon written request by any Member, the Company shall retain a national accounting firm (other than the Company's regular accounting firm) to determine how the tax return should be filed based on the objections raised by the disputing Member in its written notice. The cost of such accounting firm shall be paid by the disputing Member if such firm agrees with the tax returns as prepared by the Company or by the Company if such firm agrees with the disputing Member's proposed changes.

**11.5 Company Reports.** The Company will provide the following information to each Member at the same time:

- [a] **Annual Reports.** As soon as practicable and in any event within 40 days after the end of each Fiscal Year, a preliminary consolidated balance sheet as of the end of such Fiscal Year and a preliminary consolidated statement of operations, preliminary consolidated statement of Members' equity and a preliminary consolidated statement of cash flows of the Company for such Fiscal Year, all prepared in conformity with GAAP, and, as soon as practicable and in any event within 67 days after the end of each Fiscal Year, the final versions of such financial statements, together with a report on such financial statements from a nationally recognized independent registered public accounting firm stating that

such statements are prepared and fairly stated in all material respects in conformity with GAAP;

- [b] Quarterly Reports. As soon as practicable and in any event within 15 Business Days after the end of each quarter close of the Company (except the last quarter of the Company's Fiscal Year), a preliminary unaudited consolidated balance sheet as of the end of such fiscal quarter, and a preliminary unaudited consolidated statement of operations and a preliminary unaudited consolidated statement of cash flows of the Company and its Subsidiaries for such quarter, all prepared in conformity with GAAP with the final versions of such quarterly reports to be delivered within 37 days after the end of each such quarter close and to be accompanied by a certification from the chief financial officer of the Company as to the accuracy of such statements;
- [c] Certifications.
  - [i] As soon as practicable and in any event within 70 days after the end of each Fiscal Year, any certifications, assessments, reports and attestations reasonably requested by a Member that are necessary for such Member to meet any obligations that it has under the Sarbanes-Oxley Act of 2002 in relation to its Ownership Interest in the Company;
  - [ii] Within 90 days following the end of each Fiscal Year, a certificate signed by the Company's chief financial officer certifying [w] the dollar amount of all Professional Services provided to the Company pursuant to the GCI Services Agreement and that any such Professional Services were provided in accordance with the Professional Services Guidelines, including the requirement that the Company determine that the estimate is fair and reasonable and [x] that any Satellite Capacity Services provided to the Company pursuant to the GCI Services Agreement were provided in accordance with the Satellite Capacity Services Guidelines.
- [d] Monthly Reports. As soon as practicable (but no later than 11 Business Days after the end of each month close), an unaudited detailed balance sheet as of the end of such month and an unaudited detailed statement of operations of the Company for such month, together with a statement of the number of the Company's Connections during such month;
- [e] Budget and Plan Updates. As soon as practicable and in any event within 16 Business Days after the end of each month, budget reports with respect to the then-current Annual Operating Budget, Four Year Plan and Annual Cap Ex Budget, including comparisons of actual results to budgeted amounts and assumptions;
- [f] Asset Reports. As soon as practicable (but no later than 16 Business Days after the end of each quarter close), a schedule of all Contributed Assets retired, abandoned, sold or otherwise removed from service, together with the original cost and accumulated depreciation thereof.

[g] Other Reports. Such additional reports as a Member may reasonably request from time to time.

Without limiting the foregoing, the Company shall, upon request of a Member [i] provide in a timely manner such financial reports and other operational information as are reasonably necessary for each Member to prepare financial statements and other information required by the rules and regulations of the Securities and Exchange Commission, any exchange on which the securities of such Member are traded, and any other governmental authority, in each case to the extent applicable to it, and [ii] maintain such systems, personnel and controls as are reasonably necessary so that each Member is able to satisfy its internal control, financial reporting and other compliance requirements, in each case, to the extent required by any Member in order to comply with the rules and regulations of the Securities and Exchange Commission and relevant stock exchanges.

**11.6 Financial Statement Audit.** The Company will obtain an annual audit of its financial statements with respect to each Fiscal Year and, to the extent that quarterly review procedures of the Company's financial statements are required to be performed in order for a Member to meet its reporting obligations as a public company, the Company will cause such review procedures to be performed, in each case from or by a nationally recognized independent registered public accounting firm. The Company will furnish the Members with a copy of such audited or reviewed financial statements as provided in Section 11.5. Any exceptions to the audited statements rendered must be made by a Member within one year from its receipt and, if no exception is made within that time, the statements will be considered to be correct.

**11.7 Books and Records.**

- [a] The following books and records of the Company (which may be in electronic form) will be kept at the GCI Member's principal place of business in Alaska: [i] a current list of the full name and last known business or mailing address of each Member, [ii] the original of the Certificate and of this Agreement, as the same may be amended from time to time (as well as any signed powers of attorney pursuant to which any such document was executed), [iii] a copy of the Company's federal, state and local income tax returns and reports, and annual financial statements of the Company, for the six most recent years, and [iv] minutes, or minutes of action by written consent, of every annual and special meeting of the Members and of every meeting of the Board.
- [b] The Company will keep at the GCI Member's principal place of business in Alaska separate books of account for the Company, which will show a true and accurate record of all costs and expenses incurred, all credits made and received and all income derived in connection with the operation of the Wireless Business by the Company in accordance with GAAP consistently applied as to the Company's financial position and results of operations. The Company will maintain a system of internal accounting controls that complies with applicable law and that will provide reasonable assurance that: [i] transactions are executed in accordance with the general or specific authorization of the Members, the Board or the CEO, as applicable; [ii] transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP (or any other

criteria applicable to the statements) and to maintain accountability for assets; [iii] access to assets is permitted only in accordance with the general or specific authorization of the Members, the Board or the CEO, as applicable; and [iv] the recorded accountability for inventory is compared with existing inventory at reasonable intervals and appropriate action is taken with respect to any differences.

- [c] Each Member will, at its sole expense, have the right, at any time upon reasonable Notice to the Company, to examine and copy, or cause its designee to examine and copy, the Company's books and records (including financial books and records) during normal business hours for any proper purpose reasonably related to such Person's Ownership Interest, subject to Section 16.20 and to the Commercially Sensitive Information Policies and Procedures.
- [d] All books, records (including bills and invoices), reports and returns of the Company required by this Article 11 will be maintained in a manner and form reasonably determined by the CEO.

**11.8 Banking.** The Company may establish one or more bank or financial accounts and safe deposit boxes. The Company may authorize one or more individuals to sign checks on and withdraw funds from such bank or financial accounts and to have access to such safe deposit boxes, and may place such limitations and restrictions on such authority as the Company deems advisable.

**11.9 Tax Matters Partner.** The GCI Member is designated as the tax matters partner for the Company under § 6231(a)(7) of the Code (the "Tax Matters Partner"). The Tax Matters Partner will be responsible for notifying all Members of ongoing proceedings, both administrative and judicial, and will represent the Company throughout any such proceeding. The Members will furnish the Tax Matters Partner with such information as it may reasonably request to provide the Internal Revenue Service with sufficient information to allow proper notice to the Members. If an administrative proceeding with respect to a partnership item under the Code has begun, and the Tax Matters Partner so requests, each Member will notify the Tax Matters Partner of its treatment of any partnership item on its federal income tax return, if any, which is inconsistent with the treatment of that item on the partnership return for the Company. Any settlement agreement with the Internal Revenue Service will be binding upon the Members only as provided in the Code. The Tax Matters Partner will not bind any other Member to any extension of the statute of limitations or to a settlement agreement without such Member's written consent. Any Member who enters into a settlement agreement with respect to any partnership item will notify the other Members of such settlement agreement and its terms within 30 days from the date of settlement. If the Tax Matters Partner does not file a petition for readjustment of the partnership items in the Tax Court, federal District Court or Claims Court within the 90-day period following a notice of a final partnership administrative adjustment, any notice partner or 5-percent group (as such terms are defined in the Code) may institute such action within the following 60 days. The Tax Matters Partner will timely notify the other Members in writing of its decision regarding filing any petition for readjustment. Any notice

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partner or 5-percent group will promptly notify any other Member of its filing of any petition for readjustment.

**11.10 No Partnership.** The classification of the Company as a partnership will apply only for federal (and, as appropriate, state and local) income tax purposes. This characterization, solely for tax purposes, does not create or imply a general or limited partnership between the Members for state law or any other purpose. Instead, the Members acknowledge the status of the Company as a limited liability company formed under the Act.

**11.11 ACS Audit Rights.** The ACS Member shall have the right to audit, no more than once per Fiscal Year during the term of this Agreement and for one year thereafter, those books and records of the Company and its Subsidiaries relating to any agreement or transactions between the Company or any of its Subsidiaries, on the one hand, and GCI or any of its Affiliates, on the other hand. Any such audits shall be subject to the Commercially Sensitive Information Policies and Procedures, and shall be conducted only during normal business hours in such a manner as to not unreasonably interfere with the Company's normal business activities and only at such places as the applicable books and records are kept. The ACS Member shall provide the Company with reasonable advance written notice of any such audit. The ACS Member agrees that the information derived from, and the process of, such reviews shall be subject to the confidentiality provisions set forth herein. If any such audit reveals that GCI or its Affiliates overcharged the Company and its Subsidiaries any amounts, or underpaid the Company and its Subsidiaries any amounts, GCI shall immediately pay to the Company the amount of any such overpayment or shortfall, plus interest compounded at a monthly rate per annum equal to LIBOR plus 2.5%, from the month that any such overpayment was made by the Company, or that any shortfall amounts were first due to the Company, as applicable, in each case subject to the dispute resolution provisions of Article 15.

**11.12 Maintenance of Insurance.** The Company shall acquire and maintain or cause to be maintained, insurance coverage of the types and with coverage amounts consistent with telecommunications industry standards and such additional insurance as may otherwise be reasonably determined by the CEO to be necessary or advisable from time to time.

## **Article 12: DISSOLUTION**

**12.1 Dissolution.** Dissolution of the Company will occur upon [a] the unanimous affirmative Vote of the Members, [b] the sale, transfer or other disposition of all of the assets of the Company in accordance with the terms of this Agreement, upon the receipt of the consideration (including collection of any promissory notes or other evidences of indebtedness received as consideration) paid for such sale, transfer or other disposition, or [c] an event of Withdrawal of a Member and the election of the remaining Members to dissolve in accordance with Section 12.3.

**12.2 Events of Withdrawal.** An event of Withdrawal of a Member occurs when any of the following occurs:

- [a] With respect to any Member that is a corporation, upon filing of articles of dissolution of the corporation;

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- [b] With respect to any Member that is a partnership, a limited liability company or a similar entity, upon dissolution and liquidation of such entity (but not solely by reason of a technical termination under § 708(b)(1)(B) of the Code);
- [c] A Bankruptcy Event with respect to any Member or its Wireless Parent, it being acknowledged that the Transferee in a Bankruptcy Case can be admitted as a Member in accordance with the provisions of Section 14.6;
- [d] Any other event not otherwise defined in the preceding provisions of this Section 12.2 as being an event of Withdrawal that terminates the continued membership of a Member in the Company, including a voluntary resignation from the Company; or
- [e] With respect to any Member, upon the Transfer by such Member of any part of its Ownership Interest that is not permitted by or done in accordance with the requirements of Article 14.

Within ten days following the happening of any event of Withdrawal with respect to a Member, such Member must give Notice of the date and the nature of such event to the Company.

**12.3 Continuation.** In the event of Withdrawal of a Member, the Company will be continued, unless all of the remaining Members elect to dissolve. If the Company is so continued, with respect to any Member as to which an event of Withdrawal has occurred, such Member or such Member's Transferee or other successor-in-interest (as the case may be) will, without further act, become a Transferee of the withdrawn Member's Ownership Interest (with the limited rights of a Transferee as set forth in Section 14.5, unless admitted as a substitute Member).

### **Article 13: LIQUIDATION**

**13.1 Liquidation.** Upon Dissolution of the Company, the Company will immediately proceed to wind up its affairs and liquidate pursuant to this Section 13.1. The GCI Member will act as the liquidating trustee unless the GCI Member elects to appoint another Person as the liquidating trustee. The winding up and Liquidation of the Company will be accomplished in a businesslike manner as determined by the liquidating trustee. A reasonable time will be allowed for the orderly Liquidation of the Company and the discharge of liabilities to creditors so as to enable the Company to minimize any losses attendant upon Liquidation. Any gain or loss on disposition of any Company assets in Liquidation will be allocated to the Members in accordance with the provisions of Article 4. Any liquidating trustee is entitled to reasonable compensation for services actually performed, and may contract for such assistance in the liquidating process as such Person deems necessary or desirable. Until the filing of a certificate of cancellation under Section 13.6, and without affecting the liability of the Members and without imposing liability on the liquidating trustee, the liquidating trustee may settle and close the Company's business, prosecute and defend suits, dispose of its property, discharge or make provision for its liabilities, and make Distributions in accordance with the priorities set forth in this Article.

**13.2 Priority of Payment.** The assets of the Company will be distributed in Liquidation in the following order:

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- [a] First, to creditors by the payment or provision for payment of the debts and liabilities of the Company (other than any loans or advances that may have been made by any Member or any Affiliate of a Member) and the expenses of Liquidation;
- [b] Second, to the setting up of any reserves that are reasonably necessary for any contingent, conditional or unmatured liabilities or obligations of the Company (other than any loans made by any Member or any Affiliate of a Member);
- [c] Third, to the repayment of any loans or advances to the Company that were made by any Member or any Affiliate of a Member, including interest (including the GCI Working Capital Loan), according to the relative priority of repayment of such loans or advances and proportionally among loans of equal priority if the amount available for repayment is insufficient for payment in full;
- [d] Fourth, to the ACS Member and the GCI Member in accordance with Sections 5.1[d] and [e]; and
- [e] Fifth, to the Members in proportion to the remaining positive balances in their respective Capital Accounts after such Capital Accounts have been adjusted for [i] all allocations of Income, Net Income, Loss, Net Loss and items thereof for the Fiscal Year during which such Liquidation occurs and [ii] all Distributions pursuant to Sections 13.2[d].

**13.3 Liquidating Distributions.** The liquidating Distributions due to the Members will be made by selling the assets of the Company and distributing the net proceeds. Notwithstanding the preceding sentence, but only upon the affirmative Vote of all Members, the liquidating Distributions may be made by distributing the assets of the Company in kind to the Members in proportion to the amounts distributable to them pursuant to Section 13.2, and valuing such assets at their Fair Market Value (net of liabilities secured by such property that the Member takes subject to or assumes) on the date of Distribution. Each Member agrees to save and hold harmless the other Members from such Member's proportionate share of any and all such liabilities that are taken subject to or assumed. Appropriate and customary prorations and adjustments will be made incident to any Distribution in kind. The Members will look solely to the assets of the Company for the return of their Capital Contributions, and if the assets of the Company remaining after the payment or discharge of the debts and liabilities of the Company are insufficient to return such Capital Contributions, no Member will have any recourse against any other Member. The Members acknowledge that Section 13.2 may establish Distribution priorities different from those set forth in the provisions of the Act applicable to Distributions upon Liquidation, and the Members agree that they intend, to that extent, to vary those provisions by this Agreement.

**13.4 No Restoration Obligation.** Except as otherwise specifically provided in Article 10, nothing contained in this Agreement imposes on any Member an obligation to make a Capital Contribution in order to restore a deficit Capital Account upon Liquidation of the Company.

**13.5 Liquidating Reports.** The liquidating trustee will provide a report with each liquidating Distribution to Members made pursuant to Section 13.3, showing the collections, disbursements,

and Distributions during the period subsequent to any previous report. The liquidating trustee will provide a final report, showing cumulative collections, disbursements, and Distributions, to Members upon completion of the liquidation process.

**13.6 Certificate of Cancellation.** Upon Dissolution of the Company and the completion of the winding up of its business and the liquidation process, the Company will file a certificate of cancellation (to cancel the Certificate) with the Delaware Secretary of State pursuant to the Act. At such time, the Company also will file an application for withdrawal of its certificate of authority in any jurisdiction where it is then qualified to do business.

## **Article 14: TRANSFER RESTRICTIONS**

### **14.1 General Restrictions.**

- [a] No Person may Transfer all or any part of such Person's Ownership Interest in any manner whatsoever except [a] a Transfer of all of its Ownership Interest to a Permitted Transferee as set forth in Section 14.3, and in such case only if the requirements of Section 14.1[b] and Section 14.4 also have been satisfied or [b] subject to Section 14.7, a Transfer that is a pledge of an Ownership Interest. Any other Transfer of all or any part of an Ownership Interest is null and void, and of no effect, but if any such Transfer is nonetheless given effect under applicable law and pursuant to the Arbitration Agreement, the transferee in such Transfer will have the limited rights of a Transferee as provided in Section 14.5. Any Member who makes a Transfer of all of such Person's Ownership Interest will cease to be a Member on the effective date of such Transfer and will cease to have any Ownership Interest or other rights under this Agreement as of such date, but no Member will be released from any obligation that arose prior to the date it ceased to have an Ownership Interest or that is otherwise stated in this Agreement to survive a Person ceasing to be a Member. Any Member who makes a Transfer of part (but not all) of such Person's Ownership Interest will continue as a Member (with respect to the Ownership Interest retained), and such partial Transfer will not constitute an event of Withdrawal of such Member. The rights and obligations of any resigning Member or of any Transferee of an Ownership Interest are also governed by other provisions of this Agreement.
- [b] No Person may Transfer all or any part of such Person's Ownership Interest in any manner whatsoever unless [i] the Transferee's Wireless Parent assumes the obligations of the Transferor's Wireless Parent under the Facilities and Network Use Agreement (unless another arrangement with respect to the Transferor's Connections is made with the Company that is approved by the unanimous Vote of the Members), and the Transferor's Wireless Parent is fully released from such obligations to the extent such obligations relate to the period after the Transfer, and [ii] the Transferee's Wireless Parent assumes on its own behalf and on behalf of its Affiliates, pursuant to an assumption agreement reasonably satisfactory to the other Member, the obligations of the Transferor's Wireless Parent under Sections 6.5, 15, 16.8, 16.20, and 16.22.

**14.2 No Member Rights.** Subject to Section 14.6, no Member has the right or power to confer upon any Transferee the attributes of a Member in the Company. The Transferee of all or



Information indicated by [\*\*\*] in the text has been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for Confidential Treatment under Rule 24b-2 under the Securities Exchange Act of 1934.

any part of an Ownership Interest by operation of law does not, by virtue of such Transfer, succeed to any rights as a Member in the Company.

**14.3 Permitted Transferees.** Subject to the requirements set forth in Section 14.1[b] and Section 14.4, a Person may Transfer all, but, except pursuant to Section 14.8, not less than all, of such Person's Ownership Interest:

- [a] To another Member;
- [b] To an Affiliate of such Person;  
or
- [c] At any time after the fourth anniversary of the Effective Date.

**14.4 General Conditions on Transfers.** No Transfer of an Ownership Interest will be effective unless all of the conditions set forth below are satisfied:

- [a] The Transferor signs and delivers to the Company an undertaking in form and substance reasonably satisfactory to the Company to pay all reasonable expenses incurred by the Company in connection with the Transfer (including reasonable fees of counsel and accountants and the costs to be incurred with any additional accounting required in connection with the Transfer, and the costs and fees attributable to preparing, filing and recording such amendments to the Certificate or other organizational documents or other filings as may be required by law);
- [b] The Transferor delivers to the Company an opinion of counsel for the Transferor in form and substance reasonably satisfactory to the Company to the effect that the Transfer of the Ownership Interest is in compliance with the applicable federal and state securities laws;
- [c] The Transferor signs and delivers to the Company a copy of the assignment of the Ownership Interest to the Transferee (substantially in the form of the attached **Exhibit C**);
- [d] The Transferee signs and delivers to the Company an agreement (substantially in the form of the attached **Exhibit D**) to be bound by this Agreement, including the Arbitration Agreement that is incorporated into and is a part of this Agreement; and
- [e] The Transfer is in compliance with the other provisions of this Article, including Section 14.1[b].

The Transfer of an Ownership Interest will be effective as of 12:01 a.m. (prevailing local time at the principal place of business of the Company) on the first day of the month following the month in which all of the above conditions have been satisfied or as otherwise mutually agreed by the Transferring Member and the non-Transferring Member. Upon the effective date of any Transfer, the Company will amend **Exhibit B** to reflect the new Equity Interests.

**14.5 Rights of Transferees.** Any Transferee of an Ownership Interest (including a Permitted Transferee) will, on the effective date of the Transfer, have only those rights of an assignee as specified in the Act unless and until such Transferee is admitted as a substitute Member. This provision limiting the rights of a Transferee will not apply if such Transferee is already a Member. Any Transferee of all or any part of an Ownership Interest who is not admitted as a substitute Member in accordance with this Agreement has no right [a] to participate or interfere in the management or administration of the Company's business or affairs, [b] to Vote or agree on any matter affecting the Company or any Member, [c] to require any information on account of Company transactions, [d] except as provided in the next succeeding sentence, to inspect the Company's books and records, or [e] to have its Chief Executive Officer serve on the Board or otherwise to appoint a member to the Board. The only rights of a Transferee of all or any part of an Ownership Interest who is not admitted as a substitute Member in accordance with this Agreement are [x] to receive the allocations and Distributions to which the Transferor was entitled as if the Transferee held the Equity Interests of the Transferor (to the extent of the Ownership Interest Transferred), and [y] to receive all necessary tax reporting information. Neither the Company nor any Member will owe any fiduciary duty of any nature to a Transferee who is not admitted as a substitute Member in accordance with this Agreement. However, each Transferee of all or any part of an Ownership Interest will be subject to all of the obligations, restrictions and other terms contained in this Agreement as if such Transferee were a Member, including Section 6.5. To the extent of any Ownership Interest Transferred, the Transferor Member does not possess any right or power as a Member and may not exercise any such right or power directly or indirectly on behalf of the Transferee.

**14.6 Admission.** A Transferee of an Ownership Interest will not become a substitute Member of the Company unless the Ownership Interest is Transferred by a Member to a Permitted Transferee in compliance with this Agreement, including the provisions of Sections 14.1[b], 14.3 and 14.4. Upon compliance with Sections 14.1[b], 14.3 and 14.4, a Transferee of an Ownership Interest held by a Member (and, to the extent a Bankruptcy Event has occurred pursuant to clause [a] of the definition of Bankruptcy Event (a "**Bankruptcy Case**"), any Transferee who acquires or continues to hold an Ownership Interest as a result of a transaction or transactions approved pursuant to a final non-appealable order by a court of competent jurisdiction in such Bankruptcy Case) shall be admitted to the Company as a substitute Member, in each case without the need for any further action of any Person. Upon the admission of such Transferee as a substitute Member, the Company will amend **Exhibit A** to reflect the address of such Member.

**14.7 Security Interest.** The pledge or granting of a security interest, lien or other encumbrance in or against all or any part of a Member's Ownership Interest does not cause the Member to cease to be a Member. Upon foreclosure or sale in lieu of foreclosure of any such secured interest, the secured party will be entitled to receive the allocations and Distributions as to which a security interest has been granted by such Member. In no event will any secured party be entitled to exercise any rights of a Member under this Agreement (unless and until such Person is admitted as a substitute Member), and such secured party may look only to such Member for the enforcement of any of its rights as a creditor. In no event will the Company have any liability or obligation to any Person by reason of the Company's payment of a Distribution to any secured party as long as the Company makes such payment in reliance upon written

instructions from the Member to whom such Distributions would be payable. Any secured party will be entitled, with respect to the security interest granted, only to the Distributions to which the assigning Member would be entitled under this Agreement, and only if, as and when any such Distribution is made by the Company. Notwithstanding anything in this Section 14.7 to the contrary, during the pendency of a foreclosure action by a secured party with respect to an Ownership Interest and following the consummation thereof for so long as the secured party holds an Ownership Interest, the secured party shall continue to be entitled to receive the information set forth in Section 11.4, Sections 11.5[a], [b] and [d] and Section 11.6. Neither the Company nor any Member will owe any fiduciary duty of any nature to a secured party. Reference to any secured party includes any assignee or successor-in-interest of such Person.

#### **14.8 Tag Along Right; Drag Along Election.**

[a] If the GCI Member at any time proposes to Transfer, in accordance with this Agreement, all of its Ownership Interests in the Company in any transaction or series of related transactions (a “**Tag/Drag Sale**”) to any Person that is not a Member or an Affiliate of the GCI Member (a “**Third Party Purchaser**”), then the GCI Member shall notify the ACS Member in writing at least 30 days prior to the date on which the GCI Member expects to consummate such Tag/Drag Sale (the “**Sale Notice**”), which notice shall specify the price that the Third Party Purchaser intends to pay for such Ownership Interests and all other material terms and conditions of such Transfer, including any terms of any other material transaction between GCI or any of its Affiliates and the Third Party Purchaser or any of its Affiliates that is to be entered into in connection with such Tag/Drag Sale. If the Sale Notice is delivered on or after the fifth anniversary of the Effective Date, the Sale Notice also may state that the GCI Member is electing to require the ACS Member to sell all of its Ownership Interests to the Third Party Purchaser in accordance with the provisions of this Section 14.8 (the “**Drag Along Election**”), unless GCI or any of its Affiliates would receive an improper benefit in connection with exercising such Drag Along Election, including as a result of GCI or any of its Affiliates entering into a transaction with the Third Party Purchaser or any of its Affiliates in connection with such Tag/Drag Sale that would reasonably be expected to decrease the price that the Third Party Purchaser would be willing to pay for such Ownership Interests. If the Sale Notice does not include a Drag Along Election, then the ACS Member shall have a right to require that the proposed Third Party Purchaser purchase from the ACS Member up to a pro rata portion of the ACS Member’s Ownership Interests (determined by multiplying the percentage of the Equity Interests proposed to be transferred in the Tag/Drag Sale by the percentage of the Equity Interests held by the ACS Member) on the terms and conditions set forth in this Section 14.8 (the “**Tag Along Right**”). The Tag Along Right may be exercised by the ACS Member by delivery of a written notice to the GCI Member (the “**Tag Along Notice**”) within 15 days following receipt of the Sale Notice from the GCI Member. The Tag Along Notice shall state the percentage of the Equity Interests represented by the Ownership Interests that the ACS Member proposes to include in such Transfer to the proposed Third Party Purchaser (which may be any percentage up to the pro rata portion determined in accordance with this Section 14.8[a]).

- [b] The purchase by the Third Party Purchaser of Ownership Interests from the ACS Member pursuant to Section 14.8[a] shall be on the same terms and conditions as apply to the GCI Member and the Ownership Interests proposed to be Transferred in the Tag/Drag Sale by the GCI Member; provided that [i] the ACS Member shall not be required to make any representations or warranties with respect to the GCI Member, the Company or any of its Subsidiaries, or any Ownership Interests not owned by the ACS Member, [ii] the ACS Member shall not be required to make any representations or warranties with respect to the ACS Member beyond its power and authority to sell, free and clear of all liens, encumbrances and rights of others, its Ownership Interests, its due authorization, execution, delivery and enforceability of the definitive documents entered into by the ACS Member in connection with the Tag/Drag Sale and its title to such Ownership Interests, [iii] the ACS Member shall not have any indemnification obligation with respect to its Ownership Interests sold in such Tag/Drag Sale other than with respect to the representations and warranties referred to in clause [ii] above, [iv] the ACS Member shall not have any indemnification obligation in excess of the net proceeds received by it in such Tag/Drag Sale, and [v] the portion of the consideration to be received by the GCI Member and the ACS Member shall be determined in accordance with Section 14.8[c].
- [c] If pursuant to a Drag Along Election or a Tag Along Right, the sale to a Third Party Purchaser by the GCI Member also includes Ownership Interests of the ACS Member, that portion of the consideration paid by the Third Party Purchaser for all Ownership Interests included in the Tag/Drag Sale (the “**Aggregate Purchase Price**”) that is payable to each Member participating in such sale will be determined in accordance with the following provisions of this Section 14.8[c].
- [i] If the sale to the Third Party Purchaser includes all of the Ownership Interests in the Company, the ACS Member will first receive from the Aggregate Purchase Price an amount equal to the full amount of the ACS Preferred Distributions, less the full amount of the ACS Preferred Distributions previously distributed to the ACS Member (the “**Unpaid ACS Preferred Distribution Amount**”), and then each Member will receive that portion of the balance of the Aggregate Purchase Price that it would have received if the Company were liquidated and proceeds equal to the balance of the Aggregate Purchase Price were distributed among the Members in accordance with the priorities set forth in Section 5.1 (assuming for this purpose that the full amount of the ACS Preferred Distributions shall be deemed to have been made previously under Section 5.1).
- [ii] If the sale to the Third Party Purchaser includes less than all of the Ownership Interests in the Company, the Aggregate Purchase Price will first be grossed up to determine the imputed price that would be paid for all of the Ownership Interests in the Company if all Ownership Interests were sold for the same price per Equity Interest implicit in the Aggregate Purchase Price (the “**Entire Company Assumed Purchase Price**”), and then the amount of the Entire Company Assumed Purchase Price that would be distributed to each Member if the Company were liquidated and proceeds equal to the Entire Company Assumed

Purchase Price less an amount equal to the Unpaid ACS Preferred Distribution Amount were distributed among the Members in accordance with the priorities set forth in Section 5.1 (assuming for this purpose that the full amount of the ACS Preferred Distributions shall be deemed to have been made previously under Section 5.1) will be determined (a “**Member’s Assumed Share**”). The ACS Member will receive from the Aggregate Purchase Price an amount equal to the sum of the Unpaid ACS Preferred Distribution Amount, if any, and a percentage of its Member’s Assumed Share equal to the percentage of the ACS Member’s total Ownership Interests that are included in the Tag/Drag Sale to the Third Party Purchaser, and the GCI Member will receive the balance of the Aggregate Purchase Price.

- [d] If the GCI Member exercises its Drag Along Election or the ACS Member exercises its Tag Along Right pursuant to this Section 14.8, at the closing of the relevant Transfer to the Third Party Purchaser pursuant to this Section 14.8, the Third Party Purchaser shall remit to the GCI Member and the ACS Member the consideration to be paid to each for the Ownership Interests being purchased by the Third Party Purchaser from each, and the GCI Member and the ACS Member shall deliver to the Third Party Purchaser such transfer forms as are necessary to transfer the Ownership Interests being sold by each Member to the Third Party Purchaser.
- [e] The ACS Member and the GCI Member will cooperate in good faith and will take all actions and execute all documents reasonably required to effect any sale to a Third Party Purchaser in connection with a Drag Along Election or Tag Along Right in accordance with the provisions of this Section 14.8, including as provided in Section 14.8[f].
- [f] Notwithstanding any other provision of this Agreement providing that Members may only Transfer all of their Ownership Interests, the Members and the Company acknowledge and agree that a Tag/Drag Sale in which the ACS Member exercises its Tag Along Right but the Third Party Purchaser is not acquiring all of the Ownership Interests of all Members will result in a Transfer by the Members of only a portion of their respective Ownership Interests. In such event, the Members and the Company recognize that amendments to this Agreement will be required to reflect the addition of a new Member and the changes in the Ownership Interests of the ACS Member and the GCI Member, and the Members agree to negotiate in good faith and on a reasonable basis with each other and with the Third Party Purchaser to reach agreement on appropriate amendments to this Agreement that are necessary or advisable in connection with such Tag/Drag Sale.

#### **14.9 Right of First Offer on Asset Sales.**

- [a] If at any time the Company determines to sell or otherwise dispose of, in one transaction or a series of related transactions [i] all or substantially all the consolidated assets of the Company and its Subsidiaries, or [ii] any assets of the Company or any of its Subsidiaries having a Fair Market Value in excess of \$500,000 or [iii] any Wireless Backhaul and Transport capacity or assets that were contributed to the Company by a Member or any of

its Affiliates that the Company has decided to sell or dispose of that relate solely to a cell site that the Company has decided to sell or dispose of, and any cell site that was contributed to the Company by a Member or any of its Affiliates that the Company has decided to sell or dispose of (each of [i], [ii] and [iii], a “**Company Asset Sale**”), prior to consummating such Company Asset Sale, the Company first shall deliver to the Members a letter signed by it (the “**ROFO Notice**”), setting forth a description of the assets to be sold (the “**ROFO Assets**”) and an invitation for the Members to submit offers to acquire the ROFO Assets during the ROFO Period. For the avoidance of doubt, in no event will the sale by the Company of IRU and other network capacity, including for Wireless Backhaul and Transport, in the ordinary course of the Wireless Business constitute a Company Asset Sale.

- [b] Upon receipt of a ROFO Notice, each Member shall have a right, but not an obligation, exercisable for a period of up to 30 days after receipt of the ROFO Notice (the “**ROFO Period**”), to submit a binding, written offer (an “**Offer**”) to acquire all, but not less than all, of the ROFO Assets on the terms and conditions specified in the Offer (the right of the Members to make such an Offer is referred to as the “**Right of First Offer**”). Any Offer shall specify the cash purchase price at which the Member would be willing to acquire the ROFO Assets and all other material terms and conditions of such purchase; provided, that with respect to any ROFO Assets constituting Wireless Backhaul and Transport capacity or assets, the Member may propose an exchange of capacity or assets in lieu of a cash purchase price.
- [c] Upon receipt of an Offer, the Company shall have the right, but not the obligation, to accept the same by delivering written notice to the Member submitting such Offer (the “**Purchasing Member**”), which notice shall constitute a contract between the Company to sell, and the Purchasing Member to purchase, all of the ROFO Assets on the terms and conditions described in the Offer. If the Company receives more than one Offer, the Company may not accept an Offer if it contains terms and conditions that are less favorable to the Company than the terms and conditions of any other Offer timely received by the Company. The failure of a Member to deliver an Offer within the ROFO Period shall be deemed to be a rejection and waiver of the Right of First Offer.
- [d] If the Company accepts an Offer, then the purchase and sale of the ROFO Assets (or the exchange of the ROFO Assets, as applicable) contemplated thereby shall be consummated within 60 days after the receipt by Company of the Offer; provided, that if such purchase and sale is subject to any regulatory approvals or other material Third party consents, the period for completing such purchase and sale shall be extended for up to an additional 90 days if necessary to obtain such approvals and consents. If no Member delivers an Offer to the Company within the ROFO Period, or if the Company determines not to accept any Offer submitted, then the Company may, during the period beginning at the end of the ROFO Period and ending on the 180th day thereafter (provided, that if such sale is subject to any regulatory approvals or other material Third Party consents, the period for completing such sale shall be extended for up to an additional 90 days if necessary to obtain such approvals and consents, the 180 day period

as the same may be extended being referred to as the “**Third Party Purchaser Sale Period**”), sell the ROFO Assets to a Third Party Purchaser for a purchase price and subject to other terms and conditions that are no more favorable to such Third Party Purchaser than the purchase price and terms and conditions contained in any Offer timely received by the Company; provided, that if any Offer includes an exchange offer related to ROFO Assets constituting Wireless Backhaul and Transport capacity or assets (an “**Exchange Offer**”), the provisions of Section 14.9[e] and [f] shall apply.

- [e] If the Company timely receives more than one Offer it does not accept with respect to ROFO Assets constituting Wireless Backhaul and Transport capacity or assets and only one of such Offers is an Exchange Offer, then the Company may, during the Third Party Purchaser Sale Period, sell the ROFO Assets to a Third Party Purchaser for a purchase price and subject to other terms and conditions that are no more favorable to such Third Party Purchaser than the purchase price and terms and conditions contained in the Offer that was not an Exchange Offer.
- [f] If all Offers that the Company receives with respect to ROFO Assets constituting Wireless Backhaul and Transport capacity or assets are Exchange Offers that it does not accept, then the Company may, during the Third Party Purchaser Sale Period, sell the ROFO Assets to a Third Party Purchaser for a purchase price that is not less than Fair Market Value. The Company will notify each Member of the determination of Fair Market Value within 30 days following the end of the ROFO Period. If a Member objects to the determination of Fair Market Value it may so notify the Company within 15 days following such Member’s receipt of the Fair Market Value determination, whereupon the Company and the disputing Member will negotiate in good faith for a period of five days to reach agreement on Fair Market Value. If no agreement is reached within such time period, the Company may hire an independent third-party appraiser to determine Fair Market Value and such appraiser’s determination shall be binding and non-appealable.
- [g] If the Company does not consummate a sale of the ROFO Assets within the Third Party Purchaser Sale Period, it may not thereafter sell any ROFO Assets except in full compliance with all the provisions of this Section 14.9.

#### **14.10 Connection Termination Event.**

- [a] The provisions of Section 14.10[b] shall apply upon the occurrence of any of the following with respect to a Member (a “**Connection Termination Event**”):

- [i] such Member Transfers its Ownership Interest in breach of Section 14.1[b];

- [ii] such Member’s Wireless Parent ceases to be a party to the Facilities and Network Use Agreement or otherwise cannot be compelled in accordance with applicable law to perform its obligations under such agreement, including as a result of assignment or termination of the Facilities and Network Use Agreement other

than an assignment that is made in accordance with the requirements of Section 14.1[b]:

[iii] a Member or an Affiliate of a Member materially breaches Section 6.5[b] and fails to cure such breach within 60 days following notice from the Company to cure such breach; or

[iv] such Member and its Affiliates or a Transferee and its Affiliates are not or cease to be engaged in the retail provision of Wireless products and services in the Territory (as defined in the Facilities and Network Use Agreement).

For the avoidance of doubt, but without limiting Section 12.2, the mere occurrence of a Bankruptcy Event with respect to a Member or its Wireless Parent does not constitute a Connection Termination Event.

[b] If a Connection Termination Event occurs with respect to a Member (the “**Departing Member**”), the Departing Member shall notify the Company and the other Member (the “**Remaining Member**”) within ten days following the occurrence of such event (a “**CTE Notice**”) and the provisions set forth in Sections 14.10[b][i] through [v] shall apply.

[i] To the extent it retains an Ownership Interest following such Connection Termination Event, the Departing Member shall become a [\*\*\*] with the [\*\*\*] of a [\*\*\*] as set forth in Section [\*\*\*]. If the Connection Termination Event occurs as the result of [\*\*\*] but it does not exist [\*\*\*] the [\*\*\*] of the [\*\*\*], the Departing Member or its Transferee may be readmitted as a Member upon compliance with Sections [\*\*\*] as applicable.

[ii] Unless the Connection Termination Event is a [\*\*\*] and [\*\*\*], the Remaining Member shall have the right (the “**CTE Call Right**”) to buy all, but not less than all, of the Ownership Interest of the Departing Member for an amount equal to the CTE Purchase Price, such right to be exercised by the Remaining Member, if at all, by sending notice to the Departing Member within 90 days following the Remaining Member’s receipt of the CTE Notice. The Departing Member and the Remaining Member shall negotiate in good faith for a period of 30 days following exercise of the CTE Call Right to agree on the price that the Remaining Member shall pay for the Departing Member’s Ownership Interest. If the Departing Member and the Remaining Member do not reach agreement on price during such 30-day period, the price payable by the Remaining Member for the Departing Member’s Ownership Interest shall be the [\*\*\*] of such [\*\*\*] as of the Connection Termination Date, as determined pursuant to [\*\*\*]. The closing of the Transfer of Ownership Interest pursuant to the proper exercise of the CTE Call Right shall occur within 30 days after the Departing Member and the Remaining Member reach agreement on price or the [\*\*\*] of the [\*\*\*] is determined pursuant to [\*\*\*], as applicable. At such closing: [w] the Departing Member shall deliver to the Remaining Member an instrument of transfer with respect to such Ownership Interests, duly executed on behalf of the Departing Member; [x]



the Remaining Member or its Wireless Parent shall deliver or cause to be delivered to the Departing Member an amount equal to the CTE Purchase Price in immediately available funds to an account or accounts designated by the Departing Member; [y] the Departing Member shall not be required to make any representations or warranties beyond its power and authority to sell, free and clear of all liens, encumbrances and rights of others, its Ownership Interest, its due authorization, execution, delivery and enforceability of any definitive documents entered into by the Departing Member in connection with the exercise of the CTE Call Right and its title to such Ownership Interest, [z] the Departing Member shall not have any indemnification obligation with respect to its Ownership Interest other than with respect to the representations and warranties referred to in clause [y] above, nor shall it have any indemnification obligation in excess of the net proceeds received by it.

[iii] If the ACS Member is the Departing Member and the Connection Termination Event is the result of a termination of the [\*\*\*] and [\*\*\*] by the ACS Member pursuant to Section [\*\*\*] thereof (a “[\*\*\*] and [\*\*\*] CTE”), the ACS Member shall have the right (the “**CTE Put Right**”) to require the GCI Member to buy all, but not less than all, of the Ownership Interest of the ACS Member for an amount equal to the CTE Purchase Price, such right to be exercised by the ACS Member, if at all, by sending Notice to the GCI Member within 90 days following the occurrence of the **Facilities and Network Use CTE**. The Departing Member and the Remaining Member shall negotiate in good faith for a period of 30 days following exercise of the CTE Put Right to agree on the price that the Remaining Member shall pay for the Departing Member’s Ownership Interest. If the Departing Member and the Remaining Member do not reach agreement on price during such 30-day period, the price payable by the Remaining Member for the Departing Member’s Ownership Interest shall be the [\*\*\*] of such [\*\*\*] as of the Connection Termination Date, as determined pursuant to [\*\*\*]. The closing of the Transfer of Ownership Interest pursuant to the proper exercise of the CTE Put Right shall occur within 30 days after the Departing Member and the Remaining Member reach agreement on price or the [\*\*\*] of the [\*\*\*] is determined pursuant to Section [\*\*\*], as applicable. At such closing: [w] the ACS Member shall deliver to the GCI Member an instrument of transfer with respect to such Ownership Interest, duly executed on behalf of the ACS Member; [x] the GCI Member or its Wireless Parent shall deliver or cause to be delivered to the ACS Member an amount equal to the CTE Alternate Purchase Price in immediately available funds to an account or accounts designated by the ACS Member; [y] the ACS Member shall not be required to make any representations or warranties beyond its power and authority to sell, free and clear of all liens, encumbrances and rights of others, its Ownership Interest, its due authorization, execution, delivery and enforceability of any definitive documents entered into by the ACS Member in connection with the exercise of the CTE Put Right and its title to such Ownership Interest, [z] the ACS Member shall not have any indemnification obligation with respect to its Ownership Interest other than with respect to the

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representations and warranties referred to in clause [y] above, nor shall it have any indemnification obligation in excess of the net proceeds received by it. Section 6.5[c] shall not apply to the ACS Member following consummation of the CTE Put Right.]

[iv] If the ACS Member is the Departing Member, the amount of [\*\*\*], if any and if not previously made, will be [\*\*\*], and the amount of any [\*\*\*], if applicable and if not previously made, will be [\*\*\*]. If the GCI Member is the Departing Member, the amount of any remaining [\*\*\*], if any and if not previously made, will be [\*\*\*], the amount of [\*\*\*], if any and if not previously made, will be [\*\*\*], and the amount of any [\*\*\*], if applicable and if not previously made, will be [\*\*\*].

[v] The provisions of Section 9.6 shall terminate.

## Article 15: DISPUTE RESOLUTION

If a dispute of any kind arises under or in connection with, or relates to, this Agreement (including any dispute concerning its construction, performance or breach and including any claim for equitable relief) between the Company, the Members, ACS, GCI or any combination of such Persons, the rights of the parties to the dispute will be governed by the Arbitration Agreement. **By executing this Agreement, the Company, each Member, ACS and GCI each agree that such Person has become a party to the Arbitration Agreement, without the necessity of signing the Arbitration Agreement as a separate document. Any Transferee (whether or not substituted as a Member) also will become a party to the Arbitration Agreement, in each case without the necessity of signing the Arbitration Agreement as a separate document.**

## Article 16: GENERAL PROVISIONS

**16.1 Amendment.** This Agreement may be amended only by a written amendment executed and delivered by all Members, except for amendments to **Exhibit A** as specifically provided in Sections 14.4, or to **Exhibit B** as specifically provided in Section 14.6. Any amendment will become effective upon such execution and delivery, unless otherwise provided.

**16.2 Representations.** Each Member and each Transferee of an Ownership Interest represents and warrants to the Company and to each other Member that, as of the Effective Date (or, in the case of a substitute Member or such Transferee, as of the date of admission or Transfer, as applicable):

[a] Such Member or Transferee is duly organized, validly existing and in good standing under the laws of the jurisdiction where it purports to be organized, and is not (as such terms are defined in the Code and Regulations) a nonresident alien or a foreign corporation, foreign partnership, foreign trust, or foreign estate;

- [b] Such Member or Transferee has full power and authority to enter into and perform this Agreement;
- [c] All actions necessary to authorize the signing and delivery of this Agreement by such Member or Transferee, and the performance of its obligations under it, have been duly taken and are in full force and effect;
- [d] This Agreement has been duly signed and delivered by a duly authorized officer or other representative of such Member or Transferee and constitutes the legal, valid and binding obligation of such Member or Transferee enforceable in accordance with its terms (except as such enforceability may be affected by applicable bankruptcy, insolvency or other similar laws affecting creditors' rights generally, and except that the availability of equitable remedies is subject to judicial discretion);
- [e] No consent or approval of any other Person is required in connection with the signing, delivery and performance of this Agreement by such Member or Transferee except for those approvals that have been obtained and are in full force and effect;
- [f] The signing, delivery and performance of this Agreement do not violate the organizational documents of such Member or Transferee, or any material agreement to which such Member or Transferee is a party or by which such Member or Transferee is bound; and
- [g] Such Member or Transferee has had an opportunity to perform any due diligence deemed necessary or desirable in connection with entering into this Agreement.

**16.3 Unregistered Interests.** Each Member and each Transferee of an Ownership Interest [a] acknowledges that the Ownership Interests are being offered and sold without registration under the Securities Act of 1933, as amended, or under similar provisions of state law, [b] acknowledges that such Member or Transferee is fully aware of the economic risks of an investment in the Company, and that such risks must be borne for an indefinite period of time, [c] represents and warrants that such Member or Transferee is acquiring an Ownership Interest for such Member's or Transferee's own account, for investment, and with no view to the distribution of the Ownership Interest in violation of applicable securities laws, and [d] agrees not to Transfer, or to attempt to Transfer, all or any part of its Ownership Interest without registration under the Securities Act of 1933, as amended, and any applicable state securities laws, unless the Transfer is exempt from such registration requirements and is otherwise permitted under this Agreement.

**16.4 Waiver of Dissolution Rights.** The Members agree that irreparable damage would occur if any Member should bring an action for judicial dissolution of the Company. Accordingly, each Member accepts the provisions under this Agreement as such Person's sole entitlement on Dissolution of the Company and waives and renounces such Person's right to seek a court decree of dissolution or to seek the appointment by a court of a liquidator for the Company. Each Member further waives and renounces any alternative rights which might otherwise be provided

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by law upon the Withdrawal of such Person and accepts the provisions under this Agreement as such Person's sole entitlement upon the happening of such event.

**16.5 Waiver of Partition Right.** Each Member waives and renounces any right that it may have prior to Dissolution and Liquidation to institute or maintain any action for partition with respect to any property held by the Company.

**16.6 Waivers and Consents.** No waiver of any breach of any of the terms of this Agreement will be effective unless such waiver is in writing and signed by the Member against whom such waiver is claimed. No course of dealing will be deemed to amend or discharge any provision of this Agreement. No delay in the exercise of any right will operate as a waiver of such right. No single or partial exercise of any right will preclude its further exercise. A waiver of any right on any one occasion will not be construed as a bar to, or waiver of, any such right on any other occasion. Any consent of a Member required under this Agreement must be in writing and signed by such Member to be effective. No consent given by a Member in any one instance will be deemed to waive the requirement for such Member's consent in any other or future instance.

**16.7 Equitable Relief.** Each party hereto acknowledges and agrees that a breach of this Agreement may give rise to irreparable harm for which monetary damages would not be an adequate remedy. Each party hereto accordingly agrees that for the purpose of seeking relief under Section 16.8 or the Arbitration Agreement, and without waiving any remedy under this Agreement or the Arbitration Agreement, each party hereto shall be entitled to seek to enforce the terms of this Agreement by decree of specific performance or to obtain injunctive relief against any breach or threatened breach of this Agreement in accordance with the Arbitration Agreement. The party against whom such action or proceeding is brought waives the claim or defense that an adequate remedy at law exists, and such party will not urge in any such action or proceeding the claim or defense that such remedy at law exists.

**16.8 Remedies for Breach; Limitation of Damages.** Except for the requirement to arbitrate disputes provided for in Article 15 and except as otherwise provided in this Agreement, the rights and remedies of the Members and other parties that are set forth in this Agreement are neither mutually exclusive nor exclusive of any right or remedy provided by law, in equity or otherwise, and all legal remedies (such as monetary damages) as well as all equitable remedies (such as specific performance) will be available for any breach or threatened breach of any provision of this Agreement. In no event will ACS, GCI, the Company or any Member have any liability to the Company, another Member, a Transferee, ACS or GCI for any consequential, incidental, indirect, exemplary, special or punitive damages arising out of or related in any way to this Agreement, the Act, the Company, a Person's status as a Member or the performance or non-performance by a Person of its obligations under this Agreement (unless payable pursuant to an indemnification claim by the Company or a Member where the Person making the indemnification claim is obligated to pay such amounts to a Person that is not an Affiliate of the Company or any Member), including any damages for business interruption, loss of use, revenue or profit, whether arising out of breach of contract, tort (including negligence) or otherwise, regardless of whether such damages were foreseeable and whether or not the breaching party was advised of the possibility of such damages.

Information indicated by [\*\*\*] in the text has been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for Confidential Treatment under Rule 24b-2 under the Securities Exchange Act of 1934.

**16.9 Costs.** If the Company or any Member retains counsel for the purpose of enforcing or preventing the breach or any threatened breach of any provision of this Agreement or for any other remedy relating to it, then the prevailing party will be entitled to be reimbursed by the nonprevailing party for all fees and costs so incurred (including reasonable attorney's fees). The rights of the prevailing party to recover such fees and costs will be separate from, will survive and will not be merged into any judgment. The "prevailing party" will mean the party who receives substantially the relief desired, whether by settlement, dismissal, summary judgment, judgment or otherwise.

**16.10 Indemnification.** Each Member hereby indemnifies and agrees to hold harmless the Company and each other Member from any liability, cost or expense (including reasonable fees and expenses of attorneys and other advisors and court costs) arising from or related to any act or failure to act of such Member in its capacity as such which is in violation of this Agreement; provided, however, that no Member will have any obligation to indemnify any other Person (including any other Member) to the extent that any liability, cost or expense arises from such other Person's own negligence, willful misconduct or wrongful act or failure to act. Each Member's indemnification obligations will survive such Member's ceasing to be a Member of the Company and will survive the Dissolution and Liquidation of the Company.

**16.11 Counterparts.** This Agreement may be signed in multiple counterparts (or with detachable signature pages). Each counterpart will be considered an original instrument, but all of them in the aggregate will constitute one agreement. Telecopies or facsimiles of signatures will be given effect for purposes of the signature page of this Agreement and any amendments to this Agreement.

**16.12 Notice.** All notices, consents, approvals, waivers, elections and other communications (collectively "Notices") under this Agreement will be in writing and will be either delivered or sent addressed as follows:

[a] if to any Member (or any Board member appointed by such Member), to the address of such Member set forth on **Exhibit A** hereto;

[b] if to the Company or to the Company CEO as a Board member:

The Alaska Wireless Network, LLC  
6831 Arctic Blvd.  
Anchorage, Alaska 99518  
Attention: Senior Legal Counsel  
Facsimile: \_\_\_\_\_

With a copy to each of the GCI Member and the ACS Member, addressed as set forth in clause [a] above.

[c] if to GCI, to:

General Communication, Inc.  
2550 Denali Street, #1000  
Anchorage, Alaska 99503  
Attention: General Counsel  
Facsimile: 907-868-9845

With a copy to:

Sherman & Howard L.L.C.  
633 Seventeenth Street, Suite 3000  
Denver, Colorado 80202  
Attention: Steven D. Miller, Esq.  
Facsimile: (303) 298-0940

[d] if to ACS, to:

Alaska Communications Systems Group, Inc.  
600 Telephone Avenue  
Anchorage, Alaska 99503  
Attention: General Counsel  
Facsimile: 907-297-3153

With a copy to:

Sidley Austin LLP  
787 Seventh Avenue  
New York, New York 10019  
Attention: Irving Rotter  
Facsimile: (212) 839-5599

Gabriel Saltarelli

Any Person entitled to Notice under this Section 16.12 may change the above addresses by giving Notice as required by this Section 16.12. In computing time periods, the day of Notice will be excluded. For Notice purposes, a day means a calendar day (unless provided otherwise herein).

**16.13 Deemed Notice.** Any Notices given to any Person in accordance with this Agreement will be deemed to have been duly given and received: [a] on the date of receipt if personally delivered, [b] five Business Days after being sent by U.S. first class mail, postage prepaid, [c] the date of receipt, if sent by registered or certified U.S. mail, postage prepaid, [d] one Business Day after receipt, if sent by confirmed facsimile or telecopier transmission, or [e] one Business Day after having been sent by a nationally recognized overnight courier service with confirmation of delivery.

**16.14 Partial Invalidity.** Wherever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law. However, if for any reason any one or more of the provisions of this Agreement are held to be invalid, illegal or unenforceable in any respect, such action will not affect any other provision of this Agreement. In such event, this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained in it.

**16.15 Entire Agreement.** This Agreement (including its Exhibits and Schedules), together with the Contribution Agreement, the Ancillary Agreements and the Approved Affiliate Transactions contains the entire agreement and understanding of the Members concerning its subject matter and supersedes all prior agreements, understandings and negotiations, both written and oral, among the Members with respect to the subject matter thereof.

**16.16 Benefit.** This Agreement will inure solely to the benefit of the other parties hereto, without conferring on any other Person any rights of enforcement or other rights, except for any Person with respect to rights to indemnification under Section 10.10.

**16.17 Binding Effect.** This Agreement is binding upon, and inures to the benefit of, the Members and their Permitted Transferees, but any Transferee will have only the rights specified in Section 14.5 unless admitted as a substitute Member in accordance with this Agreement.

**16.18 Further Assurances.** Each Member agrees, without further consideration, to sign and deliver such other documents of further assurance as are consistent with the provisions of this Agreement and as may reasonably be necessary to effectuate the provisions of this Agreement.

**16.19 Headings.** Article and section titles have been inserted for convenience of reference only. They are not intended to affect the meaning or interpretation of this Agreement.

**16.20 Confidentiality.** Each party hereto recognizes and acknowledges that confidential information of various kinds may exist, from time to time, with respect to the business and assets of each party hereto and their respective Affiliates, including the Company's Wireless Business, whether provided in connection with this Agreement, the Contribution Agreement or any Ancillary Agreement. Accordingly, each party hereto (the "**Receiving Party**") covenants that, except with the prior written consent of the party (or its Affiliate, as applicable) to whom such confidential information belongs (the "**Disclosing Party**"), it will, and will cause its Related Parties to, consistent with its reasonable practices and procedures adopted in good faith for handling confidential information and consistent with the Commercially Sensitive Information Policies and Procedures, keep confidential all information regarding each Disclosing Party, including information relating to the Company's Wireless Business, furnished to it by the Disclosing Party if a reasonable Person would know that such information is confidential or which is clearly designated as "confidential," and will not, and will cause its Related Parties not to, disclose any such information to any Person whatsoever (other than the Receiving Party's officers, directors, employees, beneficial owners, attorneys, accountants, advisors, lenders or potential transferees, provided each of such Persons is informed of the confidential nature of such information and, in the case of a potential transferee, such Person executes an agreement for the benefit of the Disclosing Party agreeing to keep such information confidential in accordance

with this Section 16.20). The foregoing covenant of each party hereto will not apply to any information (other than End User Data in the case of clauses [a], [b], [c] and [d]): [a] that was or becomes generally available to the public other than as a result of disclosure by the Receiving Party, [b] that becomes available to the Receiving Party from a source other than the Disclosing Party, provided that such source is not (to the knowledge of Receiving Party) bound by a confidentiality obligation with respect to such information, [c] that the Receiving Party can establish was in the Receiving Party's possession prior to it being furnished to the Receiving Party by or on behalf of the Disclosing Party, provided that the source of such information was not (to the knowledge of the Receiving Party) bound by a confidentiality obligation with respect to such information, [d] regarding the tax treatment of a Member's investment in the Company, [e] to the extent the disclosure of such information is required pursuant to a court order or securities or other laws, rules or regulations, or [f] in the context of litigation, mediation or arbitration between the parties hereto or their respective Affiliates.

**16.21 No Tax Advice.** All Members acknowledge that any tax advice express or implicit in the provisions of this Agreement is not intended or written to be used, and cannot be used, by any taxpayer for the purpose of avoiding penalties that may be imposed on any taxpayer by the Internal Revenue Service. Each Member should seek advice based on its particular circumstances from an independent tax advisor.

**16.22 Coordination With Contribution Agreement and Ancillary Agreements; Recoupment of Certain Claims from Distributions.**

- [a] ACS, the ACS Member, GCI, the GCI Member and the Company acknowledge and agree that the transactions contemplated by the Contribution Agreement, the Ancillary Agreements and this Agreement (the "**Transaction Agreements**") are integral parts of the same transaction and that the parties entered into each of the Transaction Agreements contingent on the parties thereto entering into all such Transaction Agreements. The parties desire to set forth the circumstances and the terms and conditions on which the Company shall be entitled to recoup certain amounts in accordance with the terms and conditions set forth in this Section 16.22 based on failure of such Member or its Parent (as defined in the Contribution Agreement) to perform its or their respective obligations under any of the Transaction Agreements by deducting such amounts from Distributions that otherwise would be made to a Member hereunder.
- [b] If a final, non-appealable determination is made that a Member (or its Parent (as defined in the Contribution Agreement)) has an indemnification obligation under the Contribution Agreement, and such obligation has not been paid, each Member hereby acknowledges and agrees that the Company shall, subject to the terms and conditions of this Section 16.22, and each Member authorizes the Company to, recoup an amount up to the full amount of such Member's indemnification obligation under the Contribution Agreement by deducting such amount from any Distributions that otherwise would be made to such Member, and to pay such deducted amounts to the indemnified Member if the indemnification obligation is owed to such other Member; provided, however, that the Company will not be entitled to recoup by deducting from Distributions to be made to a



Member an amount that is greater than 25% of the amount of any Distributions to be made to such Member during any quarter pursuant to Section 5.1 and any remaining amount to be recouped will carry over to Distributions to be made to such Member during subsequent quarters and will accrue simple interest at the annual rate of the lower of LIBOR plus 2.5% and the Maximum Rate until the full amount of the indemnification obligation (including accrued interest) is recouped by making deductions from the Distributions that otherwise would be made to the Member owing the indemnification obligation. Notwithstanding the preceding provisions of this Section 16.22[b], if requested in writing by the Member owing the indemnification obligation, the Company will forebear from recouping the amount of any such indemnification obligation by deducting all or any part of such amount from any Distributions to be made to such Member for a period of up to 90 days, and the parties will negotiate in good faith regarding an alternative method for satisfaction of all or any amount of such indemnification obligation in lieu of recouping by deducting such amount from Distributions to be made to such Member

- [c] Each Member hereby acknowledges and agrees that the Company has the right to, and authorizes the Company to, recoup any undisputed amounts owed by such Member or any of its Affiliates to the Company that are past due under any of the Ancillary Agreements by deducting such amounts from any Distributions to be made to such Member.
- [d] Any amounts that are recouped by deducting such amounts from Distributions that otherwise would be made to a Member (including any such amounts that are redirected from one Member to another Member) in accordance with the preceding provisions of this Section 16.22 will be deemed to be Distributions actually made to the Member from whose Distributions such amounts were recouped and deducted for all purposes of this Agreement.

**16.23 Governing Law.** This Agreement will be governed by, and construed in accordance with, the laws of the State of Delaware (without considering Delaware choice of law provisions). Any conflict or apparent conflict between this Agreement and the Act will be resolved in favor of this Agreement, except as otherwise required by the Act.

[Signature page follows.]

Information indicated by [\*\*\*] in the text has been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for Confidential Treatment under Rule 24b-2 under the Securities Exchange Act of 1934.

The Company and each of the Members has signed this First Amended and Restated Operating Agreement of The Alaska Wireless Network, LLC to be effective from the Effective Date, notwithstanding the actual date of signing.

**The Alaska Wireless Network, LLC**

By: /s/ Wilson Hughes  
Name: Wilson Hughes  
Title: Chief Executive Officer

**GCI Wireless Holdings, LLC**

By: /s/ Gregory F. Chapados  
Name: Gregory F. Chapados  
Title: Manager

**ACS Wireless, Inc.**

By: /s/ Anand Vadapalli  
Name: Anand Vadapalli  
Title: Chief Executive Officer and President

**Alaska Communications Systems Group, Inc., solely with respect to Sections 3.10[b], 6.5, 9.6, 14.10, 15, 16.8, 16.20 and 16.22**

By: /s/ Anand Vadapalli  
Name: Anand Vadapalli  
Title: Chief Executive Officer and President

**General Communication, Inc., solely with respect to Sections 3.10[b], 6.5, 9.6, 11.11, 14.10, 15, 16.8, 16.20 and 16.22**

By: /s/ Gregory F. Chapados  
Name: Gregory F. Chapados  
Title: Manager

[Signature Page to First Amended and Restated Operating Agreement]

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**LIST OF EXHIBITS**

- Exhibit A Addresses of Members
  - Exhibit B Initial Capital Contributions
  - Exhibit C Assignment of Ownership Interest
  - Exhibit D Transferee's Agreement
  - Exhibit E Arbitration Agreement
  - Exhibit F Initial Four Year Plan
  - Exhibit G First Year Cap Ex Budget
  - Exhibit H First Year Operating Budget
  - Exhibit I Form of GCI Services Agreement
  - Exhibit J Form of Facilities and Network Use Agreement
  - Exhibit K Acceptable Use Policy
  - Exhibit L Commercially Sensitive Information Policies and Procedures
  - Exhibit M Example Connection Attrition Adjustments Calculations
  - Exhibit N-1 ACS Applicable Regulatory Exchanges
  - Exhibit N-2 GCI Applicable Regulatory Exchanges
  - Exhibit O ACS Services Agreement
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**EXHIBIT A**

**Addresses of Members  
(as of July 22, 2013)**

[a] if to the Initial GCI Member or to the GCI CEO as a Board member, to:

General Communication, Inc.  
2550 Denali Street, #1000  
Anchorage, Alaska 99503  
Attention: General Counsel  
Facsimile: 907-868-9845

With a copy to:

Sherman & Howard L.L.C.  
633 Seventeenth Street, Suite 3000  
Denver, Colorado 80202  
Attention: Steven D. Miller, Esq.  
Facsimile: (303) 298-0940

[b] if to the Initial ACS Member or to the ACS CEO as a Board member, to:

Alaska Communications Systems Group, Inc.  
600 Telephone Avenue  
Anchorage, Alaska 99503  
Attention: General Counsel  
Facsimile: 907-297-3153

With a copy to:

Sidley Austin LLP  
787 Seventh Avenue  
New York, New York 10019  
Attention: Irving Rotter  
Facsimile: (212) 839-5599

Gabriel Saltarelli

Information indicated by [\*\*\*] in the text has been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for Confidential Treatment under Rule 24b-2 under the Securities Exchange Act of 1934.

## **EXHIBIT B**

### **Initial Capital Contributions**

The Initial Capital Contributions by the GCI Member consist of (1) the Purchased Assets (as defined in the Contribution Agreement) and (2) the GCI Assets (as defined in the Contribution Agreement).

The Initial Capital Contributions by the ACS Member consist of the ACS Assets (as defined in the Contribution Agreement), other than the Purchased Assets.

[\*\*\*]

**EXHIBIT C**

**Assignment of Ownership Interest**

The undersigned **Transferor** hereby transfers and assigns an Ownership Interest representing a \_\_\_\_\_% Equity Interest in The Alaska Wireless Network, LLC, a Delaware limited liability company, to \_\_\_\_\_, as **Transferee**. The Capital Account of the **Transferor** that is attributable to the transferred Ownership Interest will carry over to the **Transferee**. The Ownership Interest transferred is subject to all of the terms and conditions of that certain First Amended and Restated Operating Agreement of The Alaska Wireless Network, LLC, dated as of \_\_\_\_\_, 201\_\_, as such Agreement may be amended, including the obligation to arbitrate disputes as set forth in the First Amended and Restated Operating Agreement and the Arbitration Agreement.

**Transferor:**

\_\_\_\_\_  
Date

**EXHIBIT D**

**Transferee's Agreement**

As a **Transferee** of an Ownership Interest in The Alaska Wireless Network, LLC, a Delaware limited liability company governed by a First Amended and Restated Operating Agreement dated as of \_\_\_\_\_, 201\_\_ (the "**Operating Agreement**"), the undersigned agrees to be bound as a party to such Agreement (which, as it may be amended, is hereby incorporated by reference), including the obligation to arbitrate disputes as set forth in the Operating Agreement and the Arbitration Agreement, and including that the Transferee makes the representations and warranties set forth in Sections 16.2 and 16.3 of the Operating Agreement. The **Transferee** acknowledges and agrees that, unless admitted as a Member of the limited liability company as provided in such Agreement, the **Transferee** will have only the limited rights of an assignee as specified by law.

**Name of Transferee:**

\_\_\_\_\_  
Date

\_\_\_\_\_

Address: \_\_\_\_\_

Taxpayer ID Number: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

**Name of Wireless Parent of Transferee:**

\_\_\_\_\_  
Date

\_\_\_\_\_

Address: \_\_\_\_\_

Taxpayer ID Number: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

**EXHIBIT E**  
**Arbitration Agreement**

E-1

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**EXHIBIT F**  
**Initial Four Year Plan**

**EXHIBIT G**

**First Year Cap Ex Budget**

G-1

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**EXHIBIT H**

**First Year Operating Budget**

H-1

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**EXHIBIT I**

**Form of GCI Services Agreement**

**EXHIBIT J**

**Form of Facilities and Network Use Agreement**

J-1

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## EXHIBIT K

### Acceptable Use Policy

In consideration of [ACS/GCI] (the “**Provider**”) providing [ ] (the “**Network Capacity**”), the Company hereby agrees to use the Network Capacity to provision capacity only for (i) Wireless services and (ii) Wireless networks in Alaska. Terms not otherwise defined in this Acceptable Use Policy are used as defined in the First Amended and Restated Operating Agreement of the Company dated as of \_\_\_\_\_ (the “Operating Agreement”).

Any traffic not falling within one of the two categories set forth above is non-acceptable. Non-acceptable traffic shall not be carried on the Network Capacity, and the Provider shall be under no obligation to provision Network Capacity for such non-acceptable traffic.

With respect to each calendar year, the Company shall attest in writing to the Provider that it has complied with this Acceptable Use Policy.

If the Company at any time becomes aware that it is no longer compliant with this Acceptable Use Policy, the Company shall advise the Provider of that fact within ten Business Days of becoming aware of such fact and shall simultaneously provide the Provider with a written plan for coming back into compliance with this Acceptable Use Policy.

Disputes arising under this Acceptable Use Policy shall be subject to the dispute resolution processes of the Arbitration Agreement.

If the Company is found by an arbitrator under the Arbitration Agreement not to be in compliance with this Acceptable Use Policy, the Company shall immediately take steps to come into compliance as soon as practicable, and in any event within ninety days after the arbitrator’s decision. If the Company has failed to come into compliance within such period, the Provider shall be entitled, in its sole and absolute discretion, to terminate the Company’s use of the Network Capacity within one hundred twenty days of the arbitrator’s decision without any liability to the Provider and without any obligation to refund past payments with respect to the Network Capacity. In either circumstance, the Company shall be obligated to pay to the Provider an amount of cash equal to the revenue that the non-acceptable traffic has generated for the Company from the date the Company accepted such traffic for carriage. The right to receive payment from the Company shall not be the sole and exclusive remedy of the Provider for non-compliance with this Acceptable Use Policy, and shall be in addition to any other remedies available to the Provider under applicable law, subject to the requirements of Article 15 of the Operating Agreement and the limitations on damages set forth in Section 16.8 of the Operating Agreement.

## EXHIBIT L

### Commercially Sensitive Information Policies and Procedures

In accordance with the First Amended and Restated Operating Agreement of The Alaska Wireless Network, LLC (the “Company” or “AWN”), dated as of \_\_\_\_\_, 2013 (the “Agreement”), the Company, the Initial GCI Member and its Affiliates (including GCI), and the Initial ACS Member and its Affiliates (including ACS), collectively referred to in this Schedule as the “Parties,” adopt and agree to enforce the Policies and Procedures (the “Policies”) set forth below to govern the handling of Commercially Sensitive Information (as defined below). Capitalized terms used but not separately defined in this Exhibit shall have the meanings assigned to them in the Agreement.

#### 1. **Introduction:**

**A.** As more fully set forth in Section 2.1 of the Agreement, the business of the Company concerns, in pertinent part, the engineering, operation, and maintenance of competitive Wireless network(s) in Alaska, the design and implementation of competitive plans for the provision of Wireless products and services in Alaska, and the provision of competitive Wireless Backhaul and Transport services and roaming services to carriers serving Alaska subscribers and roamers (collectively, the “Company Services”).

**B.** ACS and GCI will (a) market the Company’s Wireless products and services in competition with each other and with other providers of Wireless products and services in Alaska, and (b) may elect to compete with the Company and/or each other in the provision of Wireless Backhaul and Transport. In addition, ACS and GCI are competitors in lines of business other than the Company Services.

**C.** The Parties recognize that the ACS and GCI Members’ participation in the Company creates the risk of an improper exchange of non-public information of ACS and GCI concerning subscriber or subscriber-group identifying information, the marketing, advertising, promotion, pricing, distribution, sale, billing, or after-sale support regarding Wireless products and services, Wireless Backhaul and Transport, and other businesses in which ACS and GCI are competitors that if released by one party to the other would allow the receiving party to gain a significant advantage in the marketplace (collectively, “Commercially Sensitive Information”).

**D.** In order to ensure compliance with applicable antitrust laws and competition laws, the Parties have adopted these Policies to govern the handling of Commercially Sensitive Information. All references in these Policies to the Company, the ACS Member, and the GCI Member include their respective Affiliates (including ACS and GCI), and all of the officers, directors and/or managers, employees, and agents of those entities who either are in a position of competitive decisionmaking for services as to which the ACS Member and the GCI Member compete or, based on their job descriptions and work responsibilities, are reasonably likely to receive Commercially Sensitive Information (each, a “Covered Person”).

2. **Company Procedures for Specific Information.** The following provisions apply to specified information, in addition to the requirements of Section 3:

**A. Restrictions on Collection of Wireline Information.** Notwithstanding any provision in the Transaction Agreements that might be construed to the contrary, and except as provided in Sections 2.F and 2.G below, AWN shall not collect from either ACS or GCI, and neither ACS nor GCI will provide to AWN, any Commercially Sensitive Information pertaining to their respective wireline operations.

**B. Restrictions on Forward Looking Retail Wireless Information.** AWN shall only gather forward looking information (“FLI”) pertaining to the proposed provision of retail wireless products and services by either GCI or ACS to the extent reasonably necessary to permit informed judgments pertaining to network deployment, network capacity, network capability, reasonable network management, equipment needs, wholesale plan development, monthly business forecasts, 1 to 4 year business plans and related determinations within the scope of the “Company Responsibilities” set forth in Section 3(b) of the FNUA. FLI provided by one Member shall not be disclosed to the CEO of the other Member who sits on the AWN Board, absent consent of the representative of the Member providing the FLI and of the Company’s Counsel after review of the FLI pursuant to the provisions of 4.E., herein. To the extent that information derived from FLI needs to be presented to the AWN Board, prior to the provision of such information to the members of the AWN Board other than the AWN CEO, such information will be reviewed pursuant to Section 4.E., below. Notwithstanding the foregoing, AWN shall not collect from either GCI or ACS, and neither ACS nor GCI will provide to AWN, FLI with respect to either GCI’s or ACS’ wireless retail pricing or subscriber or subscriber-group identifying information.

**C. Restrictions on Subscribers Information.** To the extent that the Company reports to the Board (and thereby to the ACS and GCI Members) historical information involving subscribers, churn, and commonly used subscriber industry metrics, such information will be no more current than the last quarterly data publicly released by each Member, will not contain subscriber or subscriber-group identifying information, and will be no more geographically granular than by: 1) Anchorage, Fairbanks, and Juneau and 2) the rest of the State.

**D. Restrictions on Service Plans Information.** To the extent that the Company reports to the Board (and thereby to the ACS and GCI Members) historical information on the aggregate number of subscribers purchasing and utilizing each type of service plan offered by the Company, such reports will be no more current than the last quarterly data publicly released by each Member, will not contain subscriber or subscriber-group identifying information, and will be no more geographically granular than by: 1) Anchorage, Fairbanks, and Juneau and 2) the rest of the State.

**E. Restrictions on Information Regarding Connection Attrition Adjustments.** Any Commercially Sensitive Information provided to AWN by either ACS or GCI for purposes of calculating the Connection Attrition Adjustments contemplated by Section 9.4 of the Operating



Agreement shall not be disclosed to the CEO of the other Member who sits on the AWN Board and shall not include subscriber or subscriber-group identifying information.

**F. Restrictions on Information Pertaining to Transport Purchased From Parents.** The Company will regularly report to the Board (and thereby to the ACS and GCI Members) information on the aggregate dollar value of transport and backhaul capacity purchased from each Member sufficient to permit the Members to monitor compliance with the proportionate purchase requirements set forth in Section 9.6 of the Operating Agreement. The Company will not report on pricing with respect to specific transport and backhaul purchases except as provided in the Additional Capacity Purchase Agreement. Transport and backhaul capacity pricing information procured by AWN will be handled only by persons that are AWN employees, contractors or persons either seconded to AWN pursuant to a formal secondment agreement or persons not involved in wireless or wireline retail competitive decision-making for either Member.

**G. Restrictions on Information Pertaining to Backhaul Transport Provided by AWN to Third Parties.** If AWN responds to an RFP issued by a third party for backhaul transmission services, any such bid will be handled only by persons that are AWN employees, contractors, persons either seconded to AWN pursuant to a formal secondment agreement or persons not involved in wireless or wireline retail competitive decision-making for either Member. AWN may disclose to the Members its bid if AWN is the winning bidder but will not disclose any other non-public competitively sensitive terms of such bids to employees of the GCI Member or the ACS Member with competitive decision-making responsibility for backhaul transmission services.

**H. Roaming Agreements.** The Company will regularly report to the Board (and thereby to the ACS and GCI Members) information on roaming agreements entered into with other wireless carriers, including the term, pricing, and reciprocal rates.

**I. Wireless Backhaul Agreements.** The Company will regularly report to the Board (and thereby to the ACS and GCI Members) information on requests received from other wireless carriers for wireless backhaul facilities and the aggregate revenue received by the Company under all wireless backhaul agreements.

### **3. Competitive Independence and Information Exchange:**

**A.** All Commercially Sensitive Information received by the Company will be held strictly confidential and will not be communicated or otherwise disclosed, directly or indirectly, to a Covered Person of the non-disclosing Parties, except in compliance with the procedures set forth in Section 2 above; provided, however, that Commercially Sensitive Information may be disclosed to employees of GCI or ACS who are seconded to the Company (including the CEO of the Company) pursuant to a written agreement. All such secondment agreements will contain provisions requiring such employees to comply with these Policies, to protect the confidentiality of Commercially Sensitive Information, and not to communicate such information to a Covered Person of the non-disclosing Parties, and that restrict such employee's use and disclosure of any Commercially Sensitive Information obtained while seconded to the Company upon the

employee's post-secondment employment with GCI or ACS. All employees of GCI or ACS who are involved in designing, marketing, pricing, or selling the Company Services will do so pursuant to a secondment agreement.

**B.** The Parties recognize and acknowledge that employees of GCI or ACS who are not the subject of secondment agreements may in the course of their work become exposed to Commercially Sensitive Information, e.g., a GCI technician maintaining the Company's provisioning systems might see a subscriber count for ACS in a geographic area. All GCI or ACS employees who, based on their job descriptions and work responsibilities, are reasonably likely to receive Commercially Sensitive Information will receive periodic training with respect to these Policies and will certify annually that they are aware of these Policies and will not disclose any Commercially Sensitive Information to any other Covered Person of the non-disclosing Parties.

**C.** Unless otherwise approved by AWN Company Counsel or its legal counsel designee, to the extent that it is necessary or appropriate for the Company to provide to the Executive Board reports on the operations, finances, and plans of the Company, all such data will be provided in accordance with the procedures set forth in Section 2 above, i.e., in a manner that does not disclose Commercially Sensitive Information to Member personnel involved in competitive decisionmaking for services over which the ACS Member and GCI Member compete.

**D.** Each of the Parties will undertake to ensure that they do not, and their Covered Persons do not, utilize the Company to facilitate or effect the coordination of competitive decision-making with respect to competitive services between ACS and GCI, including retail wireless, retail wireline and backhaul transmission.

**E.** The Parties will take all reasonable and appropriate steps necessary to ensure compliance with these Policies.

**F.** Nothing in the Policies will limit the audit and access rights of ACS to the extent that third parties are used for such rights.

#### **4. Compliance.**

**A.** The person functioning as the chief legal counsel of the Company (the "Company Counsel") will be responsible for overseeing and enforcing compliance with these Policies. If such person was formerly employed by either ACS or GCI, the person shall be subject to a written secondment agreement containing the provisions specified in Paragraph 3.A above. If, at any time, the Company Counsel position is vacant, the Company Counsel's responsibilities will be performed by another Company seconded Company legal counsel, if any, or an outside counsel, in either case as designated by the CEO of the Company.

**B.** The Company Counsel will establish procedures and mechanisms for suspected violations of the Policies to be reported and to ensure there is no retaliation against any person who reports any such suspected violations.

**C.** A copy of these Policies shall be distributed to (i) all members of the executive board of the Company (the “Board”), (ii) all officers of the Company and all persons seconded to the Company pursuant to written secondment agreements, and (iii) the general counsels of ACS and GCI. Each recipient shall certify annually in writing that he or she has reviewed these Policies and will comply with them. The Company Counsel will be responsible for ensuring that these certifications are obtained and updated and that records of the certifications are maintained.

**D.** No less than one time each year, the Company Counsel shall review the Policies with the members of the Board.

**E.** The Company Counsel or his/her designee shall attend all meetings of the Board to ensure compliance with the antitrust laws, the terms of the Parties' agreements and these Policies. In addition, the Company shall engage outside counsel with relevant expertise to attend all Board meetings, to review in advance all materials to be submitted to the Board at such Board meetings to ensure compliance with these Commercially Sensitive Information Policies and Procedures, and to ensure that relevant Board members and observers are excused from portions of Board meetings that involve the review or discussion of information that may not be shared with such member or observer under these Policies. Such outside counsel shall certify annually compliance with Section 4.E. The Company Counsel shall certify annually compliance with these Commercially Sensitive Information Policies and Procedures and shall report any breach of the requirements herein in writing to the FCC within five business days of becoming aware of such breach.

**EXHIBIT M**

**Example Connection Attrition Adjustments Calculations**

M-1

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**EXHIBIT N-1**

**ACS Applicable Regulatory Exchanges**

N1-1

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**EXHIBIT N-2**

**GCI Applicable Regulatory Exchanges**

None.

N2-1

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**EXHIBIT O**

**ACS Services Agreement**

O-1

FIRST AMENDMENT TO  
 CONTRACT FOR ALASKA ACCESS SERVICES

This FIRST AMENDMENT to the CONTRACT FOR ALASKA ACCESS SERVICES is made as of this first day of March, 1996, between GENERAL COMMUNICATION, INC. ("GCI") with offices located at 2550 Denali Street, Suite 1000, Anchorage, Alaska 99503-2781, and MCI TELECOMMUNICATIONS CORPORATION ("MCI ") with offices located at 1801 Pennsylvania Avenue, N.W., Washington, D.C. 20006.

WHEREAS, GCI and MCI entered into a Contract For Alaska Access Services, effective as of January 1, 1993, and

WHEREAS, GCI and MCI desire to amend the Contract,

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, GCI and MCI agree as follows:

1. Paragraph 2. B. (2) of the Contract shall be deleted and the following inserted in its place:

(2) MCI Southbound Traffic. MCI Southbound Traffic (except for MCI Alaska Originated Traffic shall be charged at the following rates per minute in the appropriate periods:

<u>Date</u>	<u>Rate in Dollars</u>
January 1, 1996	.17
April 1, 1996	.164
April 1, 1997	.159
April 1, 1998	.154
April 1, 1999 & thereafter	.149

There shall be no time of day discount. GCI shall pay the Alaska exchange access and Alascom interexchange charges for MCI Southbound Traffic. Any query charges associated with the routing of MCI Southbound Traffic, due to FCC Docket #86-10, will be passed on to MCI.

2. Paragraph 3 of the Contract shall be deleted and the following inserted in its place:

3. TERM. Except for MCI Alaska Originated Traffic, services provided pursuant to Section 2.A shall be for a term of five (5) years beginning April 1, 1996 and ending March 31, 2001. The term shall be automatically extended for ten one (1) year periods through and including March 31, 2011 unless either party elects to cancel the renewal periods by giving written notice of non-renewal at least one year prior to the commencement of any renewal term. The services for MCI Alaska Originated traffic shall be for a term of seven (7) years upon the issue of the first ASR authorizing the turn up of a serving area. The term for MCI Alaska Originated Traffic shall be automatically extended for eight one (1) year periods through and including March 31, 2011 unless either part elects to cancel the renewal periods by giving written notice of non-renewal at least one year prior to the commencement of any renewal term.

GCI CONFIDENTIAL



3. All other terms and conditions of the Contract remain unchanged by this Amendment and are in full force and effect.
4. This Amendment will be effective on April 1, 1996.
5. This Amendment together with the Contract is the complete agreement of the parties and supersedes all other prior contracts and representations concerning its subject matter. Any further amendments must be in writing and signed by both parties.

IN WITNESS WHEREOF, the parties hereto each acting with proper authority have executed this Amendment on the date indicated below.

MCI TELECOMMUNICATIONS  
CORPORATION

GENERAL COMMUNICATION, INC.

_____	/s/ _____
Authorized Signature	Authorized Signature
	William C. Behnke Senior Vice President
_____	_____
Print Name and Title	Print Name and Title
_____	March 11, 1996
Date	Date

GCI CONFIDENTIAL

RUS Project Designation:

ALASKA 1102-A40

BROADBAND INITIATIVES PROGRAM  
LOAN/GRANT AND SECURITY AGREEMENT

dated as of June 1, 2010

between

UNITED UTILITIES, INC.

and

THE UNITED STATES OF AMERICA

UNITED STATES DEPARTMENT OF AGRICULTURE  
RURAL UTILITIES SERVICE

**BROADBAND INITIATIVES PROGRAM  
LOAN/GRANT AND SECURITY AGREEMENT**

THIS LOAN/GRANT AND SECURITY AGREEMENT (this "Agreement") dated as of June 1, 2010 is between **UNITED UTILITIES, INC.** ("Awardee," a corporation existing under the laws of Alaska, and the **UNITED STATES OF AMERICA**, acting through the Administrator of the Rural Utilities Service ("RUS").

The Awardee has applied for financial assistance ("Application") from RUS to finance the construction of a broadband infrastructure project to serve areas that are at least 75% rural.

RUS is willing to extend financial assistance, in the form of a loan and grant to the Awardee, pursuant to the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, 123 Stat. 115 (2009) (the "Recovery Act"), the Notice of Funds Availability published at 74 Fed. Reg. 33104 and Title VI of the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*), and all applicable federal regulations, on the terms and conditions stated herein.

The Awardee is willing to secure the loan and grant and its other obligations to RUS on the terms stated herein.

THEREFORE, in consideration of the promises and mutual covenants herein contained, the parties agree and bind themselves as follows:

**ARTICLE I – DEFINITIONS**

The terms defined herein include both the plural and the singular. Unless otherwise specifically provided, all accounting terms not otherwise defined herein shall have the meanings assigned to them, and all determinations and computations herein provided for shall be made in accordance with Accounting Requirements.

"Accounting Requirements" shall mean the system of accounting prescribed by RUS in RUS Regulations.

"Advance" or "Advances" shall mean the disbursement of Loan and/or Grant funds in accordance with this Agreement.

"Affiliate" or "Affiliated Company" of any specified person or entity means any other person or entity directly or indirectly controlling of, controlled by, under direct or indirect common control with, or related to, such specified person or entity, or which exists for the sole purpose of providing any service to one company or exclusively to companies which otherwise meet the definition of affiliate. This definition includes Variable Interest Entities as described in Financial Accounting Standards Board Interpretation (FIN) No. 46(R), *Consolidation of Variable Interest Entities*. For the purpose of this definition, "control" means the possession directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, whether such power is exercised through one or more

intermediary companies, or alone, or in conjunction with, or pursuant to an agreement with, one or more other companies, and whether such power is established through a majority or minority ownership voting of securities, common directors, officers, or stockholders, voting trust, holding trusts (other than money exchanged) for property or services.

"Application" shall have the meaning as defined in the second paragraph hereof.

"Award" shall mean the Loan or Loan/Grant Combination described in Article III.

"Awardee" shall mean the Loan or Loan/Grant Combination recipient named in the first paragraph hereof.

"BIP" shall mean the Broadband Initiatives Program, administered by RUS and created pursuant to the Recovery Act.

"BIP Contracting, Work Order and Advance Procedures Guide" shall mean the procedures for construction and Advances, attached hereto as Attachment 1.

"Business Day" shall mean any day that RUS and the Department of Treasury are both open for business.

"Collateral" shall mean any and all property pledged as security for the Obligations, including, without limitation, security for the Loan, and other amounts owing to RUS under the Loan-Grant Documents, including, without limitation, the property described in Article IX and on Schedule 2.

"Composite Economic Life" means the weighted (by dollar amount of each class of facility in the Award) average economic life of all classes of facilities in the Award, as determined by RUS.

"Distribution" shall have the meaning as defined in Section 7.9.

"Eligible Purposes" shall mean purposes and expenses which are specified in the NOFA as being eligible for funding.

"Event of Default" shall have the meaning as defined in Article X.

"Expiration Date" shall have the meaning as defined in Paragraph (d) of Section 3.1.

"Form 481" shall have the meaning as defined in Section 4.3(d).

"Grant" shall mean the grant described in Section 3.1.

"Interest Expense" shall mean the accrual of interest on all classes of indebtedness, including capital leases and securities issued by the Awardee and shall also include the amortization of debt issuance expenses, premiums, and discounts.

"Laws" shall have the meaning as defined in paragraph (c) of Article II.

"Loan" shall mean the loan described in Section 3.1.

"Loan/Grant Combination" shall mean, collectively, the loan and grant described in Section 3.1.

"Loan-Grant Documents" shall mean, collectively, this Agreement, Security Documents and the Note(s).

"Material Adverse Effect" shall mean a material adverse effect on, or change in, the condition, financial or otherwise, operations, properties, business or prospects of the Awardee or on the ability of the Awardee to perform its obligations under the Loan-Grant Documents as determined by RUS.

"Net. Income" or "Net Margins" shall mean the amount equal to the income that the Awardee has after subtracting costs and expenses from the total revenue. Costs and expenses include but are not limited to all operations and maintenance expenses, corporate operations, taxes, interest dividends, depreciation, and gains and losses on the disposition of property.

"Net Worth" (equity) shall mean total assets less total liabilities of the Awardee. Net worth includes the recorded value of capital stock, additional paid-in capital, treasury stock, retained earnings and other comprehensive income.

"NOFA" shall mean the Notice of Funds Availability, published in the Federal Register at 74 Fed. Reg. 33104.

"Note(s)" shall have the meaning as defined in Paragraph (a) of Section 3.2.

"Obligations" shall mean any and all indebtedness, obligations and liabilities of the Awardee to RUS, of every kind and description, direct or indirect, secured or unsecured, joint or several, absolute or contingent, due or to become due, whether for payment or performance, now existing or hereafter arising, howsoever evidenced or created, including, without limitation, all loans (including any loan by renewal or extension); all indebtedness, all Notes, all undertakings to take or refrain from taking any action; and all interest, taxes, fees, charges, expenses, and attorney's fees chargeable to Awardee or incurred by RUS under this Agreement or in any other document or instrument delivered hereunder or as a supplement hereto.

"Permitted Encumbrances" shall mean the liens and encumbrances permitted by the RUS Mortgage.

"Pledged Deposit Account" shall have the meaning as defined in Section 5.4.

"Prior RUS Loan Contract" shall mean the contract identified on Schedule 1 as it may have been amended or supplemented from time to time.

"Project" shall have the meaning as defined in Paragraph (a) of Section 3.4.

"Project Completion" shall mean that all Award funds have been advanced to the Awardee by RUS.

"RE Act" shall mean the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*).

"RUS Mortgage" shall mean the mortgage identified on Schedule 1 as it may be amended, supplemented and restated from time to time.

"RUS Regulations" shall mean the rules, regulations and bulletins of general applicability published by RUS from time to time, as such rules, regulations and bulletins exist at the date of applicability thereof, and shall also include 7 C.F.R. 3015 (and, by adoption, 48 C.F.R. 31.2 of the Federal Acquisition Regulations), 3016 and 3019 and applicable OMB Circulars, as well as any rule and regulations of other Federal entities which RUS is required by law to implement. Any reference to specific RUS Regulations shall mean the version of and cite to such regulation effective at the date of applicability thereof.

"Security Documents" shall mean, collectively, any mortgage, security agreement, financing statement, deposit account control agreement or other document providing collateral for the Obligations, including without limitation, repayment of the Loan.

"Service Rates" shall mean the rates charged for data, video, voice or any other service proposed in the RUS approved Application.

"Subsidiaries" shall mean the subsidiaries listed in Schedule 1.

"Substantially Complete" shall mean that 67% of Award funds have been advanced to the Awardee by RUS.

"System Design" shall mean the system as described in the RUS approved Application.

"TIER" shall mean the Awardee's total Net Income or Net Margins plus Interest Expense payable for any year divided by Interest Expense payable for such year, as set forth in Section 5.8 hereof.

"Timeline" shall mean the detailed schedule describing the Project build out, submitted with the RUS approved Application, as may be amended from time to time with prior written RUS consent.

"Total Assets" shall mean all property owned by the Awardee. Total assets include current and noncurrent assets such as cash, receivables, material and supplies, prepayments, deferred charges, and investments; fixed assets (plant) such as buildings and equipment, both in service and under construction; as well as capital leases and intangibles.

## **ARTICLE II - REPRESENTATIONS AND WARRANTIES**

Recognizing that RUS is relying hereon, the Awardee represents and warrants, as of the date of this Agreement, as follows:

- (a) *Organization; Power, Etc.* The Awardee: (i) is the type of organization specified in the first paragraph hereof, duly organized, validly existing, and in good standing under the laws of the State identified in the first paragraph hereof; (ii) is duly qualified to do business and is in good standing in each jurisdiction in which the transaction of its business make such qualification necessary; (iii) has legal power to own and operate its assets and to carry on its business and to enter into and perform its obligations under the Loan-Grant Documents; (iv) has duly and lawfully obtained and maintained all material licenses, certificates, permits, authorizations and approvals necessary to conduct its business or required by applicable Laws; and (v) is eligible to obtain the financial assistance from RUS contemplated by this Agreement.
- (b) *Authority.* The execution, delivery and performance by the Awardee of this Agreement and the other Loan-Grant Documents and the performance of the transactions contemplated hereby and thereby have been duly authorized by all necessary actions and do not violate any provision of law or any charter, articles of incorporation, organization documents or bylaws of the Awardee or result in a breach of, or constitute a default under, any agreement, security agreement, note or other instrument to which the Awardee is a party or by which it may be bound. The Awardee has not received any notice from any other party to any of the foregoing that a default has occurred or that any event or condition exists that with the giving of notice or lapse of time or both would constitute such a default.
- (c) *Consents.* No consent, approval, authorization, order, filing, qualification, license, or permit of any governmental authority is necessary in connection with the execution, delivery, performance or enforcement of the Loan-Grant Documents, except such as have been obtained and are in full force and effect.
- (d) *Binding Agreement.* Each of the Loan-Grant Documents is, or when executed and delivered will be, the legal, valid, and binding obligation of the Awardee, enforceable in accordance with its terms, subject only to limitations on enforceability imposed in equity or by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally.
- (e) *Compliance with Laws.* The Awardee is in compliance in all material respects with all federal, state and local laws, rules, regulations, ordinances, codes and orders (collectively, "Laws.")
- (f) *Litigation.* There are no pending or threatened legal, arbitration or governmental actions or proceedings to which the Awardee is a party or to which any of its property is subject which, if adversely determined, could have a Material Adverse Effect.
- (g) *Information Submitted with Application.* All information, reports, and other documents and data submitted to RUS in connection with the Application were, at the time the same were furnished, complete, and correct in all material respects. Any financial statements or data submitted to RUS in connection with the Application present fairly, in all material respects, the financial position of the Awardee and the results of its operations in conformity with Accounting Requirements. Since the date thereof, there has been no material adverse change in the financial condition or operations of the Awardee.
- (h) *Principal Place of Business.* The principal place of business and chief executive office of the Awardee is at the address of the Awardee specified in Schedule 1 hereto.

- (i) *Organization Number.* The Awardee's organization number is correctly identified in Schedule 1 hereto.
- (j) *Subsidiaries and Parent.* Any subsidiaries or parent of the Awardee are disclosed on the attached Schedule 1.
- (k) *Defaults Under Other Agreements.* No default by the Awardee has occurred under any agreement or instrument to which the Awardee is a party or to which any of its property is subject that could have a Material Adverse Effect.
- (l) *Title to Property.* Except as disclosed in writing in the opinion of counsel, the Awardee holds good and marketable title to all of the Collateral, free and clear of any liens, security interests or other encumbrances except for Permitted Encumbrances.
- (m) *RUS Mortgage.* The RUS Mortgage is in full force and effect, will secure the Obligations, including the Note, and creates a valid first lien on the property pledged thereunder and hereunder.
- (n) *Additional Representations and Warranties.* The Awardee further represents and warrants as set forth on Schedule 1.

## ARTICLE III — THE LOAN AND GRANT

### Section 3.1 Loan and Grant Amounts, Interest Rate, and Expiration Date.

- (a) *Loan Amounts.* RUS agrees to make and the Awardee agrees to accept, on the terms and conditions stated in this Agreement and subject to 31 U.S.C. 1551 and 1552, a loan, in the amount specified in Schedule 1 hereto (the "Loan").
- (b) *Grant Amount.* RUS agrees to make and the Awardee agrees to accept, on the terms and conditions stated in this Agreement and subject to 31 U.S.C. 1551 and 1552, a grant, in the amount specified in Schedule 1 hereto (the "Grant").
- (c) *Interest Rate.* The amount of the Loan specified in Schedule 1 hereto will bear interest on each Advance at the Treasury rate for comparable loans with comparable maturities.
- (d) *Expiration Date.* The obligation of RUS to advance the Award, or any portion thereof, shall expire on a date ("Expiration Date") three (3) years from the date of this Agreement.

### Section 3.2 Loan-Grant Documents

- (a) The debt created by the Loan will be evidenced by a note(s) ("Note(s)") executed by the Awardee and payable to the United States of America. The Awardee shall repay the Loan in accordance with the Note(s) which shall be payable and bear interest in accordance with its (their) terms.
- (b) The Awardee shall execute the Security Documents, in form and substance satisfactory to RUS, and such other security instruments as required by RUS.



**Section 3.3 Payment**

Except as otherwise prescribed by RUS, the Awardee shall make all payments on the Note(s) utilizing electronic fund transfer procedures as specified by RUS.

**Section 3.4 Project**

- (a) *Loan and Grant Purpose.* The Loan and Grant have been made solely to finance the broadband infrastructure project specifically described in the RUS approved Application ("Project.")
- (b) *Changes to Project.* The Awardee shall obtain the prior written approval of RUS for any material change to the system design, construction, Timeline, delivery of services, and/or objective(s) of the Project.

**Section 3.5 ACH Payments**

The Awardee consents to the use of the Automated Clearing House (ACH) Payment System and to the deposit of award funds directly into the Pledged Deposit Account.

**ARTICLE IV — CONDITIONS OF FINANCIAL ASSISTANCE**

**Section 4.1 Conditions Precedent to Closing**

In connection with the execution and delivery of this Agreement, each of the following conditions shall be satisfied (all documents, certificates and other evidence of such conditions are to be satisfactory to RUS in its discretion):

- (a) *Legal Matters.* All legal matters incident to the consummation of the transactions hereby contemplated shall be satisfactory to counsel for RUS;
- (b) *Loan-Grant Documents.* RUS shall receive duly executed originals of the Loan- Grant Documents;
- (c) *Filed and Recorded Security Documents.* RUS shall have received executed, filed and indexed financing statements covering all of the personal property and fixtures of the Awardee;
- (d) *Articles of Incorporation, Charter, Bylaws and Organizational Documents.* With respect to corporate and cooperative Awardees, RUS shall have received certified copies of the Awardee's most recent articles of incorporation or charter and bylaws. With respect to limited liability companies or similar organizations, RUS shall have received certified copies of the Awardee's most recent organization documents containing provisions reflecting the obligations of the Awardee in paragraphs (c) and (d) of Section 7.3;
- (e) *Authorizations.* RUS shall have received satisfactory evidence that all Loan-Grant Documents and proceedings of the Awardee necessary for duly authorizing the execution, delivery and performance of the Loan-Grant Documents have been obtained and are in full force and effect;

- (f) *Approvals.* RUS shall have received satisfactory evidence that the Awardee has duly registered when and where required by law with all state, Federal and other public authorities and regulatory bodies and obtained all authorizations, certificates, and approvals necessary for, or required as a condition of, the validity and enforceability of each of the Loan-Grant Documents;
- (g) *Title Evidence.* RUS shall have received satisfactory evidence that the Awardee has good and marketable title to its property, including the Project, and holds such franchises, permits, leases, easements, rights, privileges, licenses, or right-of-way instruments, reasonably adequate in form and substance, as may be required by law for the continued maintenance and operation of the existing facilities and Project;
- (h) *Management, Service, and Operating Agreements.* Except as otherwise provided in Sections 4.2 and/or 4.3 herein, RUS shall have received all management, service, and operating agreements, in form and substance acceptable to RUS, which shall be in accordance with fees or rates presented in the *pro forma* financial statements submitted to RUS in the RUS approved Application;
- (i) *Opinion of Counsel.* RUS shall have received an opinion of counsel for the Awardee (who shall be acceptable to RUS) in form and substance acceptable to RUS for each state in which the Awardee operates; and
- (j) *Additional Conditions.* The Awardee has met all additional conditions specified in Schedule 1 hereto.

**Section 4.2 General Conditions Precedent to RUS' Obligations to Release Funds for Advance**

The obligations of RUS hereunder are subject to the satisfaction of each of the following conditions precedent (all documents, certificates and other evidence of such conditions are to be satisfactory to RUS in its discretion):

- (a) *Service Rate Evidence.* RUS shall have received satisfactory evidence that the Awardee has duly adopted Service Rates for all proposed services which are designed with a view to (i) paying and discharging all taxes, maintenance expenses, and operating expenses of the Awardee, (ii) making all payments in respect of principal and interest on the Note(s) when and as the same shall become due, (iii) providing and maintaining reasonable working capital of the Awardee, and (iv) producing and maintaining the TIER specified in Section 5.8 hereof;
- (b) *Fidelity Bond or Theft Insurance Coverage.* RUS has received copies of the fidelity bond or theft insurance policy from the Awardee, identifying RUS as a loss payee, from a surety doing business with the United States listed in 31 CFR Part 223, in the amount specified in Schedule 1, covering all officers, employees, or agents of the Awardee authorized to receive, disburse, or receive and disburse the Loan and Grant. Notwithstanding, for current RUS borrowers, RUS may waive this fidelity bond coverage requirement, if, after evaluation, RUS has determined that adequate fidelity bond coverage is already maintained by the Awardee as a RUS borrower under existing loan or guarantee agreements between the Awardee and RUS;
- (c) *Current Financial Information and Certificate of Authority.* RUS has received from the Awardee: (i) its updated balance sheet, statement of cash flow, and income statement and (ii) a duly authorized and executed certification, Foim 675,

"Certification of Authority," designating an officer, employee, or agent of the Awardee as the person or persons authorized to execute and submit, on behalf of the Awardee, RUS Form 481, "Financial Requirement Statement;"

- (d) *Deposited Funds.* RUS has received from the Awardee evidence, satisfactory to RUS, verifying that the Awardee has maintained on deposit in an account, funds sufficient to complete the Project as specified on Schedule 1; and
- (e) *Additional Conditions.* The Awardee has met all additional conditions specified in Schedule 1 hereto.

#### **Section 4.3 Conditions to Individual Advances**

The obligations of RUS to approve any Advance are subject to the satisfaction of each of the following conditions precedent on or before the date of such Advance (all documents, certificates and other evidence of such conditions precedent are to be satisfactory to RUS in its discretion):

- (a) *Continuing Representations and Warranties.* That the representations and warranties of the Awardee contained in this Agreement be true and correct on and as of the date of such Advance as though made on and as of such date;
- (b) *Material Adverse Effect.* That no event has occurred which has had or could have a Material Adverse Effect;
- (c) *Event of Default.* That no Event of Default and no event which with the passage of time or giving of notice, or both, would constitute an Event of Default shall have occurred and be continuing, or shall have occurred after giving effect to any Advances on the books of the Awardee;
- (d) *Requisitions and Supporting Documentation.* That RUS shall have received not more frequently than once a month, unless otherwise agreed to by RUS, a completed RUS Form 481, "Financial Requirement Statement" (hereinafter " Form 481,") bearing the original signature of the officer, employee, or agent of the Awardee authorized to receive, disburse, or receive and disburse the Award, with supporting documentation from the Awardee in accordance with the BIP Contracting, Work Order and Advance Procedures Guide. Advances shall be limited to the minimum amounts required for the Awardee's immediate disbursement needs and shall be requested by the Awardee only for actual immediate cash requirements of the Awardee. Such loan/grant advances shall be provided on a reimbursement basis, or based on unpaid third party invoices for Eligible Purposes, or contracts approved by RUS, in accordance with the BIP Contracting, Work Order and Advance Procedures Guide. Grant funds must be advanced concurrently with Loan funds in the same proportion as the Grant is to the total Award;
- (e) *Flood Insurance.* That for any Advance used in whole or in part to finance the construction or acquisition of any building in any area identified by the Secretary of Housing and Urban Development pursuant to the Flood Disaster Protection Act of 1973 (the "Flood Insurance Act") or any rules, regulations or orders issued to implement the Flood Insurance Act as any area having special flood hazards, or to finance any facilities or materials to be located in any such building, or in any building owned or occupied by the Awardee and located in such a flood hazard area, the Awardee shall have submitted evidence, in form and substance satisfactory to RUS

or RUS has otherwise determined, that (i) the community in which such area is located is then participating in the national flood insurance program, as required by the Flood Insurance Act and any related regulations, and (ii) the Awardee has obtained flood insurance coverage with respect to such building and contents as may then be required pursuant to the Flood Insurance Act and any related regulations;

- (f) *Current Financial Information.* That RUS has received from the Awardee: its current, updated balance sheets, income statements and statements of cash flow;
- (g) *Compliance with Timeline.* That RUS has received from the Awardee evidence, satisfactory to RUS, that the Project is being constructed in accordance with the Timeline;
- (h) *Compliance with Loan-Grant Documents.* That the Awardee is in material compliance with the Loan-Grant Documents and the RUS Mortgage;
- (i) *Permits, Licenses and Franchises.* That RUS shall have received satisfactory evidence that the Awardee has obtained the permits, licenses, franchises and other approvals identified on Schedule 1;
- (j) *Additional Documents.* That the Awardee agrees to provide RUS with such additional documents as RUS may request; and
- (k) *Additional Conditions.* That the Awardee has met all additional conditions specified in Schedule 1 hereto.

**Section 4.4 First Advance to Pay Off Pre-Application Expenses and Interim Financing; Restrictions on. Subsequent Advances**

Funds to pay off certain pre-application expenses, as defined in the NOFA, and expenditures for Eligible Purposes incurred after submission of the Application to RUS, if any, will be included in the first Advance. Thereafter no further Advances will be made unless and until the Awardee has furnished evidence, in form and content satisfactory to RUS, that such interim financing has been paid in full and any associated liens have been duly discharged of record.

**ARTICLE V — AFFIRMATIVE COVENANTS**

**Section 5.1 Generally**

Unless otherwise agreed to in writing by RUS, while this Agreement is in effect, the Awardee shall duly observe each of the affirmative covenants contained in this Article V.

## **Section 5.2 Use of Advances**

The Awardee shall expend Award funds only for Eligible Purposes in accordance with the RUS approved line item Project budget and Form(s) 481 submitted to RUS prior to the advance of funds.

## **Section Unused and Disallowed Advances**

### **5.3**

- (a) The Awardee shall return to RUS forthwith all or any advanced portion of the Loan and Grant not disbursed by the Awardee for the Project or not needed to complete the Project with any interest earned thereon when deposited in the Pledged Deposit Account.
- (b) The Awardee shall reimburse RUS for any advanced funds whose original expenditure has been disallowed by an RUS loan and grant audit. Disallowances shall be satisfied, as directed by RUS, by either administrative offset against other approved purposes on Form(s) 481 or repaying the disallowed amount directly to the United States Treasury. Such disallowed amounts shall accrue interest payable to RUS from the date RUS delivers to the Awardee a written demand for payment. Interest shall accrue on disallowed Loan Advances at the lesser of the following: the interest rate of the disallowed Advance or the then current United States Treasury rate as prescribed by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletin. Interest shall accrue on disallowed Grant Advances at the then current United States Treasury rate as prescribed by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletin. Closeout of the Loan and Grant will not affect the right of RUS to disallow expenditures and recover, in full, any amount on the basis of a subsequent audit or other review or the Awardee's obligation to return any disallowed expenditures.

## **Section 5.4 Deposit of Advances into Pledged Deposit Account**

- (a) The Awardee shall open and maintain a deposit account pledged to RUS ("Pledged Deposit Account,") in a bank or depository whose deposits are insured by the Federal Deposit Insurance Corporation or other federal agency acceptable to RUS and shall be identified by the RUS' designation of the Awardee followed by the words "Pledged Deposit Account." The Awardee shall promptly deposit proceeds from all Advances, including previously advanced funds whose original expenditure has been disallowed by an RUS audit into the Pledged Deposit Account. Moneys in the Pledged Deposit Account shall be used solely for the purposes for which Advances were made, or for such other purposes as may be approved in writing by RUS. Deposits and disbursements from the Pledged Deposit Account shall be made and recorded in accordance with the BIP Contracting, Work Order and Advance Procedures Guide.
- (b) *First Lien on Pledged Deposit Account.* The Awardee shall perfect and maintain a first and prior lien in the Pledged Deposit Account (pursuant to a deposit account agreement or similar agreement or mechanism for perfecting as provided by applicable law) in form acceptable to RUS.

**Section 5.5 Additional Project Funding**

The Awardee shall ensure that adequate funding is in place to complete the Project and will, after obtaining the prior written approval of RUS, obtain additional loans or funds or receive binding commitments for supplemental funding in an amount needed to ensure completion of the Project.

**Section 5.6 Miscellaneous Notices**

The Awardee shall furnish to RUS:

- (a) *Notice of Default.* Promptly after becoming aware thereof, notice of the occurrence of any default under the Loan-Grant Documents or the RUS Mortgage or the receipt of any notice given pursuant to the Loan-Grant Documents or RUS Mortgage with respect to the occurrence of any event which with the giving of notice or the passage of time, or both, could become an Event of Default hereunder, the other Loan-Grant Documents or under the RUS Mortgage.
- (b) *Notice of Litigation.* Promptly after the commencement thereof, notice of the commencement of all actions, suits or proceedings before any court, arbitrator, or governmental department, commission, board, bureau, agency, or instrumentality affecting the Awardee or any Affiliate which, if adversely determined, could have a Material Adverse Effect.
- (c) *Regulatory and Other Notices.* Promptly after receipt thereof, copies of any notices or other communications received from any governmental authority with respect to any matter or proceeding which could have a Material Adverse Effect.
- (d) *Material Adverse Effect.* Promptly after becoming aware thereof, notice of any matter which has resulted or may result in a Material Adverse Effect.
- (e) *Corporate Document Changes.* Thirty (30) days prior to their effectiveness, any amendments, supplements or modifications to the Awardee's Articles of Incorporation, Charter, Bylaws, Operating Agreement, Members Agreements or other Organizational Documents.
- (f) *Other Information.* Such other information regarding the condition, financial or otherwise, or operations of the Awardee as RUS may, from time to time, reasonably request.

**Section Rates and Financial Performance Criteria**

**5.7**

The Awardee shall design, charge and maintain rates in effect which (i) pay and discharge all taxes, maintenance expenses and operating expenses of its system (ii) make all payments in respect of principal of and interest on the Note(s) when and as the same shall become due, (iii) provide and maintain reasonable working capital for the Awardee, and (iv) maintain the TIER specified in Section 5.8 hereof.

### **Section 5.8 TIER**

The Awardee will maintain the TIER required in the Prior RUS Loan Contract and, upon the termination of the obligation to maintain such TIER, will maintain a TIER of 1.0 until the Loan is repaid in full.

### **Section 5.9 Corrective Action**

Within thirty (30) days of (i) sending the financial reports required by Section 6.3 hereof that shows the TIER specified in Section 5.8 was not achieved for the reported fiscal period or (ii) being notified by RUS that the TIER specified in Section 5.8 was not achieved for the reported fiscal period, whichever is earlier, the Awardee, in consultation with RUS, shall provide a written plan satisfactory to RUS setting forth the actions that shall be taken to achieve the specified TIER on a timely basis and shall promptly implement said plan.

### **Section 5.10 Service Obligation**

The Awardee shall provide the broadband service described in the RUS approved Application commencing from the date the Project is Substantially Complete for at least as long as the Composite Economic Life of the facilities financed by the Award as specified on Schedule 1. The Awardee may update its service offerings upon receipt of RUS' prior written consent.

### **Section 5.11 Obligations with Respect to the Construction, Operation and Maintenance of the Project**

- (a) *Project Management and Operation.* The Awardee shall be responsible for the management of the Project and will operate the Project in an efficient and economic manner as well as maintaining the Project in good repair.
- (b) *Construction in Accordance with System Design and Timeline.* The Awardee shall cause the Project to be constructed and/or built out, and completed in accordance with the system design submitted with the RUS approved Application, as such design may be amended with prior RUS consent, and the Timeline.
- (c) *General Insurance Requirements.* The Awardee shall take out and maintain insurance on the Project and any other property acquired with the Loan and Grant in accordance with 7 CFR Section 1788 as well as maintaining the fidelity bond or theft insurance coverage required in Section 4.2(b) hereof.
- (d) *Contracting.* The Awardee may, in accordance with the BIP Contracting, Work Order and Advance Procedures Guide, contract for goods and services to be funded by the Award, using RUS form contracts or private contracts; provided that private contracts must comply with equal employment opportunity and civil rights requirements, as well as the Davis Bacon Act.
- (e) *Commencement and Completion of Construction and/or Installation.*

- (1) Awardees are required to commence construction and/or installation of the Project within 180 days from the date hereof, and
- (2) The Project shall be Substantially Complete within two years of the date hereof, and Project Completion shall occur within three years of the date hereof.

#### **Section 5.12 Preservation of Existence and Rights**

The Awardee shall take or cause to be taken all such actions as from time to time may be necessary to preserve its existence and to preserve and renew all franchises, contracts, rights of way, easements, permits, and licenses now or hereafter to be granted or conferred upon it, with respect to the Project, the loss of which would have a Material Adverse Effect.

#### **Section 5.13 Compliance with Laws**

Awardees shall comply with all applicable federal and state laws, including but not limited to: (i) The nondiscrimination and equal employment opportunity requirements of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000e *et seq.*, 7 CFR pt. 15); (ii) Section 504 of the Rehabilitation Act (29 U.S.C. § 794 *et seq.*; 7 CFR pt. 15b); (iii) The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*; 45 CFR pt. 90); (iv) Executive Order 11375, amending Executive Order 11246, Relating to Equal Employment Opportunity (3 CFR pt. 102). *See* 7 CFR pts. 15 and 15b and 45 CFR pt 90, RUS Bulletin 1790-1 ("Nondiscrimination among Beneficiaries of RUS Programs"), and RUS Bulletin 20-15:320-15 ("Equal Employment Opportunity in Construction Financed with RUS Loans"). The RUS Bulletins are available at <http://www.broadbandusa.gov>; (v) The Architectural Barriers Act of 1968, as amended (42 U.S.C. L4151 *et seq.*); (vi) The Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR subpart 101-19.6); (vii) The Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA and certain related federal environmental laws, statutes, regulations, and Executive Orders found in 7 CFR 1794; and (viii) The Communications Act of 1934, as amended, (47 U.S.C. § 151 *et seq.*), the Telecommunications Act of 1996, as amended (Pub. L. 104-104, 110 Stat. 56 (1996), and the Communications Assistance for Law Enforcement Act (47 U.S.C. § 1001 *et seq.*) (CALEA).

#### **Section 5.14 Equal Opportunity Requirements**

- (a) *Equal Opportunity Provisions in Construction Contracts.* The Awardee shall incorporate or cause to be incorporated into any construction contract, as defined in Executive Order 11246 of September 24, 1965 and implementing regulations, which is paid for in whole or in part with funds obtained from RUS or borrowed on the credit of the United States pursuant to a grant, contract, loan, insurance or guarantee, or undertaken pursuant to any RUS program involving such grant, contract, loan, insurance or guarantee, the equal opportunity provisions set forth in Attachment 2 hereto, entitled Equal Opportunity Contract Provisions.
- (b) *Equal Opportunity Contract Provisions Also Bind the Awardee.* The Awardee further agrees that it shall be bound by such equal opportunity clause in any federally assisted



construction work which it performs itself other than through the permanent work force directly employed by an agency of government.

- (c) *Sanctions and Penalties.* The Awardee agrees that it shall cooperate actively with RUS and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor, that it shall furnish RUS and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it shall otherwise assist the administering agency in the discharge of RUS' primary responsibility for securing compliance. The Awardee further agrees that it shall refrain from entering into any contract or contract modification subject to Executive Order 11246 with a contractor debarred from; or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to Part II, Subpart D of Executive Order 11246 and shall carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by RUS or the Secretary of Labor pursuant to Part II, Subpart D of Executive Order 11246. In addition, the Awardee agrees that if it fails or refuses to comply with these undertakings RUS may cancel, terminate or suspend in whole or in part this Agreement, may refrain from extending any further assistance under any of its programs subject to Executive Order 11246 until satisfactory assurance of future compliance has been received from the Awardee, or may refer the case to the Department of Justice for appropriate legal proceedings.

**Section 5.15 Purchases with Award Funds**

Except as specifically authorized in writing in advance by RUS, all facilities, materials, equipment, supplies, replacements and all other items purchased with Award funds shall be purchased outright, and not subject to any conditional sales agreement, chattel mortgage, bailment lease or other agreement reserving to the seller any right, title or lien.

**Section 5.16 Awardee to Defend Title and Remove Liens**

Except for Permitted Encumbrances, the Awardee will maintain and preserve the lien of this Agreement superior to all other liens affecting the Collateral, and will forever warrant and defend the title to the Collateral against any and all claims and demands whatsoever. The Awardee shall make, execute, acknowledge, deliver, file and record all such mortgages, financing statements, continuation statements, security agreements, instruments and conveyances as is necessary to preserve the lien of this Agreement against the Collateral superior to all other liens. The Awardee shall maintain the Collateral free of all liens except for Permitted Encumbrances, and will promptly pay or discharge any and all obligations for or on account of which any such lien or charge might exist or could be created and any and all lawful taxes, rates, levies, assessments, liens, claims or other charges imposed upon or accruing upon any of the Collateral, as and when the same shall become due and payable; and whenever called upon so to do by RUS will furnish to RUS adequate proof of such payment or discharge; provided, however that this provision shall not be deemed to require the payment or discharge of any tax, rate, levy, assessment or other governmental charge while the Awardee is contesting the validity thereof by appropriate proceedings in good faith and so long as it shall have set aside on its books adequate reserves with respect thereto.

**Section 5.17 Further Assurances**

- (a) The Awardee shall from time to time upon written demand of RUS make, execute, acknowledge and deliver or cause to be made, executed, acknowledged and delivered all such further and supplemental mortgages, financing statements, continuation statements, security agreements, instruments and conveyances as may be requested by RUS and take or cause to be taken all such further action as may reasonably be requested by RUS to provide for the securing and payment of the principal of, interest on, and any and all other amounts payable hereunder and under the Note(s) according to the terms thereof and for the purpose of fully conveying, transferring and confirming the property hereby conveyed, mortgaged and pledged or intended so to be, whether now owned by the Awardee or hereafter acquired by it.
- (b) The Awardee shall cause this Agreement, financing statement, continuation statement and every additional instrument which shall be executed pursuant to subsection (a) immediately above, to forthwith upon execution to be filed and recorded and refiled and rerecorded as conveyances and security interests in real and personal property in such manner and in such places as may be required by law or requested by RUS in order to fully preserve the security for the Obligations, including the Loan, and to perfect and maintain the superior lien of this Agreement and all supplemental security instruments.

**Section 5.18 Buy American - General Prohibition and Waiver**

For Awardees that are States, local governments, or any agency, subdivision, instrumentality, or political subdivision thereof, pursuant to § 1605 of the Recovery Act, no Loan or Grant funds may be used for the construction, alteration, maintenance, or repair of a public building or public work (as such terms are defined in 2 CFR § 176.140) unless all of the iron, steel, and manufacturing goods used in the project are produced in the United States, except as provided in OMB regulations at 75 Fed. Reg. 14323 (Mar. 25, 2010). Notwithstanding, such Awardees have been granted a general waiver by the Secretary of Agriculture with respect to certain broadband equipment, as outlined in the Federal Register at 74 Fed. Reg. 31402 (July 1, 2009). All other waivers must be requested of RUS pursuant to 2 CFR § 176.60.

**Section 5.19 Nondiscrimination and Interconnection Obligations**

The Awardee agrees to (i) adhere to the principles contained in the FCC's Internet Policy Statement (FCC 05-151, adopted August 5, 2005); (ii) not favor any lawful Internet applications and content over others; (iii) display any network management policies in a prominent location on the service providers webpage, provide notice to customers of changes to these policies, such policies include any business practices or technical mechanisms they employ, other than standard best efforts Internet delivery, to allocate capacity; differentiate among applications, providers, or sources, limit usage and manage illegal or harmful content; (iv) connect to the public Internet directly or indirectly, such that the project is not an entirely private closed network; and (v) offer interconnection, where technically feasible without exceeding current or reasonably anticipated capacity limitations, on reasonable rates and terms to be

negotiated with requesting parties. This includes both the ability to connect to the public Internet and physical interconnection for the exchange of traffic.

- (a) Notwithstanding the above, the Awardee may not offer interconnection to anyone that will provide services that duplicate services provided by projects funded by outstanding telecommunications loans made under the RE Act. Further, interconnection may not be used for an ineligible purpose under the Recovery Act.
- (b) These obligations are subject to the needs of law enforcement and reasonable network management. As such, the Awardee may employ generally accepted technical measures to provide acceptable service levels to all customers, such as caching and application-neutral bandwidth allocation, as well as measures to address spam, denial of service attacks, illegal content, and other harmful activities.
- (c) In the event the Awardee contracts with another entity to operate the Project, the Awardee shall require such entity to comply with the terms of this Section, expressly including this Section in their contractual arrangement.
- (d) These obligations do not apply to the Awardee's existing network.

**Section 5.20 Davis-Bacon Wage Requirements**

The Awardee shall comply with the Davis-Bacon Act, and the guidance found at 29 C.F.R. pts. 1, 3, and 5, such that any covered contract with a contractor or subcontractor in excess of \$2,000 for construction, alteration or repair (including painting and decorating) shall contain the contract clauses found in 29 C.F.R. 5.5(a), to ensure that all laborers and mechanics employed on the Project receive payment of not less than the prevailing wage.

**Section 5.21 Additional Affirmative Covenants**

The Awardee shall comply with the additional affirmative covenants set forth in Schedule 1 hereto.

**ARTICLE VI — ACCOUNTING AND REPORTING**

**Section 6.1 Financial Records**

- (a) Awardees must establish an accounting system satisfactory to RUS in compliance with Accounting Requirements. Such a system of accounts must account for all funds advanced under this Agreement separately from all other funds for the Project, as required by the Recovery Act.
- (b) The Awardee shall maintain, at its premises, such books, documents, papers, or other records and supporting documents, including, but not limited to, invoices, receipts, payroll records and bills of sale, adequate to identify the purposes for which, and the manner in which Loan, Grant, and other funds were expended on the Project. The Awardee shall at all times keep, and safely preserve, proper books, records and accounts in which full and true entries shall be made of all dealings, business, and affairs of the Awardee and its Subsidiaries, in accordance with its system of accounts complying with Paragraph (a) immediately above. The

Awardee shall maintain copies of all documents submitted to RUS in connection with the Award until the later of (i) the Loan being paid in full and all audits have been completed or (ii) three years subsequent to close-out of the Award.

#### **Section Rights of Inspection**

##### **6.2**

The Awardee shall afford RUS, the Office of the Inspector General of USDA, and the Government Accountability Office, through their representatives, reasonable opportunity, at all times during business hours and upon prior notice, to have access to and right to inspect the Project, any other property encumbered by the Security Documents, and any and all books, records, accounts, including electronic books, records, accounts and electronic mail messages, regardless of the physical form or characteristics, invoices, contracts, leases, payroll records, canceled checks, statements, and other documents, and papers of every kind belonging to or in any way pertaining to its property or business, including its Subsidiaries, if any, and to make copies or extracts therefrom.

#### **Section Annual Audit**

##### **6.3**

Effective after an Advance has been made, one hundred twenty (120) days from the end of the Awardee's current fiscal year and, thereafter, one hundred twenty (120) days from the close of each subsequent fiscal year, the Awardee must submit annual audited financial statements along with a report on compliance and on internal control over financial reporting, and a management letter in accordance with the requirements of 7 CFR 1773. The CPA conducting the annual audit must meet the requirements for a qualified CPA as set forth in 7 CFR § 1773.5. However, if the Awardee is a state, local government, or non-profit organization that expends \$500,000 or more of federal funds during its fiscal year, an audit must be performed in accordance with OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, located at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. Awardees are also responsible for ensuring that sub-recipient audit reports are received and for resolving any audit findings.

#### **Section BIP Reporting**

##### **6.4**

- (a) *Quarterly Report.* No later than thirty (30) calendar days after the end of each calendar year quarter the Awardee must submit to RUS utilizing RUS's online Broadband Collection and Analysis System (BCAS), the following information: balance sheets, income statements, statements of cash flow, summaries of its rate packages, the number of customers taking broadband service on a per community basis, the completion status of the build-out and whether the project is Substantially Complete. In addition the Awardee must provide RUS with such other reports concerning the financial condition or operation of the Awardee, including its Subsidiaries, as RUS may request.
- (b) *Annual Report.* For the lesser of five years or as long as the Awardee is required to provide service hereunder, on each January 31<sup>st</sup>, starting the first January 31<sup>st</sup> after Project Completion, the Awardee must submit the following information to RUS utilizing BCAS:
  - (i) Number of households and businesses subscribing to broadband service;

- (ii) Number of households and businesses subscribing to broadband service that receive improved access;  
and
- (iii) Number of educational, library, healthcare, and public safety providers receiving either new or improved access to broadband service.
- (c) *Annual Compliance Certificate.* Within forty-five (45) days after the close of each calendar year, or more often if requested in writing by RUS, the Awardee shall deliver to RUS a written statement signed by its general manager, managing member, or equivalent corporate official satisfactory to RUS, stating that, during such year the Awardee has fulfilled its obligations under the Loan-Grant Documents throughout such year in all material respects or, if there has been a material default in the fulfillment of such obligations, specifying each such default known to such official and the nature and status thereof.
- (d) *Close Out Report.* The Awardee shall deliver a close out report to RUS no later than ninety (90) days after the expiration or termination of the Award, or the completion of the Project and expenditure of all Award funds. The close out report shall address: (i) a comparison of actual accomplishments to the objectives set forth in the Application; (ii) a description of problems, delays, or adverse conditions that occurred, or which affected the attainment of overall Project objectives, prevented the meeting of time schedules or objectives, or precluded the attainment of particular Project work elements during established time periods; and (iii) a comparison of how funds were spent against the original general budget submitted with the RUS approved Application.

#### **Section Recovery Act Reporting**

##### **6.5**

No later than ten (10) calendar days after each calendar quarter in which the Awardee receives the assistance award funded in whole or part with Award funds, the Awardee shall submit through <http://www.federalreporting.gov> the information required by 2 C.F.R. 176. The final report should summarize the Awardee's quarterly filings and state whether the project's goals have been satisfied.

### **ARTICLE VII — NEGATIVE COVENANTS**

#### **Section General**

##### **7.1**

Unless otherwise agreed to in writing by RUS, while this Agreement is in effect, the Awardee shall duly observe each of the negative covenants set forth in this Article VII.

#### **Section Merger, Consolidation, Transfer of Property, or Change in Control**

##### **7.2**

The Awardee shall not, without the prior written consent of RUS, take or suffer to be taken any steps to reorganize, consolidate with or merge into any other corporation, or to sell, lease or transfer

(or make any agreement therefore) all or any substantial part of its property, including, without limitation, the Project.

**Section 7.3 Covenants for Limited Liability Companies and Similar Awardees**

Awardees which are limited liability or similar organizations agree that:

- (a) The death, retirement, resignation, expulsion, termination, bankruptcy or dissolution of any member or the occurrence of any other event that terminates the continued membership of any member shall not cause the Awardee to be dissolved or its affairs to be wound up;
- (b) Prior to the date on which any and all obligations owed to RUS, including the Note evidencing the Loan, are discharged in full, the Awardee shall not be dissolved or terminated;
- (c) The organizational documents of the Awardee shall contain provisions reflecting the obligations of the Awardee in paragraphs (a) and (b) immediately above and such provisions shall not be amended without the prior written consent of RUS; and
- (d) No direct or indirect addition or issuance of any membership units (or any other ownership interest) in the Awardee may be made by the Awardee or its members without the prior written consent of RUS and no transfer, whether individually or in the aggregate, of any membership units (or any other ownership interest) in the Awardee which will result in the transfer of more than 49% of the equity interests (of whatever nature, including voting and non-voting) in the Awardee may be made by the Awardee or its members without the prior written consent of RUS.

**Section Additional Indebtedness  
7.4**

The Awardee shall not, without the prior written consent of RUS, incur additional secured or unsecured indebtedness other than (i) purchase money security interests, (ii) unsecured trade indebtedness and (iii) other debt arising in the ordinary course of business. Indebtedness under items (i), (ii), and (iii) in the aggregate shall not exceed five percent (5%) of the Awardee's consolidated total assets.

**Section 7.5 Negative Pledge**

The Awardee shall not create, incur or suffer any lien, mortgage, pledge, assignment, or other encumbrance on, or security interest on its property, other than Permitted Encumbrances.

**Section 7.6 Contracts**

The Awardee shall not, without the prior written consent of RUS, enter into any contract or contracts for the operation or management of all or any substantial part of the Awardee's system, including, without limitation, the Project, and shall not enter into any contract for the use by others of all or any substantial part of its system, including, without limitation, the Project.

**Section 7.7 Salaries**

Salaries, wages, and other compensation paid by the Awardee for services, and directors', members', managers' or trustees' fees, shall be reasonable and in conformity with the usual practice of entities of the size and nature of the Awardee.

**Section 7.8 Extension of Credit**

Except as specifically authorized in writing in advance by RUS, the Awardee will make no advance payments or loans, or in any manner extend its credit, either directly or indirectly, with or without interest, to any of its directors, trustees, officers, employees, stockholders, members, managers, Affiliates or Affiliated companies; provided, however, that the Awardee may make an investment for any purpose described in section 607(c)(2) of the Rural Development Act of 1972 (including any investment in, or extension of credit, guarantee, or advance made to an Affiliated Company that is used by such Affiliate for such purpose) to the extent that, immediately after such investment: (1) the aggregate of such investments does not exceed one-third of the Net Worth and (2) the Awardee's Net Worth is at least twenty (20) percent of its Total Assets.

**Section 7.9 Distributions or Withdrawals**

- (a) The Awardee shall not, without the prior written approval of RUS, make any membership withdrawal, unit redemptions, or other type of profit allocation to its members, if it is a limited liability company, nor make any dividend, stock, capital, capital credit or other distribution in the nature of an investment, guarantee, extension of credit, loan or advance payment on obligations, if it is a corporation or cooperative (all such distributions being hereinafter collectively called "Distributions"); provided, however, the Awardee may make a Distribution after 75% of the Loan funds have been expended as approved if after such Distribution, the Awardee's Net Worth is equal to at least twenty percent (20%) of its Total Assets and the amount of all such Distributions during the calendar year does not exceed twenty-five percent (25%) of the Awardee's Net Income or Net Margins for the prior calendar year.
- (b) *Additional Negative Restrictions.* The Awardee shall comply with the additional negative restrictions on Distributions and Withdrawals set forth in Schedule 1 hereto.

**Section 7.10 Changing Principal Place of Business, Place of Conducting Business, or Type of Organization**

The Awardee shall not change its principal place of business, place of conducting business, or type of organization without the prior written consent of RUS.

**Section 7.11 Changing Name or Place of Incorporation or Organization**

The Awardee shall not change its legal name or place of incorporation or organization without giving RUS sixty (60) days prior written notice.

**Section 7.12 Historic Preservation**

The Awardee shall not, without the prior written consent of RUS, use any Advance to construct any facility which shall involve any district, site, building, structure or object which is included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior pursuant to the Historic Sites Act of 1935 and the National Historic Preservation Act of 1966.

**Section 7.13 Affiliated Transactions**

With regard to the Project, the Awardee shall not enter into any transaction, contract, or dealing with an Affiliate of the Awardee or with the Awardee's or Affiliate's directors, trustees, officers, managers, members (if the Awardee is a limited liability company), or other corporate officials, without the prior written consent of RUS. RUS' consent to advance award funds for affiliated transactions will be limited to an amount which is the lower of cost or market rate and which is subject to verification by RUS and its representatives having access to the books and records of the Affiliate.

**Section 7.14 Preferred Stock**

The Awardee shall not issue any new or additional preferred stock without the prior written approval of RUS, which approval shall not be unreasonably withheld if such stock issuance, in RUS' sole opinion, would not be considered a debt instrument under GAAP.

**Section 7.15 Restrictions on Transfers of Property**

- (a) Except as provided in Paragraph (b), and excluding any property which the Awardee must sell to customers in the ordinary course of business, the Awardee shall not sell, lease or transfer any Collateral to any other person or entity (including any subsidiary or affiliate of the Awardee) without the prior written consent of the RUS.
- (b) So long as the Awardee is not in default hereunder, the Awardee may, without obtaining the consent of RUS, sell or otherwise dispose of, free from the lien hereof, any of its property which is neither necessary to, nor useful for, the operation of the Awardee's business, or which has become obsolete, worn out, damaged, or otherwise unsuitable for the purposes of the Awardee; provided, however, that the Awardee shall to the extent necessary: (1) replace the same with other property of the same kind and nature, or substitute thereof, which shall be subject to the lien hereof, free and clear of all prior liens, and apply the proceeds, if any, derived from the sale or disposition of such property, which are not needed for the replacement thereof, to the prepayment of the indebtedness on the outstanding Notes; (2) immediately upon the receipt of the proceeds of any sale or disposition of said property, apply the entire amount of such proceeds to the prepayment of the indebtedness evidenced by the Notes; or (3) deposit all or such part of the proceeds derived from the sale or disposition of said property into the Pledged Deposit Account, and shall use the same only for such additions to, or improvements in, the Collateral, on such terms and conditions as RUS shall specify.



**Section 7.16 Restrictions on Changes to Line Item Budget**

The Awardee agrees that the budget for the Project is a line item budget and agrees not to make any revisions to the RUS approved line item Project budget, including, without limitation, the part of the budget for construction, without the prior written approval of RUS.

**Section 7.17 Additional Negative Covenants**

The Awardee shall comply with the additional negative covenants set forth in Schedule 1 hereto.

**ARTICLE VIII - LENDER'S RIGHTS**

**Section 8.1 Termination of Award Offer**

RUS, in its sole discretion, may terminate the offer to make the Loan or Loan/Grant Combination if it does not receive the Loan-Grant Documents, duly executed on behalf of the Awardee and all conditions in Section 4.1 hereof are not satisfied within sixty (60) days from the date hereof

**Section 8.2 Audits and Compliance Reviews**

After giving prior notification to the Awardee, RUS has the right to conduct compliance reviews and audits of the Awardee to assure compliance with the Loan-Grant Documents, NOFA and the Accounting Requirements.

**Section 8.3 Disallowed Expenditures**

Upon a determination by RUS that the Awardee did not expend Award funds on Eligible Purposes in accordance with the RUS approved line item Project budget and the Form(s) 481 approved by RUS prior to the advance of funds, RUS may, in its sole discretion:

- (a) Disallow all or a part of the expenditures and disbursements of the Award and require the Awardee to deposit such funds in the Pledged Deposit Account to be applied toward other approved Project purposes on Form(s) 481 or to reimburse the Government, as provided in Section 5.3 hereof;
- (b) Suspend making Advances;
- (c) Take any other action RUS determines to be necessary including, without limitation, exercising any right or remedy available under the Loan-Grant Documents or law.

**Section 8.4 Suspension of Advances**

RUS may, in its absolute discretion, suspend making Advances on the Award upon its making a determination that an event has occurred that is likely to have a Material Adverse Effect. RUS may also suspend making advances of the Award upon the occurrence of an Event of Default.

**Section 8.5 Payment Extensions**

RUS may, at any time or times in succession without notice to or the consent of the Awardee and upon such terms as RUS may prescribe, grant to any person, firm or entity who shall have become obligated to pay all or any part of the principal of or interest on any note held by or indebtedness owed to RUS or who may be affected by the lien created by the Loan-Grant Documents, an extension of the time for the payment of such principal or interest, and after any such extension the Awardee will remain liable for the payment of such note or indebtedness to the same extent as though it had at the time of such extension consented thereto in writing.

**Section 8.6 Right to Expend Money**

RUS shall have the right (without prejudice to any of its rights with respect to any Event of Default) to advance or expend moneys for the purpose of procuring insurance, or for the payment of insurance premiums as required hereunder, or to advance or expend moneys for the payment of taxes, assessments or other charges, or to save the Collateral from sale or forfeiture for any unpaid tax or assessment, or otherwise, or to redeem the same from any tax or other sale, or to purchase any tax title thereon, or to remove or purchase any mechanics' liens or other encumbrance thereon, or to make repairs thereon or to comply with any covenant herein contained or to prosecute and defend any suit in relation to the Collateral or in any manner to protect the Collateral and the title thereto, and all sums so advanced for any of the aforesaid purposes with interest thereon at the highest legal rate, but not in excess of twelve per centum (12%) per annum shall be deemed a charge upon the Collateral and shall be forthwith paid to RUS upon demand. It shall not be obligatory for RUS in making any such advances or expenditures to inquire into the validity of any such tax title, or of any such taxes or assessments or sales therefore, or of any such mechanics' liens or other encumbrance.

**Section 8.7 Right to File Financing Statements**

RUS shall have the right to file such financing statements and continuation statements on its behalf, as secured party, and on behalf of the Awardee, as debtor, as RUS deems necessary to perfect a first lien on the Collateral and to maintain and preserve such perfected first lien as long as the Loan remains outstanding. The Awardee shall reimburse RUS for any expenses incurred in the exercise of this right.

**ARTICLE IX - GRANT OF SECURITY INTEREST**

To secure the payment and performance of the Obligations, including, without limitation, the Note(s), the Awardee hereby pledges, assigns, and transfers to RUS, and grants to RUS a continuing security interest in and to all property, tangible and intangible, of every kind, nature or description, now owned, leased, or hereafter acquired by the Awardee, wherever located, including but not limited to, accounts, chattel paper, documents, instruments, general intangibles, licenses, (including, without limitation, those granted by the Federal Communications Commission ("FCC"), subject to the FCC's prior approval of any assignment or transfer of de jure or de facto control of such licenses), permits, equipment, goods, proceeds, products, and accessions, as well as its right, title and interests in fixtures and real property, now owned, leased or hereafter acquired and wherever located, and the property described in Schedule 2 hereto.

## ARTICLE X - EVENTS OF DEFAULT

### Section 10.1 Events of Default

The following shall be events of default (each an "Event of Default") under this Agreement:

- (a) Representations and Warranties. Any representation or warranty made by the Awardee in Loan-Grant Documents, Form(s) 481 or any certificate furnished to RUS under the Loan-Grant Documents, or in the Application shall prove to have been incorrect in any material respect at the time made;
- (b) Non-Payment. The nonpayment of any required and due installment of interest on, or principal of, any Note, whether by acceleration or otherwise, which continues for five (5) Business Days, as such term is herein defined;
- (c) Corrective Actions. Default by the Awardee in the observance or performance of Section 5.9;
- (d) Limited Liability Companies. Default by the Awardee or its members in the observance or performance of Section 7.3;
- (e) Improper Expenditures. The Awardee expends Award funds on costs which are not for Eligible Purposes in accordance with the RUS approved line item Project budget and the Form(s) 481 approved by RUS prior to the advance of funds;
- (f) Failure to Keep Adequate Records. The Awardee fails to keep adequate records, including the failure to document Award fund expenditures for Eligible Purposes as required herein;
- (g) Failure to Build in Accordance with Timeline. The Awardee fails to commence build out of the Project within 180 days from the date hereof or otherwise fails to meet or exceed milestones established in the Timeline, as it may be amended with prior written RUS consent;
- (h) Failure to Comply with Accounting and Reporting Requirements. The Awardee fails to comply with the accounting and reporting requirements in Article VI;
- (i) Other Covenants. Default by the Awardee in the observance or performance of any other covenant or agreement contained in any of the Loan-Grant Documents, which shall remain unremedied for thirty (30) calendar days after written notice thereof shall have been given to the Awardee by RUS;
- (j) Adverse Effects. The Awardee shall forfeit or otherwise be deprived of its charter, articles of organization, franchises, permits, easements, consents or licenses required to carry on any material portion of its business or the Awardee files for or an event occurs which can reasonably be expected to result in its dissolution or termination;
- (k) Other Obligations. Default by the Awardee in the payment of any obligation, whether direct or contingent, for borrowed money in excess of ten thousand dollars (\$10,000.00) or in the performance or observance of the terms of any instrument pursuant to which such obligation was created or securing such obligation which

default shall have resulted in such obligation becoming or being declared due and payable prior to the date on which it would otherwise be due and payable;

- (l) Bankruptcy. A court having jurisdiction in the premises shall enter a decree or order for relief with respect to the Awardee in an involuntary case under any applicable bankruptcy, insolvency, or other similar law now or hereafter in effect: (1) appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator, or similar official, or (2) ordering the winding up or liquidation of its affairs; or the Awardee shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or under any such law, or consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian or trustee, of a substantial part of its property, or make any general assignment for the benefit of creditors;
- (m) Dissolution or Liquidation. Other than as provided in the immediately preceding subsection, the dissolution or liquidation of the Awardee, or the filing of such by the Awardee;
- (n) Impaired Business. The failure by the Awardee to promptly forestall or remove any execution, garnishment or attachment of such consequence as shall impair its ability to continue its business or fulfill its obligations and such execution, garnishment or attachment shall not be vacated within thirty (30) days;
- (o) Payment of Final Judgment. A final judgment in an amount of ten thousand dollars (\$10,000.00) or more shall be entered against the Awardee and shall remain unsatisfied or without a stay in respect thereof for a period of thirty (30) days; and/or
- (p) Default under RUS Mortgage. An event of default occurs under the RUS Mortgage and is continuing for thirty (30) days.

## ARTICLE XI – REMEDIES

### Section 11.1 Generally

- (a) Upon the occurrence of an Event of Default, RUS may pursue all rights and remedies available to RUS that are contemplated by the Loan-Grant Documents and/or the RUS Mortgage in the manner, upon the conditions, and with the effect provided in such documents, and may pursue such other remedies that are generally available at law or in equity including, without limitation, a suit for specific performance, injunctive relief or damages. Nothing herein shall limit the right of RUS to pursue all rights and remedies available to a creditor following the occurrence of an Event of Default listed in Article X hereof. Each right, power and remedy of RUS shall be cumulative and concurrent, and recourse to one or more rights or remedies shall not constitute a waiver of any other right, power or remedy.
- (b) RUS and the Awardee acknowledge they are, respectively, mortgagee and mortgagor, under the RUS Mortgage and agree that the RUS Mortgage secures the Obligations, including the Note, and that the RUS Mortgage creates or will create a first lien on

the Collateral. RUS and the Awardee further agree that an Event of Default hereunder shall constitute an event of default under the RUS Mortgage permitting RUS to exercise rights and remedies thereunder.

## **Section 11.2 Remedies**

In addition to the remedies referred to in Section 11.1 hereof, upon the occurrence of an Event of Default, RUS may:

- (a) Refuse to make any advance or further advance on account of the Award, but any advance thereafter made by RUS shall not constitute a waiver of such default;
- (b) Declare all unpaid principal of and all interest accrued on the Note(s) to be immediately due and payable and upon such declaration all such principal and interest shall become due and payable immediately;
- (c) Terminate the obligation to further advance on account of the Award;
- (d) Take immediate possession of the Collateral, collect and receive all credits, outstanding accounts and bills receivable of the Awardee and all rents, income, revenues and profits pertaining to or arising from the Collateral, or any part thereof, and issue binding receipts therefor; manage and control and operate the Collateral as fully as the Awardee might do if in possession thereof; RUS, any employee or agent of RUS is hereby constituted and appointed as true and lawful attorney-in-fact of the Awardee with full power to (i) notify or require the Awardee to notify any and all Customers that the Collateral has been assigned to RUS and/or that RUS has a security interest in the Collateral; (ii) endorse the name of the Awardee upon any notes, checks, acceptances, drafts, money orders, or other instruments or payment (including payments made under any policy of insurance) that may come into possession of RUS in full or part payment of any amount owing to RUS; (iii) sign and endorse the name of the Awardee upon any invoice, freight, or express bill, bill of lading, storage or warehouse receipt, assignment verification or notice in connection with receivables; (iv) send requests for verifications of Collateral to customers or account debtors; (v) sell, assign, sue for, collect, or compromise payment of all any part of the Collateral in the name of the Awardee or in its own name, or make any other disposition of Collateral, or any part thereof, which disposition may be for cash, credit, or any combination thereof, and RUS may purchase all or any part of the Collateral at public or, if permitted by law, private sale, and in lieu of actual payment of such purchase price may set off the amount of such price against the Obligations; granting to RUS, as the attorney-in-fact of the Awardee, full power of substitution and full power to do any and all things necessary to be done in and about the premises fully and effectually as the Awardee might or could do but for this appointment, hereby ratifying all that said attorney-in-fact shall lawfully do or cause to be done by virtue hereof. Neither RUS, its employees, nor its agents shall be liable for any act or omissions or for any error of judgment or mistake of fact or law in its capacity as such attorney-in-fact. This power of attorney is coupled with

an interest and shall be irrevocable during the term of this Agreement and so long as any Obligations shall remain outstanding;

- (e) RUS shall have the right to enter and/or remain upon the premises of the Awardee without any obligation to pay rent to the Awardee or others, or any other place or places where any of the Collateral is located and kept and: (i) remove the Collateral therefrom in order to maintain, collect, sell, and/or liquidate the Collateral or, (ii) use such premises, together with materials, supplies, books, and records of the Awardee, to maintain possession and/or the condition of the Collateral, and to prepare the Collateral for sale, liquidation, or collection. RUS may require the Awardee to assemble the Collateral and make it available to RUS at a place to be designated by RUS;
- (f) RUS shall have the right, without prior notice to the Awardee, to exercise rights of setoff or recoupment and apply any and all amounts held or hereafter held, by RUS or owed to the Awardee or for the credit of the Awardee against any and all of the Obligations. RUS agrees to notify the Awardee promptly after any such setoff or recoupment and the application thereof; provided that the failure to give such notice shall not affect the validity of such setoff, recoupment or application. Awardee waives all rights of setoff, deduction, recoupment or counterclaim; and/or
- (g) RUS shall have, in addition to any other rights and remedies contained in this Agreement, and in any other agreements, guarantees, notes, mortgages, instruments, and documents heretofore, now, or at any time or times hereafter executed by the Awardee and delivered to RUS, all of the rights and remedies of a secured party under the Uniform Commercial Code in force in the state identified in the first paragraph hereof; as well as the state where the Collateral is located, as of the date hereof, all of which rights and remedies shall be cumulative, and nonexclusive.

## ARTICLE XII - MISCELLANEOUS

### Section 12.1 Notices

All notices, requests and other communications provided for herein including, without limitation, any modifications of, or waivers, requests or consents under, this Agreement shall be given or made in writing (including, without limitation, by telecopy) and delivered to the intended recipient at the "Address for Notices" specified below; or, as to any party, at such other address as shall be designated by such party in a notice to each other party. Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given when transmitted by telecopier or personally delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as provided for herein. The Addresses for Notices of the respective parties are as follows:

RUS Awardee  
Rural Utilities Service See Schedule 1  
United States Department of Agriculture  
1400 Independence Avenue, S.W.

Washington, D.C.20250-1510  
Attention: Administrator  
Fax: (202) 720-1725

With a copy to: With a copy to:  
Rural Utilities Service See Schedule 1  
United States Department of Agriculture  
1400 Independence Avenue, S.W.  
Stop 1599, Room No. 2868  
Washington, D.C. 20250-1599  
Attention: Kenneth Kuchno  
Fax: (202) 690-4389

**Section 12.2 Notices of Actions Against Collateral**

Any notice required to be given by RUS of a sale or other disposition or other intended action by RUS with respect to any of the Collateral, or otherwise, made in accordance with this Agreement at least five (5) days prior to such proposed action, shall constitute fair and reasonable notice to the Awardee of any such action.

**Section 12.3 Application of Proceeds**

Any proceeds or funds arising from the exercise of any rights or the enforcement of any remedies herein provided after the payment or provision for the payment of any and all costs and expenses in connection with the exercise of such rights or the enforcement of such remedies shall be applied first, to the payment of indebtedness hereby secured other than the principal of or interest on the Notes; second, to the ratable payment of interest which shall have accrued on the Notes and which shall be unpaid; third, to the ratable payment of or on account of the unpaid principal of the Notes, and the balance, if any, shall be paid to whosoever shall be entitled thereto.

**Section 12.4 Expenses**

To the extent allowed by law, the Awardee shall pay all costs and expenses of RUS, including reasonable fees of counsel, incurred in connection with the enforcement of the Loan-Grant Documents or with the preparation for such enforcement if RUS has reasonable grounds to believe that such enforcement may be necessary.

**Section 12.5 Late Payments**

If payment of any amount due hereunder is not received at the United States Treasury in Washington, DC, or such other location as RUS may designate to the Awardee within five (5) Business Days after the due date thereof or such other time period as RUS may prescribe from time to time in its policies of general application in connection with any late payment charge (such unpaid amount being herein called the "delinquent amount", and the period beginning after such due date until payment of the delinquent amount being herein called the "late-payment period"), the Awardee shall pay to RUS, in addition to all other amounts due under the terms of the Notes, the Mortgage and this Agreement, any late payment charge as may be fixed from time to time on the delinquent amount for the late-payment period by regulations adopted by RUS.

**Section 12.6 Filing Fees**

To the extent permitted by law, the Awardee agrees to pay all expenses of RUS (including the fees and expenses of its counsel) in connection with the filing or recordation of all financing statements and instruments as may be required by RUS in connection with this Agreement, including, without limitation, all documentary stamps, recordation and transfer taxes and other costs and taxes incident to recordation of any document or instrument in connection herewith. Awardee agrees to save harmless and indemnify RUS from and against any liability resulting from the failure to pay any required documentary stamps, recordation and transfer taxes, recording costs, or any other expenses incurred by RUS in connection with this Agreement. The provisions of this section shall survive the execution and delivery of this Agreement and the payment of all other amounts due hereunder or due on the Notes.

**Section 12.7 No Waiver**

No failure on the part of RUS to exercise, and no delay in exercising any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise by RUS of any right hereunder preclude any other or further exercise thereof or the exercise of any other right.

**Section 12.8 Governing Law**

This Agreement shall be governed by and construed in accordance with applicable federal law and, in the absence of controlling federal law, by the laws of the State identified in the first paragraph herein, except those that would render such choice of law ineffective.

**Section 12.9 Consent to Jurisdiction**

The Awardee hereby irrevocably submits to the jurisdiction of the U.S. District Court for the District of Columbia and the US Court of Appeals for the Federal Circuit (both the "DC Federal Courts") for any action or proceeding arising out of or relating to this Agreement, and hereby irrevocably agrees that all claims in respect of such action or proceeding shall be heard and determined in such federal courts. The Awardee irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to the Awardee's address set forth in Schedule 1. The Awardee hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Agreement brought in the DC Federal Courts and hereby further



irrevocably waives and agrees not to plead or claim in such court that any such action or proceeding brought in any such court has been brought in a *forum non conveniens*. Nothing herein shall affect the right of the Government to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against the Awardee in its own jurisdiction.

**Section 12.10 Waiver of Jury Trial**

EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, SECURED PARTY, OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**Section 12.11 Holiday Payments**

If any payment to be made by the Awardee hereunder shall become due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in computing any interest in respect of such payment.

**Section 12.12 Rescission**

The Awardee may elect to rescind the Award, in which event RUS shall release the Awardee from its obligations hereunder, provided the Awardee complies with such terms and conditions as RUS may impose for such release.

**Section 12.13 Successors and Assigns**

- (a) This Agreement shall be binding upon and inure to the benefit of the Awardee and RUS and their respective successors and assigns, except that the Awardee may not assign or transfer its rights or obligations hereunder without the prior written consent of RUS.
- (b) Pursuant to federal claims collection laws, RUS' claims hereunder may be transferred to other agencies of the United States of America; in the event of such a transfer, all rights and remedies hereby granted or conferred on RUS shall pass to and inure to the benefit of any such successor agency.

**Section 12.14 Complete Agreement; Waivers and Amendments**

Subject to RUS Regulations, this Agreement and the other Loan-Grant Documents are intended by the parties to be a complete and final expression of their agreement. However, RUS reserves

the right to waive its rights to compliance with any provision of this Agreement and the other Loan-Grant Documents. No amendment, modification, or waiver of any provision hereof or thereof, and no consent to any departure of the Awardee herefrom or therefrom, shall be effective unless approved in writing by RUS in the form of either a RUS Regulation or other writing signed by or on behalf of RUS, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

**Section 12.15 Headings**

The headings and sub-headings contained in the titling of this Agreement are intended to be used for convenience only and do not constitute part of this Agreement.

**Section 12.16 Severability**

If any term, provision, condition, or any part thereof, of this Agreement, Note(s) or the Security Documents shall for any reason be found or held invalid or unenforceable by any governmental agency or court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of such term, provision, or condition nor any other term, provision, or condition, and this Agreement, the Note(s), and the Security Documents shall survive and be construed as if such invalid or unenforceable term, provision or condition had not been contained therein.

**Section 12.17 Right of Setoff**

Upon the occurrence and during the continuance of any Event of Default, RUS is hereby authorized at any time and from time to time, without prior notice to the Awardee, to exercise rights of setoff or recoupment and apply any and all amounts held or hereafter held, by RUS or owed to the Awardee or for the credit or account of the Awardee against any and all of the obligations of the Awardee now or hereafter existing hereunder or under the Note(s). RUS agrees to notify the Awardee promptly after any such setoff or recoupment and the application thereof, provided that the failure to give such notice shall not affect the validity of such setoff, recoupment or application. The rights of RUS under this section are in addition to any other rights and remedies (including other rights of setoff or recoupment) which RUS may have. Awardee waives all rights of setoff, deduction, recoupment or counterclaim.

**Section 12.18 Schedules and Attachments**

Each Schedule and Attachment attached hereto and referred to herein is each an integral part of this Agreement.

**Section 12.19 Authority of Representatives of RUS**

In the case of any consent, approval or waiver from RUS that is required under this Agreement or any other Loan-Grant Document, such consent, approval or waiver must be in writing and signed by an authorized RUS representative to be effective. As used in this section, "authorized RUS representative" means the Administrator of RUS, and also means a person to whom the Administrator has officially delegated specific or general authority to take the action in question.

**Section 12.20 Prepayment of Loan**

In the event the Awardee prepays the entire Loan portion of the Loan within three (3) years from the date hereof, the Awardee shall, within thirty (30) days of making such prepayment, execute a standard grant agreement with the RUS.

**Section 12.22 Term**

This Agreement shall remain in effect until one of the following two events has occurred:

- (a) The Awardee and RUS replace this Agreement with another written agreement;
- (b) All of the Awardee's obligations under this Agreement have been discharged and paid.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

UNITED UTILITIES, INCORPORATED

by /s/ Steve Hamlen

Name: Steve Hamlen

Title: President & CEO

(Seal)

Attested to by: /s/ Bonnie J. Paskvan  
Secretary

UNITED STATES OF AMERICA

by /s/ Jonathan Adelstein

Administrator  
of the Rural Utilities Service

**SCHEDULE 1**

Article I Definitions

1. **Prior RUS Loan Contract: LOAN AGREEMENT dated as of November 2, 2007**
2. **RUS Mortgage: RESTATED MORTGAGE, SECURITY AGREEMENT AND FINANCIANG STATEMENT dated as of November 2, 2007**

Article II Representations and Warranties

1. **Paragraph (h) Awardee's principal place of business: 5450 A Street  
Anchorage, Alaska 99518**
2. **Paragraph (i) Awardee's Organization Number: 16696D**
3. **Paragraph (j) Awardee's Subsidiaries: United-KUC, Inc.**
4. **Paragraph (j) Awardee's Parent: GCI Communication Corp.**
5. Paragraph (n) Additional Representations and Warranties:

**The Awardee represents and warrants that it is primarily engaged in the business of transmitting communications electrically, electromagnetically, or by light.**

Article III The Loan

1. **Section 3.1(a) Loan amount: \$44,158,522**
2. **Section 3.1(b) Grant amount: \$43,982,240**

Article IV Conditions Precedent to Loan Closing

1. **The additional conditions referred to in Section 4.1(j) are as follows:  
None**

Conditions Precedent to Release of Funds

2. **Section 4.2(b) amount of fidelity bond coverage: \$13,221,114**
3. **Section 4.2(d) funds deposited for Project completion: None**
4. The additional conditions referred to in Section 4.2(e) are as follows:

**The obligations of RUS hereunder are subject to the satisfaction of the following additional conditions precedent:**

- a. **The Awardee has provided RUS with documentation of its consultation with its local U.S. Fish and Wildlife Services (USFWS) Ecological Services office (<http://www.fws.gov/offices>) with respect to the affect of the Project on any listed threatened or endangered species, candidate species or their critical habitat; and**
- b. **The consultation process referred to immediately above in paragraph (a) has concluded.**
- c. **RUS shall have received the following executed agreements, in form and substance satisfactory to RUS, which incorporate the fees and rates projected for each respective agreement in the Application:**
  - 1. **An agreement with GCI Communication Corporation for design and engineering, construction management, and other services;**
  - 2. **An agreement with GCI Communications Corporation for operation and maintenance of the Awardee's system outside the existing LEC service area;**
  - 3. **An agreement with GCI Communication Corporation for space and power in GCI Communication Corporations facilities.;**
  - 4. **An agreement with Unicom, Inc. for space and power in Unicom's existing facilities.**

Conditions Precedent to Individual Advances

- 5. Section 4.3(i) Required permits, licenses, franchise, and other approvals:  
**None**
- 6. The additional conditions to advance referred to in Section 4.3(k) are as follow:  
**None**
  - a. **No funds will be advanced for construction that disturbs ground or involves land clearing, until the Awardee has received written confirmation from RUS that the requirements of Section 106 of the National Historic Preservation Act (16 U.S.C. 4700 have been met in accordance with implementing regulations, "Protection of Historic Properties" (36 C.F.R. Part 800).**
  - b. **No funds will be advanced for the following sites until the Awardee provides evidence demonstrating ownership of the FCC Microwave license for the site: Caribou Ridge Repeater, Cone Mountain Repeater, Dillingham, Ekwok, Goodnews Bay, Koliganek, Kulukak Repeater, Levelock, Manokotak, Muklung Repeater, Naknek, New Stuyahok, and Platinum.**
  - c. **No funds will be advanced for the following sites until the Awardee provides evidence demonstrating the FCC Microwave license have been modified to add additional radio channels for the site: Akiak, Aniak, Askinuk Mountain, Bethel, Chefornak, Chuathbaluk, Eek, Kalskag Hill, Kipnuk, Kongiganak, Kwigillignok,**

Newtok, Pilcher Mountain, Quinhagak, Russian Mission, St. Marys NDB, Togiak, Tuluksak, Tuntutuliak, Ugchirnak Mountain.

- d. No funds will be advanced for the following sites until the Awardee provides evidence demonstrating the FCC has granted the cable landing license or the Awardee provides an attorney's opinion stating the licenses are not required: Homer, Iguigig, Iliamna, Kokhanok, Nondalton, Pedro Bay, Pile Bay, Port Alsworth, Fish Village, and Williamsport.

Article V Affirmative Covenants

1. Section 5.10 Composite Economic Life of RUS financed facilities: **24 years**
2. The additional affirmative covenants referred to in Section 5.21 are as follows: **None**

- a. **Within sixty (60) days from the date hereof, the Awardee shall provide Project construction plans to their local U.S. Fish and Wildlife Service (USFWS) Ecological Services office (<http://www.fws.gov/offices/>) to initiate the consultation process as to whether Project construction will affect any listed threatened or endangered species, candidate species or their critical habitat.**
- b. **Within sixty (60) days from the date hereof the Awardee shall provide all information necessary to the applicable organizations to complete the review and approval processes required by Section 106 of the National Historic Preservation Act (16 U.S.C. 470f), in accordance with implementing regulations, "Protection of Historic Properties" (36 C.F.R. 800), relating to construction that disturbs ground or involves land clearing.**
- c. **The Awardee shall insert the following language in all construction contracts:**

**If previously unidentified historic properties (that is, properties listed on or eligible for listing on the National Register of Historic Places) or unanticipated effects to historic properties are discovered during Project construction, the construction contractor shall immediately halt all activity within a one hundred (100) foot radius of the discovery, notify *United Utilities, Incorporated* and law enforcement of the discovery and implement interim measures to protect the discovery from further impact, especially looting and vandalism. Construction shall not resume within a 100 foot radius of the discovery until the construction contractor has received written instructions to proceed from *United Utilities, Incorporated*.**

- d. **Immediately upon receipt of notification from the construction contractor that a discovery of unidentified historic properties (properties listed or eligible for listing on the National Register of Historic Places) or unanticipated effects to historic properties are discovered during Project construction, the Awardee shall:**

- (i) **Inspect the construction site to determine the scope of the discovery and to ensure that construction activities have halted;**
- (ii) **Clearly mark the area of the discovery;**
- (iii) **Implement additional measures, as appropriate, to protect the discovery from further impact, especially looting and vandalism;**
- (iv) **Notify USDA Rural Utilities Service (RUS), Engineering and Environmental Staff, Federal Preservation Officer at 202-7209583; and**
- (v) **If the discovery contains human remains, comply with all applicable state laws, notify the State Historic Preservation Office(s) and any Indian Tribes or Hawaiian organizations which might be interested in the discovery.**

Article VII Negative Covenants

1. The additional negative restrictions on Distributions and Withdrawals referred to in Section 7.9(b) are as follows:  
**None**
2. The additional negative covenants referred to in Section 7.17 are as follows:
  - a. **The Awardee agrees not to start or proceed with any ground breaking construction activities relating to the Project prior to completing the consultation process required by the Endangered Species Act and referred to on this Schedule under Article IV, Paragraphs 5(a) and (b)**
  - b. **The Awardee agrees not to engage in construction activities which disturb ground or involves land clearing until the Awardee has received written confirmation from RUS that the requirements of Section 106 of the National Historic Preservation Act (16 U.S.C. 4700 have been met in accordance with implementing regulations, "Protection of Historic Properties" (36 C.F.R Part 800).**
  - c. **The Awardee agrees not to resume construction or authorize a construction contractor to resume construction within a 100 foot radius of a discovery of unidentified historic properties (properties listed or eligible for listing on the National Register of Historic Places) or unanticipated effects to historic properties until receipt of written notification from RUS that the requirements of the National Historic Preservation Act (16 U.S.C. 4700 have been met.**

Article XII Miscellaneous

1. Section 12.1 Awardee's address for purposes of notification:

**Greg Chapados  
Chairman  
United Utilities, Inc.  
5450 A Street**



**Anchorage, Alaska 99518**  
**Telephone: (907) 317-0090**

2. Section 12.1 Address for Awardee's notification copy: **same as above**

## SCHEDULE 2

### COLLATERAL

1. Collateral shall include the following:

All property, assets, rights, privileges, licenses and franchises of the Awardee of every kind and description, real, personal or mixed, tangible and intangible, of the kind or nature specifically mentioned herein, or any other kind or nature now owned or hereafter acquired or arising by the Awardee (by purchase, consolidation, merger, donation, construction, erection or in any other way) wherever located, including without limitation all or in part the following (hereinafter the "Collateral:")

#### I

All right, title, and interest of the Awardee in and to the Existing Facilities, buildings, plants, works, improvements, structures, estates, grants, franchises, easements, rights, privileges and properties, whether real, personal, or mixed, tangible or intangible, of every kind or description, now or hereafter owned, leased, constructed, or acquired by the Awardee, wherever located, and in and to all extensions, improvements, and additions thereto, including but not limited to all buildings, plants, works, structures, towers, antennas, fixtures, apparatus, materials, supplies, machinery, tools, implements, poles, posts, crossarms, conduits, ducts, lines, wires, cables, whether underground, overhead, or otherwise, exchanges, switches, including, without limitation, host and remote switches, desks, testboards, frames, racks, motors, generators, batteries, and other items of central office equipment, pay stations, protectors, instruments, connections and appliances, office furniture, equipment, and any and all other property of every kind, nature, and description, used, useful, or acquired for use by the Awardee in connection therewith;

#### II

All right, title, and interest of the Awardee in, to, and under any and all grants, privileges, rights of way and easements now owned, held, leased, enjoyed or exercised, or which may hereafter be owned, held, leased, acquired, enjoyed or exercised, by the Awardee for the purposes of, or in connection with, the construction or operation by, or on behalf of, the Awardee of its properties, facilities, systems, or businesses, whether underground, overhead, or otherwise, wherever located;

#### III

All right, title, and interest of the Awardee in, to, and under any and all licenses and permits (including without limitation those granted by the Federal Communications Commission ("FCC"), subject to the FCC's prior approval of any assignment or transfer of de jure or de facto control of such licenses), franchises, ordinances, and privileges, whether heretofore or hereafter granted, issued, or executed, to it or to its assignors by the Government, or by any state, county, township, municipality, village, or other political subdivision thereof, or by any agency, board, commission, or department of any of the foregoing, authorizing the construction, acquisition, or operation of the Awardee's properties, facilities, systems, or

businesses, insofar as the same may by law be assigned, granted, bargained, sold, conveyed, transferred, mortgaged, or pledged;

IV

All right, title, and interest of the Awardee in, to, and under all personal property and fixtures of every kind and nature, including without limitation all goods (such as inventory, equipment and any accessions thereto), instruments (such as promissory notes or chattel paper, electronic or otherwise), documents, accounts (such as deposit accounts or trust accounts pursuant hereto or to a loan agreement), letter-of-credit rights, investment property (such as certificated and uncertificated securities or security entitlements and accounts,) software, general intangibles (such as payment intangibles), supporting obligations, contract rights or rights to the payment of money, insurance claims, and proceeds (as such terms are presently and hereafter defined in the UCC; provided, however, that the term "instrument" shall be such term as defined in Article 9 of the UCC rather than Article 3);

V

All right, title, and interest of the Awardee in, to, and under any and all agreements, leases or contracts heretofore or hereafter executed by and between the Awardee and any person, firm, corporation, or other corporate entity relating to the Collateral (including contracts for the lease, occupancy, or sale of the Collateral, or any portion thereof);

VI

All right, title, and interest of the Awardee in, to, and under any and all books, records and correspondence relating to the Collateral, including, but not limited to, all records, ledgers, leases, computer and automatic machinery, software, programs, databases, disc or tape files, print-outs, batches, runs, and other electronically-prepared information indicating, summarizing, evidencing, or otherwise necessary or helpful in the collection or realization on the Collateral;

VII

Also, all right, title, and interest of the Awardee in, to, and under all other property, real or personal, tangible or intangible, of every kind, nature, and description, and wherever situated, now or hereafter owned or leased by the Awardee, it being the intention hereof that all such property now owned or leased but not specifically described herein, or acquired or held by the Awardee after the date hereof, shall be as fully embraced within and subjected to the lien hereof as if the same were now owned by the Awardee and were specifically described herein to the extent only, however, that the subjection of such property to the lien hereof shall not be contrary to law;

Together with all rents, income, revenues, proceeds, products, profits and benefits at any time derived, received, or had from any and all of the above-described property of the Awardee;

Provided, however, no automobiles, trucks, trailers, tractors or other vehicles (including without limitation aircraft or ships, if any) owned or used by the Awardee shall be included in the Collateral.

2. Additionally, property pledged as Collateral shall also include the following specifically described property, if any:  
**None**

**ATTACHMENT 1**

**BROADBAND INITIATIVES PROGRAM  
CONTRACTING, WORK ORDER AND ADVANCE PROCEDURES GUIDE**

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**Rural Development  
United States Department of Agriculture**

## **RURAL UTILITIES SERVICE**

**Broadband Initiatives Program  
Contracting, Work Order and  
Advance Procedures Guide**

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## GENERAL

This guide implements and explains the provisions of the loan and grant documents containing the requirements and procedures to be followed by an Awardee performing work to be financed with RUS Recovery funds. The Awardee shall maintain accounting and plant records sufficient to document the cost and location of all construction and to support fund advances and disbursements. The standard Loan and Grant Documents also contain provisions regarding advances and disbursement of broadband funds. This document also implements certain provisions by setting forth requirements and procedures to be followed by the Awardees in obtaining advances and making disbursements of funds.

## ABBREVIATIONS

For purpose of this guide:

*C.F.R.* stands for Code of Federal Regulations.

*FRS* stands for RUS Form 481, *Financial Requirement Statement*.

*GFR* stands for RUS general field representative.

*Pub. L.* stands for Public Law.

*U.S.C.* stands for United States Code.

## DEFINITIONS

For purposes of this guide:

*Advance* means transferring funds from RUS to the Awardee's deposit account.

*Architect* means a person registered as an architect in the state where construction is performed.

*Award* means any broadband award made by RUS.

*Award documents* mean the documents covering an award made by RUS, including the loan or grant agreement, note, and mortgage or other security documents between the Awardee and RUS.

*Award funds* means funds provided by RUS through an award.

*Awardee* means any organization that has received financing from RUS.

*Bid guarantee* means a bid bond or certified check required of contractors bidding on construction work to ensure that the bidder, if successful, will furnish a performance bond.

*Buy American Requirement* means the requirements as stated in the Recovery Act and any associated waivers.

*Broadband Service* means the minimum transmission rate as defined in the applicable NOFA for the Broadband Initiatives Program, under which the award was made.

*Closeout documents* mean the documents required to certify satisfactory completion of all obligations under a contract.

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*Contract* means the agreement between the Awardee and an independent contractor covering the purchase and/or installation of equipment or the construction of facilities to deliver broadband services for an Awardee's system.

*Contract work* means any work performed pursuant to an RUS form contract, or a Non-Standard Contract.

*Disbursement* means payment by the Awardee out of the deposit account for approved award purposes.

*Engineer* means a person registered as an engineer in the state where construction is performed, or a person on the Awardee's staff authorized by RUS to perform engineering services.

*In-house engineering* means any pre-loan or post-loan engineering services performed by the Awardee's staff.

*Interim work* means any work that commences after an application has been submitted to RUS, but prior to release of award funds.

*Non-Standard Contract* means a non-RUS form contract for specific work that is submitted by the Awardee, which must be approved by RUS before execution, if it is to be funded.

*Outside plant* means the part of the telecommunications network that is physically located outside of telecommunication buildings. This includes cable, conduits, poles and other supporting structures and certain other associated equipment items.

*Performance bond* means a surety bond in form satisfactory to RUS guaranteeing the contractor's faithful performance of a contract. (See 7 CFR Part 1788.)

*Plans and specifications* means a copy of the appropriate contract, the specifications, and such additional information and documents needed to provide a clear, accurate, and complete understanding of the work to be performed.

*Pledged Deposit account* means an account required by the award agreement into which all RUS funds are advanced.

*RUS* means the Rural Utilities Service; an agency of the United States Department of Agriculture and successor to the Rural Electrification Administration.

*RUS form contract* means contracts identified as a RUS form.

*Subcontract* means a secondary contract undertaking some of the obligations of a primary contract.

*System design* means the system described in the approved Application.

*Work* means any purchase of equipment, software and/or installation, if applicable; construction of facilities; or professional services.

*Work order* means any work performed by the Awardee's employees, pursuant to its work order procedure, with the Awardee furnishing all materials, equipment, tools, and transportation.

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## CONTRACTING PROCEDURES

### I GENERAL

All work must conform to the Application, as approved by RUS, and shall be covered by an Environmental Report prepared in accordance with 7 CFR Part 1794 and approved by RUS. No construction and/or installation activities shall commence until all necessary local, state and federal requirements have been satisfied.

All work performed prior to the submission of an application to RUS will not be eligible for financing. In addition, only new materials and equipment may be financed with award funds, unless otherwise approved in writing by RUS.

#### A. Interim Work

Once RUS has received an application, the applicant may proceed with interim work. However, this should not be construed as a commitment that RUS will approve the application. To ensure that interim work is eligible for reimbursement with award funds, the Awardee must comply with all the procedures in this Guide, including the following requirements:

- (1) Equal employment opportunity requirements in RUS Bulletin 320-15;  
and
- (2) Environmental requirements contained in 7 CFR  
1794;

#### B. Non-Standard Contracts

The Awardee may choose to use a Non-Standard contract to perform work. The Non-Standard Contract must include a provision that it will not be binding on the parties, until administrative approval by RUS has been granted. RUS will not approve use of the Non-Standard Contract if, in RUS' judgment:

- (1) The contract is for work not covered in the approved Application, or is not for an Eligible Purpose;
- (2) The contract terms and conditions, are vague, inadequate, or unreasonable;  
or
- (3) The contract presents unacceptable loan security risk to RUS.

#### C. Contract Amendments

The Awardee shall obtain RUS approval before execution of any amendment to an approved contract if:

- (1) The amendment alters the terms and conditions of the contract or changes the scope of the project covered by the contract regardless of the amount of the contract before amendment;
  - (2) The amendment by itself (or together with preceding amendments) increases the original contract price by 20% or more. In this case, a bond extension will be required to bring the penal sum of the bond to the total amended contract price; or
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- (3) The amendment causes an unbonded contract to require a contractor's performance bond. This would occur when an amendment increases the contract price to an amount requiring a performance bond per 7 CFR Part 1788, Subpart C.

Once RUS approval to amend the contract has been granted, or for any other contract amendments not requiring approval, the Awardee must submit an original executed amendment to RUS.

D. Insurance

A performance bond is required for construction of facilities exceeding \$250,000, as indicated in 7 CFR Part 1788, Subpart C, or certain significant installation, as outlined in the Agency's memorandum found at [http://www.usda.gov/rus/telecom/publications/pdf\\_files/Contractors-BondRequirement7-28-09.pdf](http://www.usda.gov/rus/telecom/publications/pdf_files/Contractors-BondRequirement7-28-09.pdf).

The Awardee is responsible for ensuring that its contractor and engineer comply with all the insurance and bond requirements of 7 CFR Part 1788, Subpart C.

E. Title  
Clearance

For any building construction over \$250,000, the Awardee shall provide title evidence satisfactory to RUS, prior to releasing the invitations to bid.

F. Software  
License

As part of an equipment purchase, the original equipment manufacturer may require that the Awardee enter into a software license agreement for the use of the equipment. The Awardee may use RUS Form 390, *Software License Agreement—Special Equipment Contract*, or a Non- Standard Contract.

G. Buy  
American

All iron, steel, or manufactured goods that are purchased with Recovery Act funds by state or local governments, or an instrumentality thereof, which are not included in the Agency's waiver covering Broadband Switching Equipment, Broadband Routing Equipment, Broadband Transport Equipment, Broadband Access Equipment, Broadband Customer Premises Equipment and End- User Devices, or Billing/Operations Systems, shall be subject to the Buy American provision of the Recovery Act, unless a waiver is requested from the RUS. For further details see 74 Fed. Reg. 31402.

H. Davis-Bacon  
Act

The Awardee shall comply with The Davis-Bacon Act, and the guidance found at 29 C.F.R. pts. 1, 3, and 5, such that any covered contract with a contractor or subcontractor in excess of \$2,000 for construction, alteration or repair (including painting and decorating) shall contain the contract clauses found in 29 C.F.R. 5.5(a), to ensure that all laborers and mechanics employed on the Project receive payment of not less than the prevailing wage.

I. Affiliated  
Transactions

With regard to the Project, the Awardee shall not enter into any transaction, contract, or dealing with an Affiliate of the Awardee or with the Awardee's or Affiliate's directors, trustees, officers, managers, members (if the Awardee is a limited liability company), or other corporate officials, without the prior written consent of RUS. RUS' consent to advance award funds for affiliated transactions will be limited to an amount which is the lower of cost or market rate and which is

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subject to verification by RUS and its representatives having access to the books and records of the Affiliate.

As defined in the appropriate award document, "Affiliate" or "Affiliated Company" of any specified person or entity means any other person or entity directly or indirectly controlling of, controlled by, under direct or indirect common control with, or related to, such specified person or entity, or which exists for the sole purpose of providing any service to one company or exclusively to companies which otherwise meet the definition of affiliate. This definition includes Variable Interest Entities as described in Financial Accounting Standards Board Interpretation (FIN) No. 46(R), *Consolidation of Variable Interest Entities*. For the purpose of this definition, "control" means the possession directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, whether such power is exercised through one or more intermediary companies, or alone, or in conjunction with, or pursuant to an agreement with, one or more other companies, and whether such power is established through a majority or minority ownership voting of securities, common directors, officers, or stockholders, voting trust, holding trusts (other than money exchanged) for property or services.

J. Records

Records supporting all assets financed by RUS shall be retained until audited and approved by RUS.

Records must be sufficient to document the cost and location of all expenditures and to support advances and disbursement of award funds. The support records must include, but not be limited to, contracts, third party invoices, timesheets, payroll records, material records, and overhead allocation records and summary schedules

Records related to plant in service must be retained until the facilities are permanently removed from utility service, all removal and restoration activities are completed, and all costs are retired from the accounting records unless accounting adjustments resulting from reclassification and original costs studies have been approved by RUS or other regulatory body having jurisdiction.

Life and mortality study data for depreciation purposes must be retained for 25 years or for 10 years after plant is retired, whichever is longer.

II PROFESSIONAL SERVICES

General

Awardees shall only obtain professional services from persons or firms not affiliated with, or that do not represent a contractor, vendor or manufacturer presently providing labor, materials, or equipment to the Awardee. This does not include in-house services.

A. Engineering Services

All engineering services required by an Awardee, including inspection and certification, shall be rendered by an engineer selected by the Awardee and licensed in the State where the facilities will be located, or by qualified employees on the Awardee's staff, who after submission of qualifications to RUS, have been approved to perform such services.

- (1) *Outside Consultant.* Engineering services performed by an outside consultant may be covered under RUS Form 217, *Postloan Engineering Services Contract - Telecommunications*, RUS Form 245, *Engineering Service Contract — Special Services*, or a Non-Standard Contract.
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(2) *In-House Engineering.* When the proposed work is such that the engineering involved is within the capabilities of the employees on the Awardee's staff, Awardees may request RUS approval to provide such services. The request shall include:

(i) A description of services to be performed;

(ii) The names and qualifications of each employee that will be performing the specific services. In addition, the Awardee shall identify an employee who will be in charge of the services. Such employee must meet the State experience requirements for a registered engineer in the State where facilities will be located. In the absence of specific State experience requirements, this employee should have at least eight years experience in the design and construction of telecommunication facilities, with at least two years of the work experience at a supervisory level. RUS does not require professional registration of this employee, but this does not relieve the Awardee from compliance with applicable state registration requirements, which may require a licensed individual to perform such services; and

(iii) A letter signed by an authorized representative of the Awardee requesting in-house engineering approval and certifying the supporting information.

RUS shall notify the Awardee by letter of approval or disapproval to perform in-house engineering. The letter shall set forth any conditions associated with an approval or the reasons for disapproval. RUS approval of in-house engineering services shall be only for the specific services covered by the approval.

B. Architectural Services

The Awardee shall select an architect licensed in the state where the facility will be located. The borrower may use either RUS Form 220 or RUS Form 217 when contracting for architectural services, or a Non-Standard Contract.

C. Contract and Closeout Documents

The Awardee must submit three executed copies of the RUS form contract or the approved Non- Standard Contract, covering the professional services to be provided, for final administrative approval. Once all services and obligations required under the professional services contract have been completed, Awardees shall submit two copies of RUS Form 288, *Final Statement of Architect's Fees* and/or RUS Form 506, *Final Statement of Engineering Fees*, to close out the specific RUS Form contract. Awardees using Non-Standard Contracts should provide a similar certification for Non-Standard Contracts.

III PURCHASE AND INSTALLATION OF EQUIPMENT

General

When purchasing any equipment, including installation, that costs more than \$100,000, the Awardee must use a contract for the purchase. Any equipment purchases for less than \$100,000, including installation, can be purchased under a purchase order and reimbursed after submission of the invoices along with an RUS Form 771a, following the inspection and reimbursement procedures under Work Order procedures.

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A. Equipment Purchased with Contract

Awardee may use RUS Form 397, *Special Equipment Contract (Including Installation)*, RUS Form 398, *Special Equipment Contract (Not Including Installation)*, or a Non-Standard Contract.

The engineer shall prepare the performance requirements, including any installation requirements, if applicable, prior to releasing them along with the respective contract to prospective vendors. The Awardee may purchase equipment using a negotiated purchase, although RUS recommends that the Awardee obtain quotes from at least three different vendors.

Equipment purchased under RUS Form 398 or a Non-Standard Contract that does not include installation, may be installed by the Awardee using the Work Order method or RUS Form 773, as outlined in the Work Order procedures below.

B. Contract and Closeout Documents

Once a vendor has been selected, the Awardee must submit three executed copies of the RUS form contract or the approved Non-Standard Contract, including the non-standard performance requirements covering the equipment to be provided, for final administrative approval. Once all equipment purchased under the contract has been installed, and tested, and meets the performance requirements, the Awardee shall proceed with the closeout of the contract and submit a final contract closeout certification on RUS Form 756 or a similar certification for Non-Standard Contracts.

IV CONSTRUCTION OF FACILITIES

General

Construction for outside plant facilities, building, and towers may be performed using the work order method or by an outside contractor. When using an outside contractor, either RUS Contract Forms 773, 257, or 515, or a Non-Standard contract may be used.

A. Outside Contractor

If using a standard RUS Contract Form, the Awardee shall use the form without modifications, and attach any diagrams, sketches, and tabulations necessary to specify clearly the work to be performed and who shall provide which materials.

The engineer shall prepare the construction specifications prior to releasing them along with the respective contract to prospective contractors. RUS recommends that Awardees obtain quotes from several contractors before entering into a contract to ensure obtaining the lowest cost. The Awardee shall ensure that the contractor selected meets all federal, state, and local licensing requirements, as well as bonding requirements, and that the contractor maintains the insurance coverage required by the contract for the duration of the work. (See 7 C.F.R. Part 1788.)

Once a contractor has been selected, the Awardee must submit three executed copies of the RUS form contract (except RUS Form 773, which shall follow the procedures below) or the approved Non-Standard Contract, including the construction specifications for the work to be performed, for final administrative approval. Once construction has been completed per the construction specifications and all acceptance tests have been made, the Awardee shall proceed with the closeout of the contract and submit a final contract closeout certification on RUS Form 756 or a similar certification for Non-Standard Contracts.

B. Work Order Procedures

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Work order construction shall be performed to all local, state, and Federal requirements. As work order construction is performed, the Awardee shall keep daily timesheets and material reports, referenced by the work project number, to record labor and materials used. Cost accounting system must be in place to meet the requirements of 7 CFR 3015 (including 48 CFR 31.2), 3016, 3019 as applicable, to show the source and summary records to support requested and expended funds.

- (1) Inspection and Certification. Upon completion and prior to closeout, the Awardee shall obtain the engineer's certification on RUS Form 771a for all construction completed using RUS Form 773 or the work order method. An authorized official of the Awardee shall execute the Awardee's certification.
  - (2) Reimbursement. To request funds for construction completed under the work order construction procedures or RUS Form 773 contract construction procedures, the Awardee shall submit RUS Form 771a, initialed by the GFR, along with a description of each project, as well RUS Form 481, *Financial Requirement Statement* (FRS). RUS Form 771a should be submitted only with the FRS that it supports. Unless otherwise approved by RUS, the Awardee shall finance all work order and RUS Form 773 contract construction with non-loan funds and obtain reimbursement with RUS funds when construction is completed and properly executed closeout documents have been submitted to RUS.
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VADVANCE AND DISBURSEMENT OF FUNDS

General

The award document contains the provisions regarding advances and disbursement of funds to the Awardee. This section implements certain provisions by setting forth requirements and procedures to be followed by the Awardee in obtaining advances and making withdrawals/disbursements of funds.

RUS is under no obligation to make or approve advances of funds unless the Awardee complies with all terms and conditions of the award documents.

A. Broadband Budget

The Awardee will be provided a broadband budget, based on the approved Application. This budget divides the award into budget categories that are associated with the proposed projects, such as equipment, outside plant, land and buildings, professional services, etc. Funds from one budget category may not be used for a different budget category without prior written approval from RUS.

B. Budget Adjustments

If more funds are required than are available in a budget category, the Awardee may request RUS' approval of a budget adjustment to use funds from another budget category. The request shall include an explanation as to why the adjustment is needed and the affected budget categories. RUS will not approve a budget adjustment unless the Awardee can demonstrate that all purposes can still be completed with the requested adjustment. RUS, at its discretion, may make a budget adjustment without a formal request to encumber funds for a contract, when funds within the budget category are insufficient, and when it determines that the budget adjustment is insignificant.

C. Pledged Deposit Account

The Awardee shall establish and maintain a pledged deposit account to hold all Advances deposited by the Agency. The pledged deposit account shall only be established in a bank or depository whose deposits are insured by the FDIC or other federal agency acceptable to RUS. Funds in the pledged deposit account shall be used solely for the purpose approved in the Application and shall be withdrawn/disbursed for the approved purpose for which they were requested in the financial requirement statement. All Advances will be deposited into the pledged deposit account by electronic transfer.

RUS may require that other funds be deposited into the pledged deposit account. These may include equity or general fund contributions to construction, proceeds from the sale of property, interest received on award funds and similar types of receipts. Deposit slips for any deposits to the pledged deposit account shall show the source and amount of funds deposited and be executed by an authorized representative of the bank. The disbursement of non-award funds deposited into the pledged deposit account requires the same RUS approval as Advances on the award.

For accounting purposes, all withdrawals/disbursements from the Pledged Deposit Account must be evidenced by canceled checks or support for other forms of payment. Disbursements to reimburse the Awardee's general fund account shall be documented by a reimbursement schedule to be retained in the Awardee's records that lists the pledged deposit account check number, date, and an explanation of amounts reimbursed for the Project.

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D. Financial Requirement Statement (FRS)

To request Advances the Awardee must submit RUS Form 481, *Financial Requirement Statement* ("FRS"), a description of the Advances desired, and other related information to the transactions as required by RUS.

The Awardee must request funds in the first Advance to repay any interim financing indebtedness, as well as other approved pre-application expenses. RUS may not make further Advances until the Awardee has submitted evidence, in form and substance satisfactory to RUS, that: (1) any indebtedness created by the interim financing and any liens associated therewith have been fully discharged of record; and (2) the Awardee has satisfied all other conditions on the advance of additional loan funds.

If the source of funds for interim financing is the Awardee's internally generated funds, the Awardee may request reimbursement of those funds along with Advances for other purposes on the first FRS submitted to RUS.

The Awardee shall, request advances as needed to meet its obligations promptly. Generally, RUS does not approve an advance requested more than 30 days before the obligation is payable.

Funds must be disbursed for the item for which they were advanced except in the following circumstance. If the Awardee needs to pay an invoice which has been approved on an FRS for which funds have not been advanced, and disbursement of advanced funds for another item has been delayed, the latter funds may be disbursed to pay the due and owing invoice up to the amount approved for such item on the FRS. The Awardee shall make entries on the next FRS showing the changes under "Total Advances to Date" and shall explain the changes in writing before RUS will process the next FRS.

The certification on each of the three copies of the FRS sent to RUS shall be signed by a corporate officer or manager authorized to sign such statements. RUS Form 675, *Certificate of Authority*, shall be submitted to RUS indicating the names of all persons authorized to sign a FRS. RUS will not process a FRS signed by an individual whose name is not included on the most recent Form 675.

Funds other than award funds that are deposited in the pledged deposit account are reported as a . credit under total disbursements. Disbursements of these funds are subject to the same RUS approvals as RUS funds.

The documentation required for audit of FRS transactions, include but are not limited to deposit slips for the pledged deposit account, all cancelled pledged deposit account checks and the supporting third party invoices, timesheets, payroll records, accounts payable records, general ledger, etc., and/or reimbursement schedules. These shall be kept in the Awardee's files for periodic audits by RUS.

The FRS shall be the primary method used by the Awardee to record and control transactions in the deposit account. Approved contracts and other items are shown on the FRS under "Approved Purposes." Funds are approved for advance as follows:

(1) Contracts/Work Orders

- (a) *Equipment Contracts*: Ninety percent of the approved contract amount, including amendments, with the final 10 percent available when RUS approves the contract closeout certification.
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- (b) *Construction contracts*: Ninety-five percent of the approved contract amount, including amendments, with the final 5 percent available when RUS approves the contract closeout certification.
- (c) *Work orders*: The amount shown on the RUS form 771a that RUS determines to be eligible for reimbursement.

(2) Pre-Application Expenses and Engineering

- (a) *Pre-Application expenses*: Based on the final itemized invoice from the person(s) or firm(s) that provide services to complete the Application, engineering, and accounting, as approved by RUS.
- (b) *Post-loan engineering contracts*: Ninety-five percent of the amount of the RUS approved engineering contract, with the final 5 percent available when RUS approves the final statement of engineering/architectural fees.
- (c) *In-house engineering*: One hundred percent of the amount approved by RUS.

(3) Operating Equipment

Office equipment, vehicles, and work equipment will be reimbursed based on copies of invoices.

E. Temporary Excess Construction Funds

When unanticipated events delay the Awardee's disbursement of advanced funds, the funds may be used for other approved purposes as described above or must remain in the pledged deposit account. If the pledged deposit account is an interest bearing account, all interest earned must remain in the pledged deposit account and cannot be disbursed without RUS approval.

F. Method of Advancing Funds

The first or subsequent advances may be conditioned on the satisfaction of certain requirements stated in the Awardee's agreement with RUS.

All advances shall be made electronically using the Automatic Clearing House (ACH). Normally, for advance of funds ACH only makes one payment per FRS.

The following information shall be included with each advance:

- (1) Name and address of Awardee's bank. If the Awardee's bank is not a member of the Federal Reserve System, the name and address of its correspondent bank that is a member of the Federal Reserve System;
  - (2) ACH routing information;
  - (3) Awardee's bank account title and number; and
  - (4) Any other necessary identifying information.
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## ATTACHMENT 2

### EQUAL OPPORTUNITY CONTRACT PROVISIONS

During the performance of this contract, the contractor agrees as follows:

- (a) The contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.
  - (b) The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, or national origin.
  - (c) The contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or worker's representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous place available to employees and applicants for employment.
  - (d) The contractor shall comply with all provisions of Executive Order 11246 of September 24, 1965 and of the rules, regulations, and relevant orders of the Secretary of Labor.
  - (e) The contractor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965 and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulation, and orders.
  - (f) In the event of the contractor's non-compliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or part by the Government, and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with the procedure authorized in Executive Order 11246 of September 14, 1965, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
  - (g) The contractor shall include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246, dated September 24, 1965, so that such provisions shall be binding upon each subcontractor or vendor. The contractor shall take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for non-compliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
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## PROMISSORY NOTE

ALASKA 1102-A40

Anchorage, Alaska

THIS PROMISSORY NOTE (hereinafter the "Note,") dated as of June 1, 2010, is made by **UNITED UTILITIES, INC.** (hereinafter the "Borrower,") a corporation duly organized and existing under the laws of the State of Alaska, to the **UNITED STATES OF AMERICA**, (hereinafter the "Government,") acting through the Administrator of the Rural Utilities Service ("RUS.") For value received, the Borrower promises to pay to the order of the Government, at the United States Treasury, Washington, D.C., Forty Four Million One Hundred Fifty Eight Thousand Five Hundred Twenty Two Dollars (\$44,158,522), with interest payable, from the date of each advance, on the amount advanced by the Government (hereinafter the "Advance,") pursuant to a certain Loan/Grant and Security Agreement, dated the same date as this Note (hereinafter the "Loan/Grant Agreement,") made by and between the Borrower and the Government, and remaining unpaid from time to time, in the time and manner herein provided:

1. Interest Rate. Interest on each Advance shall be at rate(s) per annum, published by the Secretary of the Treasury, which shall be equal to the cost of borrowing of the Department of Treasury for obligations, as determined by the Government, of comparable maturity (hereinafter the "Cost-of-Money Interest Rate.")
2. Maturity Date. On a date Twenty Four (24) years after the date hereof, the principal hereof advanced pursuant to the Loan/Grant Agreement and remaining unpaid, if any, and interest thereon, shall be due and payable (hereinafter the "Maturity Date.")
3. Fund Advance Period. Funds will be advanced pursuant to the Loan/Grant Agreement. The fund advance period for this Note begins on the date hereof and terminates three (3) years from the date of this Note (hereinafter the "Termination Date.") No funds will be advanced subsequent to the Termination Date.

4. Payments on Advances.

- (a) *Made Within One (1) Year.* Interest on Advances made during the first year from the date of the first Advance hereunder, and remaining unpaid, shall be payable on the last day of each month (hereinafter the “Monthly Payment Date,”) beginning on the last day of the month following the month of each Advance for the period ending one (1) year from the date of the first Advance hereunder. Thereafter, to and including the Maturity Date, the Borrower shall make a payment every Monthly Payment Date on each Advance made during such period which shall be: (i) substantially equal to all subsequent monthly payments and (ii) in an amount that will pay all principal and interest due on each Advance no later than the Maturity Date.
- (b) *Made After One (1) Year.* Interest and principal payments on Advances made more than one (1) year after the date of the first Advance hereunder shall be repaid in installments beginning with the Monthly Payment Date of the month following each Advance and ending on the Maturity Date. The first such payment on an Advance shall be increased by the amount of interest accruing between the date of the Advance and the first day of the next month. Thereafter, to and including the Maturity Date, the Borrower shall make a payment every Monthly Payment Date on each Advance (i) substantially equal to every other monthly payment on such Advance, and (ii) in an amount that will pay all principal and interest of each Advance no later than the Maturity Date. This payment shall be in addition to the payment on the Advances made within one (1) year from the date of the first Advance hereunder and remaining unpaid.

5. Application of Payments. Each payment made on this Note shall be applied as follows: First, to expenses, costs and penalties; Second, to late charges; Third, to the payment of interest on principal; and Fourth, to principal.

6. Prepayment. All, or a portion of the outstanding balance, of any Advance may be prepaid on any payment date, as herein provided. However, so long as any of the principal advanced pursuant to the Loan/Grant Agreement shall remain unpaid, the Borrower shall be obligated to make the monthly payment on account of principal and interest, in the amount provided herein, unless the Borrower and the Government shall otherwise agree, in writing.

7. Late Payments. A late charge shall be charged on any payment not made within five (5) days of the date the payment becomes due. The late charge rate shall be computed on the payment from the due date at a rate equal to the rate of the cost of funds to the United States Treasury as prescribed and published by the Secretary of the Treasury. In addition, the Borrower shall pay administrative costs and penalty charges assessed in accordance with applicable Government regulations. Acceptance by the Government of a late payment shall not be deemed to be a waiver of any right or remedy of the Government.
8. Security. This Note is secured by a security interest in collateral described in the Loan/Grant Agreement as such agreement may be amended, supplemented, consolidated or restated from time to time. Rights and obligations with respect to the collateral are stated herein.
9. Noteholder. This Note evidences indebtedness created by a loan made pursuant to the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, 123 Stat. 115 (2009), the Notice of Funds Availability published at 74 Fed. Reg. 33104 and Title VI of the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*) The Government shall be and shall have all rights as holder of this Note.
10. Default. In an event of default, as provided in the Loan/Grant Agreement, all principal advanced pursuant to the Loan/Grant Agreement and remaining unpaid on this Note, and all interest thereon may be declared or may become due and payable in the manner and with the effect provided in the Loan/Grant Agreement.
11. Costs. The Borrower shall pay any and all costs and expenses incurred in connection with the exercise of rights or the enforcement of remedies, as set forth in the Loan/Grant Agreement.
12. Waivers. The Borrower waives demand, presentment for payment, notice of non-payment, notice of dishonor, protest, and notice of non-payment of this Note.
13. Obligations. The obligations hereunder of the Borrower on this Note are absolute and unconditional, irrespective of any defense or any right to set off, recoupment, or counterclaim it might otherwise have against the Government.

IN WITNESS WHEREOF, the Borrower has caused this Note to be signed in its corporate or legal name and its corporate seal, if any, to be hereunto affixed and attested by its officers thereunto duly authorized, all as of the day and year first above written.

UNITED UTILITIES, INC.

by /s/ Steve Hamlen

Name: Steve Hamlen

(SEAL) Title: President & CEO

Attested to by: /s/ Bonnie J. Paskvan

**SECTION 302 CERTIFICATION**

I, Ronald A. Duncan, certify that:

1. I have reviewed this quarterly report on Form 10-Q of General Communication, Inc. for the period ended September 30, 2013;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 7, 2013

/s/ Ronald A. Duncan

Ronald A. Duncan  
President and Director



**SECTION 302 CERTIFICATION**

I, John M. Lowber, certify that:

1. I have reviewed this quarterly report on Form 10-Q of General Communication, Inc. for the period ended September 30, 2013;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 7, 2013

/s/ John M. Lowber

John M. Lowber

Senior Vice President, Chief Financial Officer, and Treasurer

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of General Communication, Inc. (the "Company") on Form 10-Q for the period ended September 30, 2013 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Ronald A. Duncan, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

Date: November 7, 2013

/s/ Ronald A. Duncan

Ronald A. Duncan

Chief Executive Officer

General Communication, Inc.

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of General Communication, Inc. (the "Company") on Form 10-Q for the period ended September 30, 2013 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, John M. Lowber, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

Date: November 7, 2013

/s/ John M. Lowber

John M. Lowber

Chief Financial Officer

General Communication, Inc.