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September 29, 2000

*BY FEDERAL EXPRESS*

Florida Public Service Commission  
Division of Records and Reporting  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

001518-TI

**RE: Notification of Zone Telecom, Inc., of Its Intent to Acquire Selected Assets of The Furst Group, Inc. (and Request, as Necessary, for Waiver of Rules or Statutes Governing Changes in Presubscribed Carriers)**

Zone Telecom, Inc. ("Zone") and The Furst Group, Inc. ("TFG") hereby jointly notify the Florida Public Service Commission of a proposed assignment of selected assets from TFG to Zone. 1/ Please date-stamp the enclosed additional copy of this letter and return it in the self-addressed, prepaid envelope provided.

TFG is an authorized reseller of intrastate interexchange telecommunications services in Florida. Zone is concurrently filing with the Commission today a request for authority to provide non-dominant facilities-based and resold intrastate interexchange services in the State of Florida ("Certification Application"), thereby enabling Zone to serve the customers of TFG following its acquisition of the assets that are the subject of this notification. 2/

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1/ We are filing this notification pursuant to the oral instructions of Staff dated September 27, 2000. We understand from our conversation with Staff that no other application or filing with the Commission is required in connection with the proposed transfer of assets from TFG to Zone.

2/ Specifically, Zone has submitted an "Application Form for Authority to Provide Interexchange Telecommunications Service Between Points Within

BRUSSELS LONDON PARIS\* BUDAPEST\* PRAGUE\* WARSAW MOSCOW TC  
NEW YORK BALTIMORE McLEAN MIAMI DENVER BOULDER COLORADO SPRINGS

\*Affiliated Office

DOCUMENT NUMBER-DATE

12470 OCT-28

FPSC-RECORDS/REPORTING

As discussed below, Zone has already obtained a waiver from the Federal Communications Commission's ("FCC's") presubscribed carrier letter of authorization ("LOA") rules for the transfer of customers that will take place as part of the asset transfer from TFG to Zone. To the extent this Commission's LOA rules and statutes (e.g., 25 FL ADC § 25-4.118) apply to this asset transfer, Zone and TFG respectfully request a variance or waiver of those rules and statutes in order to facilitate the timely consummation of the proposed transaction. Zone and TFG will, as detailed below and in compliance with FCC requirements, provide customers assigned from TFG to Zone with timely notice of the change.

### **Zone Telecom**

Zone is a Delaware corporation whose principal office and place of business is located at 279 Harvard Street, Suite 21, Cambridge, Massachusetts 02139. Zone is an indirect wholly owned subsidiary of e-Kong Group Limited ("e-Kong Group"), a widely held Bermuda corporation whose stock is listed on the Hong Kong Stock Exchange. The only individual or entity holding more than ten percent of the issued and outstanding stock of e-Kong Group is Goldtron Limited, a Singapore corporation, which has an 11.12 percent non-controlling voting stock interest. e-Kong Group's principal office and place of business is located at Suite 2101-3, K. Wah Centre, 191 Java Road, North Point, Hong Kong.

e-Kong Group is a prominent Hong Kong-based Internet company with operations throughout Asia. In Hong Kong, e-Kong Group is engaged in the telephone business as a reseller through its operation of a unique scalable and portable service portal that provides customers with access to a wide range of international long distance carriers at a single source, thereby enabling users to select the most competitive prices for their calls. e-Kong Group has approximately 320 employees world-wide.

### **Description of the Assignment of Selected Assets from TFG to Zone**

Pursuant to an Asset Purchase Agreement between Zone and TFG and their respective corporate parents dated August 4, 2000 (the "Agreement"), Zone plans to acquire certain assets of TFG used in connection

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the State of Florida" along with the appropriate filing fee and supporting documentation.

with the provision of resold retail and wholesale interLATA (and, in certain instances, intraLATA) long distance services to residential and business customers in the State of Florida. 3/ The transaction is expected to close soon. The customers associated with these services (the "Assigned Customers") also will be assigned to Zone. The consideration to be paid by Zone in exchange for the TFG assets will be in the form of: (1) cash and shares of stock in e-Kong Group, and (2) the assumption by Zone of certain preexisting liabilities of TFG.

Upon obtaining the authority requested in the concurrently filed Certification Application, Zone will, to the extent applicable, submit a tariff incorporating and mirroring the provisions of the tariffs now in effect for TFG.

In compliance with FCC requirements, TFG and Zone will provide the Assigned Customers with timely notice stating that: (1) a carrier change is taking place, (2) the carrier change will not result in any charges to the customer, and (3) the customer has the right to change the customer's presubscribed long distance carrier if desired; and providing (4) a toll free number for questions. Zone and TFG have secured a waiver from the FCC's presubscribed carrier LOA rules. 4/ (Such waivers are routinely granted when, as here, lines of business are being sold.) To the extent any of Florida's LOA (anti-slamming) regulations (e.g., 25 FL ADC § 25-4.118) apply, Zone and TFG also hereby request a variance or waiver thereof in order to facilitate the timely consummation of the proposed transaction.

### **The Transaction is in the Public Interest**

The proposed transfer of assets will facilitate competition in the provision of a variety of telecommunications services in Florida. The transfer of assets and the services Zone will provide also will serve the public interest

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3/ A copy of the Asset Purchase Agreement between Zone and TFG is attached hereto as Exhibit A.

4/ The FCC granted the Applicants' Emergency Petition for Wavier of the Subscriber Change Provisions of the Telecommunications Act of 1996 and the FCC's Rules (filed August 7, 2000) and supplement thereto (filed August 9, 2000) on September 1, 2000. Copies of the FCC order granting the Petition, the Petition, and the Supplement to the Petition are attached to this letter as Exhibit B.

by contributing to the full utilization of existing interexchange telecommunications plant and by providing cost effective rates for interexchange telecommunications services. As explained above, Zone's corporate parent, e-Kong Group, is a leader in the development and deployment of innovative competitive telecommunications services that aim, above all, to provide customers with flexibility and choice. Zone will be guided by the same principles as it enters the telecommunications marketplace in Florida. Also, as demonstrated in the concurrently filed Certification Application and supporting documentation, Zone possesses the requisite managerial, technical and financial qualifications to acquire and hold the assets to be assigned from TFG.

By virtue of its affiliation with e-Kong Group, Zone is well qualified to provide reliable competitive telecommunications services to residential and business customers in Florida. Zone's management will bring to bear the expertise of its parent company in the provision of efficient, innovative and reliable telecommunications services throughout Florida.

For service, billing and repair inquiries, customers will be able to contact Zone representatives 24 hours a day, seven days a week, at 1-800-233-4736 and 1-800-626-4736, or by writing to Zone Telecom, Inc., Customer Service Division, 459 Oakshade Road, Shamong, NJ 08088.

Zone hereby agrees to abide by all applicable statutes, orders, rules and regulations adopted by the Commission governing the provision of telecommunications services by Zone. Because Zone will be a non-dominant, competitive provider of telecommunications services in Florida, it respectfully requests, to the extent applicable, that it be subject to the same streamlined regulatory treatment afforded other competitive carriers in Florida.

**Conclusion**

For these reasons, the assignment of assets from TFG to Zone described herein (and the grant of any necessary variance or waiver of the Commission's LOA rules and statutes) will serve the public interest. Please do not hesitate to contact the undersigned if you have any questions regarding this correspondence.

Respectfully submitted,

**ZONE TELECOM, INC.**



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Attorneys for Zone Telecom,  
Inc.

**EXHIBIT A**

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ASSET PURCHASE AGREEMENT  
ACQUISITION OF CERTAIN ASSETS OF  
THE FURST GROUP, INC.;  
TELEVISTA, INC.;  
CROSS COMMUNICATIONS, INC.  
AND ALLIED GLOBAL TELECOM, INC.

BY  
ZONE TELECOM, INC.

DATED: AUGUST 4, 2000

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ASSET PURCHASE AGREEMENT

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## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is entered into as of the 4th day of August, 2000, by and among e-KONG GROUP LIMITED, a Bermuda corporation with its principal place of business in Hong Kong ("Parent") and ZONE TELECOM, INC., a Delaware corporation and an indirect, wholly-owned subsidiary of Parent ("Buyer"), on the one hand, and THE FURST GROUP, INC. ("Furst"), a New Jersey corporation, TELEVISTA, INC. ("Televista"), a Florida corporation, CROSS COMMUNICATIONS, INC. ("Cross"), a California corporation, and ALLIED GLOBAL TELECOM, INC. ("Allied"), a New York corporation, each of Cross and Allied being a wholly owned subsidiary of Televista and Televista being a wholly owned subsidiary of Furst (Furst, Televista, Cross and Allied being hereinafter collectively referred to as "Seller") on the other hand.

### RECITALS:

WHEREAS, Seller is, among other things, a reseller of long distance telecommunications and data communications services (collectively, Seller's businesses are referred to as the "Business") and has established a customer base and related assets which it now desires to sell;

WHEREAS, Buyer wishes to purchase substantially all of the assets of the Business on the terms and subject to the conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, in order to consummate said sale, the parties hereto agree as follows:

### ARTICLE 1. PURCHASE AND SALE OF ASSETS.

#### 1.1 Sale of Assets.

(a) Subject Assets. Subject to the provisions of this Agreement, and except as expressly excluded in Section 1.1 (b), Seller agrees to sell and Buyer agrees to purchase, at the Closing (as defined in Section 1.5 hereof), all of Seller's right, title and interest in all of the assets of the Business. The assets of the Business to be sold to and purchased by Buyer under this Agreement are hereinafter sometimes referred to as the "Subject Assets" and include, without limitation:

(i) all assets shown or reflected on the Seller's Base Balance Sheet (as defined in Section 2.7 hereof) except as excluded pursuant to Section 1.1(b);

(ii) all of Seller's permits, licenses, OCN and NXX numbers, orders, ratings and approvals of federal, state or local governmental or regulatory authorities, to the

extent transferable, held in connection with the Business, including as set forth on Schedule 1.1(a)(ii);

(iii) all end user long distance telecommunications and data communications customer accounts of Seller including as set forth on Schedule 1.1(a)(iii) (the "Qualified Customer Accounts"), which also shall be listed in an electronic format as currently maintained by Seller and reasonably satisfactory to Buyer (which electronic format shall include all present and former (to the extent they are currently maintained on or in such format) customer accounts whether currently active or inactive, in existence as of the Closing Date) including all customer lists, customer records, customer files, customer data, letters of agency, sub-CIC arrangements, computer data records, billing data, billing files and similar items related to the foregoing;

(iv) all accounts receivable and unbilled revenue associated with and derived from the Qualified Customer Accounts and other mutually agreed accounts receivable including as set forth on Schedule 1.1(a)(iv) (the "Customer Receivables"), as such listing shall be updated by Seller and delivered to Buyer at and as of the Closing;

(v) all of Seller's rights under any agreement, application forms, term contracts, letters of agency and all other contractual instruments related to the Qualified Customer Accounts (collectively, the "Customer Contracts"), including as set forth on Schedule 1.1(a)(v), including but not limited to Seller's right to assert claims and take other rightful action in respect of breaches, defaults and other violations of such Customer Contracts;

(vi) all customer and other deposits held or made by Seller related to the Qualified Customer Accounts including as set forth on Schedule 1.1(a)(vi);

(vii) all relationships and goodwill related to the Qualified Customer Accounts;

(viii) all dialers, T-1's and other equipment currently used by or for the customers with respect to the Qualified Customer Accounts including as set forth on Schedule 1.1(a)(viii);

(ix) all current toll-free numbers used by Seller, whether for customer service, sales or otherwise and with respect to the Qualified Customer Accounts or otherwise, including as set forth on Schedule 1.1(a)(ix);

(x) all real property leases, personal property leases, leasehold interests, equipment, furniture, fixtures, computers, telephones and other tangible, intangible, real and personal property held in connection with the Business including as set forth on Schedule 1.1(a)(x);

(xi) all of Seller's Intellectual Property (as defined in Section 2.14 hereof), including as set forth on Schedule 1.1(a)(xi) (which shall include, without limitation, the

tradename "Furst" and "Furst Group"; any adaptation thereof; all websites and domain names, and all third party software licenses), held in connection with the Business and also including any and all claims for damages by reason of any past or continuing infringement of any or all rights in or to the patents, copyrights, trademarks, trade secrets, or other Intellectual Property right assigned hereunder, and the right to sue for and collect the same for Buyer's own use and benefit;

(xii) Seller's four (4) Excel switches (together with related assets necessary to operate such switches) located in New York City and Los Angeles and the one (1) Summa IV switch (together with related assets necessary to operate such switch) located in Los Angeles.

(xiii) all of Seller's additional right, title and interest in and to any and all contracts, agreements, warranties, licenses or purchase orders related to the Business, including, without limitation, client and customer contracts, acquisition or similar agreements, non-competition agreements, non-disclosure and confidentiality agreements with present and former employees and consultants who are to be hired by Buyer, or other contracts, agreements and purchase orders for the purchase or sale of materials, supplies or services, in each case to the extent held in connection with the Business, including as set forth on Schedule 1.1(a)(xii).

(xiv) Good, marketable and insurable title in fee simple to that certain real property known as 457-459 Oak Shade Road, Shamong Township, NJ 07088 (the "Real Property") and all structures and other improvements thereon and fixtures attached thereto, such Real Property being located in Shamong Township, New Jersey, and more particularly described on Schedule 1.1(a)(xiv) attached hereto and made a part hereof, including all right, title and interest of Seller in and to all adjacent streets, alleys and rights-of-way, and including all tenements, hereditament, easements, access rights, parking rights, and other appurtenances benefiting the Real Property, if any, however the Real Property is transferred subject to the following (the "Permitted Exceptions"):

(I) The standard exceptions contained in an ALTA title insurance commitment;

(II) All applicable laws and ordinances including but not limited to applicable zoning ordinances;

(III) Any assessments attributable to the period prior to the Closing not yet due and payable; and

(IV) All items shown on that certain Title Insurance Commitment Policy dated July 10, 2000 issued by Stewart Title Guaranty Company through its agent, Land Title Agency, Inc.

(b) Excluded Assets. Assets and property not transferred to Buyer pursuant to this Agreement shall be excluded from the Subject Assets and are referred to herein as the "Excluded Assets." Such Excluded Assets include:

(i) Seller's corporate franchise, stock record books, corporate record books containing minutes of meetings of directors and stockholders, original tax returns and financial statements (although copies of such tax returns and financial statements shall be delivered to Buyer as provided herein), and such other records as have to do with Seller's organization or stock capitalization;

(ii) all of Seller's cash, marketable securities and cash equivalents;

(iii) Seller's interest in the stock of any subsidiaries;

(iv) all rights, title and interest in and to any insurance policies;

(v) pension, profit sharing and savings plans and trusts and any assets thereof, and all rights of Seller with respect to its employees and agents;

(vi) all rights, title and interest to the contracts, permits and licenses set forth on Schedule 1.1(b)(vi) (the "Excluded Contracts");

(vii) the Teleservices business maintained and/or operated by Seller through a wholly owned subsidiary operating principally out of Fort Myers, Florida and Fremont, Nebraska;

(viii) any and all rights related to the so-called Vista-V, Child Safety and Extracom litigations and/or litigation settlements, including, without limitation, the right to any and all benefit(s) and/or recovery(ies) therefrom and/or in connection therewith, which litigations and/or matters are described with greater particularity on Schedule 1.1(b)(viii) attached hereto.

## 1.2 Assumption of Liabilities.

(a) Upon the sale and purchase of the Subject Assets, except as excluded in paragraph (b) below, Buyer shall assume and agree to perform and discharge the following liabilities:

(i) (x) in an amount not to exceed \$500,000, liability for any and all accrued vacation benefit(s) earned by and/or due to the employees of Seller who Buyer hires as of the Closing as are specifically accrued and reflected on the Estimated Closing Date Balance Sheet (as subsequently adjusted by the Final Closing Date Balance Sheet as defined in Section 1.4(b) hereof) in accordance with the procedures set forth in Section 1.4) (such liabilities, the "Assumed Liabilities") and (y) all liabilities accruing in the ordinary course of business after the Closing with respect to the contracts and leases included in the Subject Assets (provided that such contracts and leases are disclosed on Schedule 1.1(a)(v) and Schedule 1.1(a)(x) attached hereto).



(b) Except to the extent expressly assumed pursuant to Section 1.2(a) above, Buyer shall not assume and shall not be liable for any debt, obligation, responsibility or liability of Seller, or any Affiliate (as defined in Section 1.2(b)(ii) below), or any claim against any of the foregoing, whether known or unknown, contingent or absolute, or otherwise and, without limiting the foregoing sentence, Buyer shall have no responsibility with respect to the following, whether or not disclosed in the Base Balance Sheet or a schedule hereto:

(i) liabilities and obligations related to or arising from the Excluded Assets and/or related to or arising from Seller's operations and assets incurred or accrued prior to the Closing Date including, without limitation, obligations of Seller under any agreement, contract, lease or the like included in the Subject Assets;

(ii) liabilities and obligations related to or arising from Seller's transactions with any officer, director or stockholder of Seller or any person or organization controlled by, controlling, or under common control with any of them (an "Affiliate");

(iii) liabilities and obligations for Taxes (as defined in Section 2.10) of any kind, including Taxes related to or arising from the transfers contemplated hereby;

(iv) liabilities and obligations for damage or injury to person or property;

(v) liabilities and obligations to employees of Seller, whether for accident, disability, or workers compensation insurance or benefits, benefits under employee Benefit Plans (as defined in Section 2.17 hereof), back pay, or obligations related to or resulting from severance of employment by Seller, and all rights of Seller with respect to its employees, independent contractors or agents, including Seller's obligation to provide COBRA continuation coverage in accordance with Section 4980B of the Internal Revenue Code of 1986, as amended (the "Code") to Seller's current and former employees and their qualified beneficiaries who are entitled to such coverage as of the Closing, or who will become entitled thereto as a result of this transaction;

(vi) liabilities incurred by Seller in connection with this Agreement and the transactions provided for herein, including counsel's and accountant's fees, filing fees, transfer and other taxes or the performance by Seller of its obligations hereunder, except as specifically provided to the contrary in this Agreement;

(vii) workmen's liens on any of the Subject Assets;

(viii) liabilities of Seller with respect to any options, warrants, agreements or convertible or other rights to acquire any shares of its capital stock of any class;

(ix) liabilities and obligations related to or arising from products or services delivered or performed prior to the Closing Date (as defined in Section 1.5)(including warranty or service claims and upgrades of existing products);

(x) liabilities of Seller under any tariff applicable to the Subject Assets or the Business accruing or relating to the Subject Assets or the Business prior to the Closing Date;

(xi) all liabilities and obligations with respect to any claims or litigation described in Schedule 2.21 hereof;

(xii) liabilities and obligations for Environmental Laws (as defined in Section 2.18) of any kind; and

(xiii) all liabilities and obligations under the Excluded Contracts.

(c) The assumption of the Assumed Liabilities by Buyer hereunder shall be treated as independent of Buyer's existing business and shall not enlarge any rights of third parties under contracts or arrangements with Buyer or Seller or Furst Holdings, Inc. or any of their respective subsidiaries. Nothing herein shall prevent Buyer from contesting in good faith any of the Assumed Liabilities as against any party(ies) other than Seller; provided, however, that Buyer shall be responsible for any additional obligations resulting from any such contest.

1.3 Purchase Price and Payment. In consideration of the sale by Seller to Buyer of the Subject Assets, subject to the assumption by Buyer of the Assumed Liabilities, Buyer will pay a total of Twelve Million Dollars (\$12,000,000) (the "Purchase Price"), subject to adjustment as set forth in Section 1.4 below, payable as follows (in no event shall Seller be entitled to any amounts which exceed the Purchase Price):

(a) Seven Hundred Fifty Thousand Dollars (\$750,000) (the "PPA/Indemnity Amount") to be satisfied as set forth in Section 1.3(e) and (f) and held by the Closing Escrow Agent (the "Closing Escrow Agent") under the Closing Escrow Agreement substantially in the form of Exhibit A hereto (the "Closing Escrow Agreement") to secure the following: (i) \$250,000 to secure any Purchase Price adjustments; and (ii) \$500,000 to secure the indemnification commitments to Buyer hereunder, with each such amounts to be released as set forth in said Closing Escrow Agreement;

(b) A credit against the Purchase Price equal to the aggregate of (i) the Assumed Liabilities; (ii) the Most Cost Effective Remediation, if any, determined in accordance with the provisions of Sections 4.2(b) and 6.16(b) hereof; and (iii) the Leased Equipment Adjustment, if any, as determined in accordance with Section 2.11(c) hereof;

(c) An amount equal to the principal balance of Seller's obligations due and owing to Commerce Bank, N.A. ("Bank") as of the Closing, which shall not exceed Seven Million Dollars (\$7,000,000) (the "Bank Debt") and shall be used on behalf of Seller to satisfy Seller's obligations due and owing to Bank; and

(d) The balance thereof (the "Balance") to (i) the debtholders and third party creditors of Seller in satisfaction of such outstanding debts of Seller and, to the extent applicable,

the release of any liens such debtholders and third party creditors may have on the Subject Assets, and after satisfying the foregoing, (ii) Seller. To the extent applicable, in connection with the satisfaction of such obligations, Seller shall deliver to Buyer, prior to Closing, payoff letters in a form reasonably acceptable to Buyer, from such debtholders and third party creditors set forth on Schedule 1.3(d) holding liens on the Subject Assets, if any, covering the release of such debtholders' and third party creditors' liens on the Subject Assets.

(e) Buyer intends to satisfy, in cash, its obligation to pay the Purchase Price, pursuant to the terms of this Agreement, the documents to be executed in connection with the Closing, and in accordance with the schedule set forth in Schedule I.

(f) Notwithstanding the foregoing, Buyer specifically reserves the right, in its sole and absolute discretion, to elect not to settle its obligation to pay the Purchase Price in cash, but instead to elect to settle its obligation to pay all or any portion of the Purchase Price by the issuance of Parent's ordinary shares HK\$0.02 (the "Shares") in the name of Furst (on behalf of each Seller) and by delivering the Shares to the escrow agent (the "Stock Escrow Agent") under the Stock Escrow Agreement substantially in the form of Exhibit B attached hereto (the "Stock Escrow Agreement") (which payments, in Shares also shall be in accordance with the schedule set out in Schedule I hereto). The following provisions shall govern the payment of the Purchase Price:

(i) on or before such date as Buyer is required to satisfy a portion of the Purchase Price in accordance with Schedule I attached hereto (each date being a "Determination Date"), Buyer shall determine whether such portion of the Purchase Price as indicated in the first column of Schedule I will be paid in cash or with Shares. If Buyer should elect to pay such portion of the Purchase Price with Shares, then the number of Shares to be transferred to the Stock Escrow Agent upon each transfer date shall be determined by dividing the applicable amount set forth in the first column of Schedule I by the fair market value (as defined in the next sentence) of the Shares. For purposes hereof, "fair market value" shall be defined as the average closing price of the Shares in each of the five (5) trading days preceding such transfer date. In connection with the delivery of the Shares, it is understood and agreed that Seller shall execute the Stock Escrow Agreement;

(ii) If Buyer determines not to elect to pay such portion of the Purchase Price as indicated in the first column of Schedule I with Shares, then no Shares shall be delivered to the Stock Escrow Agent on or before such Determination Date and the payment required to be made on such Determination Date shall be paid by distributions in a like amount from the Closing Escrow Agreement in accordance with its terms and/or draws under the LOC (as defined in Section 1.3(g)) in accordance with its terms;

(iii) In either event, on or before Determination Date, Buyer shall notify Seller (and at Buyer's option, the Closing Escrow Agent), whether or not the amount set forth in the first column of Schedule I represents a cash payment or Share payment in satisfaction of such portion of the Purchase Price.

(g) In order to, inter alia, procure the debtholders of Seller to release any lien they may hold over any Subject Asset at the Closing and enable Buyer to have the ability to use Seller's current vendors when Buyer begins to operate the Business on and after the Closing, at the Closing (i) Buyer will deliver a Letter of Credit ("LOC") in the amount of the Bank Debt plus interest which will accrue on the Bank Debt for the period beginning as of the Closing through the date the LOC may first be drawn, in form, substance and from a financial institution reasonably satisfactory to both Buyer and the Bank; and (ii) Buyer will place cash with the Closing Escrow Agent in an amount equal to (x) the sum of (A) the PPA/Indemnity Amount, plus (B) the Balance, which amounts are to be held by the Closing Escrow Agent and utilized and distributed as set forth in the Closing Escrow Agreement. The LOC shall provide for, among other things, the terms set forth in Exhibit C attached hereto.

1.4 Purchase Price Adjustments. The procedures set forth in this Section 1.4 shall govern the adjustment of the Purchase Price, if any, for the "Receivables Adjustment," the "Revenue Adjustment" and the Real Property Adjustment, all prior to the Closing and after the Closing.

(a) Closing Date Adjustments. There shall be a negative adjustment to the Purchase Price, if any, determined in accordance with this Section 1.4(a) and which shall be the aggregate of the Purchase Price adjustments determined pursuant to Sections 1.4 (a) (i), (ii) (iii) and (iv).

(i) Receivables Adjustment. Seller shall deliver to Buyer five (5) business days prior to the Closing a good faith estimate of Seller's balance sheet as of the Closing Date (the "Estimated Closing Date Balance Sheet"). The Estimated Closing Date Balance Sheet shall be prepared by Seller, with the consultation of Buyer, in accordance with Generally Accepted Accounting Principles ("GAAP"), on a basis consistent with the principles, practices and procedures used in the preparation of the Base Balance Sheet (as defined in Section 2.7 hereof) and in accordance with the representations and warranties of Seller as contained herein. The Estimated Closing Date Balance shall set forth a calculation of the Receivables (as hereinafter defined) as of the Closing Date (the "Estimated Closing Date Receivables"). Seller and Buyer agree to cooperate with each other in the preparation of the Estimated Closing Date Balance Sheet and shall make such books, records, information and personnel available as reasonably requested by the other party. Seller shall provide Buyer with full access to all working papers, books, records, financial data and other documentation used in the preparation of the Estimated Closing Date Balance Sheet. The Purchase Price paid at Closing shall be reduced by the amount, if any, that Estimated Closing Date Receivables is less than Four Million Two Hundred Thousand Dollars (\$4,200,000) (the "Estimated Receivables Adjustment"). If Estimated Closing Date Receivable reflected on the Estimated Closing Date Balance Sheet is greater than Four Million Two Hundred Thousand Dollars (\$4,200,000) there shall be no adjustment to the Purchase Price at Closing on account of Closing Date Receivables.

(ii) Revenue Adjustment. At the same time as Seller delivers to Buyer the Estimated Closing Date Balance Sheet, Seller also shall deliver to Buyer a schedule of Seller's "Revenues," prepared based upon the information then available to Seller ("Revenue

Schedule”) for each of the three (3) full calendar months ended as of the end of the month preceding the date of the Closing, and with respect to which the Revenues have been computed in accordance with GAAP, on a basis consistent with Seller’s existing practices consistently applied. Seller shall provide to Buyer the same degree of cooperation and access as provided for in Section 1.4(a)(i) for purposes of Buyer’s review of the Revenue Schedule. The Purchase Price paid at Closing shall be reduced if Seller’s average monthly revenue as computed based upon the Revenue Schedule (“Estimated Closing Date Revenue”) is less than One Million Eight Hundred Twenty Thousand Dollars (“Target Revenue”). In such event, the Purchase Price shall be reduced by an amount determined as follows: (x) the amount by which Target Revenue exceeds Estimated Closing Date Revenue times (y) 3.0 (the “Estimated Revenue Adjustment”). If average monthly Revenue based on the Revenue Schedule is greater than Target Revenue, there shall be no adjustment to the Purchase Price at Closing on account of the Revenue Schedule.

(iii) Assumed Liabilities. To the extent applicable under Section 1.2(a), the Estimated Closing Date Balance shall include a good faith estimate of the Assumed Liabilities as of the Closing Date (the “Estimated Closing Date Assumed Liabilities”). Seller shall provide to Buyer the same degree of cooperation and access as provided for in Section 1.4(a)(i) for purposes of Buyer’s review of Seller’s estimate of the Estimated Closing Date Assumed Liabilities.

(iv) Real Property Adjustment. At the same time as Seller delivers to Buyer the Estimated Closing Date Balance Sheet, Seller also shall deliver to Buyer an estimated statement of the real property taxes relating to the Real Property for the tax fiscal year 2000. There shall be an adjustment to the Purchase Price as of the Closing for the Real Property taxes prorated between Seller and Buyer based upon the latest available estimates of the amount of the taxes that will be due and payable with respect to the Real Property. As soon as the amount of taxes levied against the Real Property for such year is known, Seller and Buyer shall readjust the amount of taxes to be paid by each party with the result that Seller shall pay for those taxes attributable to the period of time prior to the Closing Date, and Buyer shall pay for those taxes attributable to the period of time commencing with the Closing Date, and Seller shall pay to Buyer, or Buyer shall pay to Seller, as the case may be, any additional amounts that may be owing as a result of the readjustment (the “Post Closing Tax Adjustment”). The foregoing obligations shall survive the Closing. All other ordinary operating expenses of the Real Property, including, without limitation, public utility charges, and all other normal operating charges (collectively, the “Operating Expenses”) with respect to the Real Property shall be prorated as of the Closing Date based upon the Estimated Closing Date Balance Sheet and the procedures for its preparation and delivery, and an appropriate cash adjustment shall be made by Buyer and Seller with respect thereto based upon the latest available estimates of such expense. Buyer and Seller agree that there shall be a post Closing “true-up” of the Operating Expenses, which along with the Post Closing Tax Adjustment, shall be done in connection with the procedures set forth in Section 1.4(b). Prior to Closing Date, Seller shall pay all ordinary operating expenses of the Real Property and after Closing Date, Buyer shall pay all ordinary operating expenses of the Real Property.

(b) Post-Closing Date Adjustments. There shall be a positive or negative adjustment to the Purchase Price, if and as applicable, determined in accordance with this Section 1.4(b) and which shall be the aggregate of the Purchase Price adjustments determined pursuant to Sections 1.4 (b) (i), (ii) and (iii) and Section 1.4(a)(iv) and which shall be payable in accordance with the Closing Escrow Agreement. In the event the Purchase Price adjustments result in an increase to the Purchase Price, Buyer shall pay any such increase to the Purchase Price to the Closing Escrow Agent, once finally determined in accordance with the procedures set forth at Section 1.4(d), within not later than fifteen (15) days after the date of such determination.

(i) Receivables Adjustment. Seller shall deliver to Buyer, as soon as possible but in any event not later than thirty (30) business days after the Closing Date, a final statement of Seller's balance sheet as of the Closing Date (the "Final Closing Date Balance Sheet"). The Final Closing Date Balance Sheet shall be prepared by Seller, with the consultation of Buyer, in accordance with GAAP, the Estimated Closing Date Balance Sheet, on a basis consistent with the principles, practices and procedures used in the preparation of the Base Balance Sheet and in accordance with the representations and warranties of Seller as contained herein. The Final Closing Date Balance shall set forth a calculation of Closing Date Receivables ("Final Closing Date Receivables"). Seller and Buyer agree to cooperate with each other in the preparation of the Final Closing Date Balance Sheet and shall make such books, records, information and personnel available as reasonably requested by the other party. Each party shall provide the other and its agents and accountants with full access to all working papers, books, records, financial data and other documentation used in the preparation of the Final Closing Date Balance Sheet. There shall be a post-Closing adjustment to the Purchase Price payable in accordance with the Closing Escrow Agreement in the following amount: (i) the amount, if any, that Final Closing Date Receivables is less than Four Million Two Hundred Thousand Dollars (\$4,200,000); minus (ii) the Estimated Receivables Adjustment (the "Closing Date Receivables Adjustment"). In the event the Closing Date Receivables Adjustment is a negative number, this shall result in an increase to the Purchase Price.

(ii) Revenue Adjustment. At the same time as Seller delivers to Buyer the Final Closing Date Balance Sheet, Seller also shall deliver to Buyer a final schedule of Seller's Revenues ("Final Revenue Schedule") for each of the three (3) full calendar months ended as of the end of the month preceding the date of the Closing, and with respect to which the Revenues have been computed in accordance with GAAP, on the same basis that the Revenue Schedule was prepared, and on a basis consistent with Seller's existing practices consistently applied. Each party shall provide to the other the same degree of cooperation and access as provided for in Section 1.4(b)(i) for purposes of each party's review of the Final Revenue Schedule. There shall be a post-Closing adjustment to the Purchase Price if average monthly revenue computed based upon the Final Revenue Schedule ("Final Closing Date Revenue") is less than Target Revenue in the following amount: (x) the amount by which Target Revenue exceeds Final Closing Date Revenue times 3.0; minus (y) Estimated Revenue Adjustment (the "Final Revenue Adjustment"). In the event Final Closing Date Revenue is greater than \$2,200,000 then there will be an increase in the Purchase Price in the following amount: (x) the

amount by which Final Closing Date Revenue exceeds \$2,200,000 times 3.0; plus any (y) Estimated Revenue Adjustment.

(iii) Assumed Liabilities Adjustment. The Final Closing Date Balance shall include a final statement of the Assumed Liabilities as of the Closing Date (the "Final Closing Date Assumed Liabilities"). Each party shall provide to the other the same degree of cooperation and access as provided for in Section 1.4(b)(i) for purposes of each party's review of the statement of the Final Closing Date Assumed Liabilities. There shall be a post-Closing adjustment to the Purchase Price, payable in accordance with, and subject to the limitations in, the Closing Escrow Agreement in the following amount: the amount, if any, that Final Closing Date Assumed Liabilities is more than or less than Estimated Closing Date Assumed Liabilities ("Closing Date Assumed Liabilities Adjustment").

(c) Definitions.

(i) "Receivables" shall be defined as set forth in Section 2.12 and shall be computed after taking into account a reserve determined in accordance with Sections 2.7 and 2.12 (which, for clarification, shall take into account any reserves or credits against any of Seller's Receivables due from any of the local exchange carriers or any other third party billers).

(ii) "Revenue" shall mean Seller's net revenues derived from the Qualified Customer Accounts and the Customer Receivables and computed in accordance with GAAP and in a manner consistent with Seller's existing practices consistently applied, but excluding any revenues from related PICC charges.

(d) Disputes Regarding Final Closing Date Balance Sheet and Final Revenue Schedule. Disputes with respect to the Final Closing Date Balance Sheet and the Final Revenue Schedule (together, the "Closing Financial Statements") shall be dealt with as follows:

(i) Buyer shall have ten (10) business days after its receipt of the Closing Financial Statements (the "Dispute Period"), to dispute any of the elements of or amounts reflected in the Closing Financial Statements. If Buyer has a dispute with respect to either of the Closing Financial Statements (collectively, the "Dispute"), Buyer shall deliver to Seller written notice (a "Dispute Notice") within the Dispute Period, setting forth in reasonable detail a description of the Dispute. Within three (3) business days after Buyer's delivery of any such Dispute Notice, Buyer and Seller shall work cooperatively in an attempt to resolve such Dispute and agree in writing upon an appropriate adjustment to Closing Date Receivables and/or Final Revenue Schedule as reflected in the Closing Financial Statements. Whether or not a Dispute Notice is submitted, the Closing Financial Statements shall include the reserve as required by Section 1.4(c)(i).

(ii) If any Dispute is not finally resolved within five (5) business days after Buyer shall have delivered a Dispute Notice, as aforesaid, then the Dispute shall be referred to KPMG (the "Arbitrator") for resolution of the Dispute in accordance with the terms hereof (the "Arbitration"). Each of Buyer and Seller represents and warrants to the other that such

Arbitrator is an independent entity which has not represented, nor has had any other past business or financial relationship with, such party or any affiliates thereof within the past five (5) years (excluding relationships with affiliates prior to such entities becoming affiliates).

(iii) In the event that KPMG is then unwilling or unable to serve as the Arbitrator, then the parties hereto shall select another nationally recognized certified public accounting firm to serve as the Arbitrator, which firm is not then rendering (and during the preceding five (5) year period has not rendered) services to any party hereto or any affiliate thereof (excluding relationships with affiliates prior to such entities becoming affiliates).

(iv) The Arbitrator shall hold a hearing within four (4) days of the submission of the Dispute for arbitration (the "Hearing") and shall render a decision within two (2) days of the conclusion of such hearing. Each party hereto may file with the Balance Sheet Arbitrator such written statements, affidavits and supporting documents as they deem appropriate. Seller and Buyer shall be afforded with the same access to any of the personnel or documentation as used in the preparation of the Final Closing Date Balance Sheet and the Final Revenues Schedule and the calculation of Closing Date Receivables and Final Revenue Adjustment. Any decision made by the Arbitrator within in the scope of its authority shall be final, binding and non-appealable.

(v) The Arbitrator shall only be authorized on any one issue to decide in favor of and choose the position of either one of the parties hereto or to decide upon a compromise position between the ranges presented by the parties to such arbitration. The Arbitrator shall base its decision solely upon the presentations of the parties hereto at the Hearing and any materials made available to it thereunder and not upon any independent review.

(vi) The Arbitrator's decision regarding its final resolution of any Dispute (the "Arbitrator's Decision") shall be in writing, shall set forth the calculations made in reaching its decision, shall describe the manner in which such calculations were made and include a representation that the manner so used was in accordance with GAAP and the specific terms of this Agreement relative to the calculation of Closing Date Receivables and Final Revenue Schedule. The Arbitrator's Decision shall specifically set forth the amount of any adjustment required to be made to the Purchase Price pursuant to Section 1.4(b)(i) through (iii) and the Arbitrator shall notify the Closing Escrow Agent of his decision and instruct the Closing Escrow Agent to make the distribution required by the Closing Escrow Agreement to carry out the Purchase Price adjustment.

(vii) Any such Arbitration shall take place in Philadelphia, Pennsylvania unless the parties shall mutually agree on another location. The Arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. Sections 1 through 16, and judgment upon the award of the Arbitrator may be entered by any court having jurisdiction thereof.

(viii) The fees and expenses of the Arbitrator shall be borne (1) by Seller in the event that Buyer's calculation of aggregate of Closing Date Receivables, Assumed Liabilities and Final Revenue Schedule (per month average) was closer in dollar amount to the



Arbitrator's determination than was Seller's calculation thereof, and (2) by Buyer in the event that Seller's calculation of aggregate of Closing Date Receivables, Assumed Liabilities and Final Revenue Schedule (per month average) was closer in dollar amount to the Balance Sheet Arbitrator's determination than was Buyer's. Notwithstanding the foregoing, each of the parties hereto shall bear their own costs and expenses related to such Arbitration. Upon the request of the Arbitrator, each party hereto agrees to enter into an arbitration agreement providing reasonable protection to the Arbitrator, in such form as may be reasonably acceptable to the Arbitrator and the parties hereto.

1.5 Time and Place of Closing. The closing of the purchase and sale provided for in this Agreement (herein called the "Closing") shall be held at such location(s) as the parties shall mutually agree and upon such time and date specified by the parties (with the parties acknowledging that the Closing need not be in person), which date shall be as soon as reasonably practicable after the conditions set forth in Articles 6 and 7 have been satisfied (the "Closing Date"), or such other place and time as agreed to by the parties.

1.6 Delivery of Assumption of Liabilities. At the Closing, Buyer shall deliver or cause to be delivered to Seller an agreement to assume the Assumed Liabilities in the form Exhibit D hereto (the "Assumption of Liabilities Agreement").

1.7 Transfer of Subject Assets. At the Closing, Seller shall deliver or cause to be delivered to Buyer good and sufficient instruments of transfer transferring to Buyer, or any one or more of Buyer's designees (if Buyer elects to have any portion of the Subject Assets transferred by Seller to a designee of Buyer, Buyer shall use commercially reasonable efforts to notify Seller ten (10) days prior to the Closing), title to all the Subject Assets, including without limitation, bills of sale, deeds, assignments of trademarks and patents, assignments of leases, novation agreements, master letters of agency, a current list (in electronic format) of the Qualified Customer Accounts, all (to the extent deliverable on that date and, in any event, subject to such reasonable escrow and/or other provisions as may be required by creditors and/or lienholders and acceptable to Buyer) Uniform Commercial Code release statements ("UCC-3s") and such other instruments of transfer as may be required, if any. With respect to any such transfers which require the consent or approval of a third party, Seller shall only be required to obtain the consent or approval in favor of Buyer. Such instruments of transfer (a) shall be in the form and will contain the warranties, covenants and other provisions (not inconsistent with the provisions hereof) which are usual and customary for transferring the type of property involved under the laws of the jurisdictions applicable to such transfers, (b) shall be in form and substance reasonably satisfactory to counsel for Buyer, and (c) shall effectively vest in Buyer good and valid title to all the Subject Assets, free and clear of all liens, restrictions and reasonably encumbrances other than the Assumed Liabilities. Without limitation, Seller shall execute a bill of sale in the form Exhibit E hereto (the "Bill of Sale"). To the extent requested by Buyer, Seller shall, at Buyer's expense, crate, remove and transport the Subject Assets from Seller's facilities to such destinations as Buyer shall request.

1.8 Delivery of Records and Contracts. At the Closing, Seller shall deliver or cause to be delivered to Buyer all of Seller's leases, contracts, commitments and rights described in

Section 1.1(a) above or arising therefrom or in connection therewith or otherwise in connection with, necessary for or material to the Business, with such assignments thereof and consents to assignments, to the extent obtainable after commercially reasonable efforts by Seller, as are necessary to assure Buyer of the full benefit of the same; with the assigned and consents required as a condition to Closing set forth in Section 6.10. Seller shall also deliver to Buyer at the Closing all of Seller's business records, Tax Returns (as defined in Section 2.10 hereof), books and other data relating to the Business (except corporate records and other property of Seller excluded under subsection 1.1(b)) and Seller shall take all commercially reasonable steps necessary to put Buyer in actual possession and operating control of the assets of the Business. After the Closing, Buyer shall afford to Seller and its accountants and attorneys reasonable access to the books and records of Seller delivered to Buyer under this Section 1.8 and shall permit Seller to make extracts and copies therefrom for the purpose of preparing such tax returns of Seller as may be required after the Closing and for other proper purposes approved by Buyer.

1.9 Tax Returns. Seller, with the assistance of Buyer, shall promptly prepare and file on or before the due date or any extension thereof all required federal, state and local tax returns with respect to Seller's operations prior to the Closing.

1.10 Further Assurances. The parties from time to time after the Closing at the request of the other and without further consideration shall execute and deliver further instruments of transfer and assignment (in addition to those delivered under Section 1.7) and take such other action as such other party may reasonably require to more effectively transfer and assign to, and vest in, Buyer each of the Subject Assets and/or otherwise to effectuate the transactions contemplated by this Agreement. To the extent that the assignment of any lease, contract, license, commitment or right shall require the consent of other parties thereto, this Agreement shall not constitute an assignment thereof; however, prior to the Closing, Seller shall use commercially reasonable efforts to obtain any necessary consents or waivers to assure Buyer of the benefits of such leases, contracts, commitments or rights. Nothing herein shall be deemed a waiver by Buyer of its right to receive at the Closing an effective assignment, to the extent same are assignable, of each of the leases, contracts, licenses, commitments or rights of Seller. Without prejudice to the generality of the foregoing, Seller hereby undertakes, with respect to any of the Subject Assets that are not identified at any time prior to Closing (whether or not they are expressly described in Sections 1.1(a)(i) through (xiv)) and without prejudice to any other rights and remedies available to Buyer to promptly, after the identification or awareness thereof, transfer the same to Buyer or as Buyer directs, and in the meantime thereof, shall hold the same upon trust for the benefit of Buyer absolutely.

1.11 Allocation of Purchase Price. The Purchase Price payable by Buyer for the Subject Assets pursuant to Section 1.3 and the face amount of the Assumed Liabilities assumed pursuant to Section 1.2 shall represent payment for the Subject Assets at the prices shown on a schedule to be agreed upon by Buyer and Seller prior to the Closing and the parties hereto agree that they will not take a position inconsistent with such allocation for Federal income tax purposes.

## ARTICLE 2. REPRESENTATIONS AND WARRANTIES OF SELLER

Each of Furst, Televista, Cross and Allied hereby jointly and severally represent and warrant to Buyer as follows (for the purposes hereof, "Seller" means each of Furst, Televista, Cross and Allied):

2.1 Organization and Qualification of Seller. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State under which it was incorporated, with full power and authority to own, operate or lease its properties and to conduct its business in the manner and in the places where such properties are owned or leased or such business is conducted by it. The copies of Seller's Certificate of Incorporation as amended to date (the "Charter"), certified by the Secretary of such State, and of Seller's bylaws as amended to date, certified by Seller's Secretary, attached as Schedule 2.1 hereto, are complete and correct. Seller is duly qualified to do business and in good standing as a foreign corporation in each of the jurisdictions in which Seller has previously qualified to do business as a foreign corporation, all as identified on Schedule 2.1 and it is not required to be licensed or qualified to conduct the Business or own its property in any other jurisdiction where it presently operates the Business.

2.2 Capitalization of Seller. The authorized capital stock of Seller is set forth on Schedule 2.2. Schedule 2.2 correctly sets forth the number of shares of Seller's and each of its subsidiary's capital stock that is validly issued and outstanding and the holder thereof. There are no shares of capital stock reserved for any purpose. Except as set forth on Schedule 2.2, there are no (i) outstanding or authorized subscriptions, warrants, options or other rights granted by Seller or any subsidiary to purchase or acquire, or preemptive rights with respect to the issuance or sale of, the capital stock of Seller or any subsidiary, or which obligate or may obligate Seller to issue any additional shares of its capital stock or any securities convertible into or evidencing the right to subscribe for any shares of its capital stock, (ii) other securities of Seller or any subsidiary directly or indirectly convertible into or exchangeable for shares of capital stock of Seller or any subsidiary, or (iii) agreements relating to the voting of Seller's or any subsidiary's capital stock.

2.3 Subsidiaries; Other Investments. Except as set forth on Schedule 2.3, Seller does not own, directly or indirectly, any capital stock of any corporation and has no subsidiaries. Except as set forth on Schedule 2.3, Seller does not own any securities issued by any other business organization or governmental authority and Seller is not a partner or participant in any joint venture or partnership of any kind.

2.4 Authorization of Transaction. Seller has the full power and authority to execute, deliver and perform this Agreement and the other agreements to be executed and delivered pursuant to this Agreement (the "Ancillary Agreements"); to perform its obligations hereunder and thereunder, and to carry out the transactions contemplated hereby and thereby. All necessary action, corporate, shareholder or otherwise, has been taken by Seller to authorize the execution, delivery and performance of this Agreement and each of the Ancillary Agreements and the transactions contemplated hereby and thereby, specifically including the approval of Furst Holding, Inc., as the principal shareholder of Seller. The Agreement has been, and each Ancillary Agreement will be at the Closing, duly executed and delivered by Seller and the

Agreement is, or upon the Closing will be, the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.

## 2.5 Present Compliance with Obligations and Laws.

(a) Except as set forth on Schedule 2.5, Seller is not: (i) in material violation of its Charter or bylaws; (ii) in default in the performance of any obligation, agreement or condition of any debt instrument which (with or without the passage of time or the giving of notice) affords to any person the right to accelerate any indebtedness or terminate any right; or (iii) in default of or in breach of (with or without the passage of time or the giving of notice) any other contract to which it is a party or by which the Business or any of the Subject Assets are bound, except to the extent such failure is not reasonably likely to have a material adverse effect on the Business or the Subject Assets (a "Material Adverse Effect") or would not have a Limiting Effect (as such term is hereinafter defined).

(b) Except as set forth on Schedule 2.5, (i) Seller is not in violation of any court order, judgment, administrative or judicial order, writ, decree, stipulation, arbitration award or injunction (collectively, "Court Orders") or any license or permit specifically, any license or permit issued by the Federal Communications Commission ("FCC") or similar State Department of Public Utility Control ("DPUC"), order, franchise agreement, concession, grant, authorization, consent or approval (collectively, "Government Authorizations") that is held by Seller applicable to it, the Business or the Subject Assets, except where such violation would not (x) preclude Buyer from obtaining any Governmental Authorization for the transfer of the Subject Assets or (y) limit in any material manner Seller's right to do business in any jurisdiction in which it is authorized to originate and terminate long distance traffic (items (x) and (y) each a "Limiting Effect"); and (ii) Seller has conducted and is now conducting the Business, and the ownership and operation of the Business and the Subject Assets, in compliance with all applicable statutes, laws, ordinances, rules and regulations, including, without limitation, the Clayton Act, the Sherman Act, the Federal Telecommunications Act and all similar state laws, the Federal Trade Commission Act and the rules and regulations thereunder and all Environmental Laws, as defined in Section 2.18 hereof (collectively, "Laws") except for such non-compliance that would not be reasonably likely to have a Material Adverse Effect or would not have a Limiting Effect. All notices and complaints of violations or alleged violations of Law received by Seller in the last three (3) years are attached to Schedule 2.5 together with a description of the status and disposition of such matters.

(c) If Seller is engaged in the "carrier's carrier" wholesale terminating business, it has, to Seller's Knowledge (as such term in hereinafter defined) all licenses and contracts necessary to carry and terminate any long distance calls with the applicable Incumbent Local Exchange Carrier ("ILEC") in accordance with applicable Laws and the obligations of Seller under any applicable contract.

(d) All long distance calls being carried by Seller that are being delivered by Seller directly to an ILEC are being delivered to the ILEC by Seller in accordance with the applicable tariffs of such ILEC and in compliance with all terms and conditions of any contracts

applicable to Seller, except where such noncompliance would not be reasonably likely to have a Material Adverse Effect or would not have a Limiting Effect.

(e) With respect to any third party (which is not an ILEC) used by Seller to terminate telecommunications traffic, Seller is, where required, properly reporting the percentage of interstate use ("PIU") with respect to the calls terminated through such third party, and where Seller is required to calculate the PIU, Seller's PIU is calculated properly in accordance with applicable FCC and state regulatory policies, and in material compliance with the representations, warranties and covenants set forth in the agreements with such third party, except where such noncompliance would not be reasonably likely to have a Material Adverse Effect or would not have a Limiting Effect.

(f) With respect to any third party (which is not an ILEC) used by Seller to terminate telecommunications traffic, Seller believes that it is accurately providing Call Data (as defined below) where required for calls delivered to such third party by Seller where such Call Data is known to such Seller, or, where such Call Data is not known, such calls are being identified for purposes of calculating the PIU (where Seller is required to calculate the PIU) in compliance with applicable FCC and state regulatory policy, and in compliance with the representations, warranties and covenants set forth in the agreements with such third party except for such non-compliance that would not be reasonably likely to have a Material Adverse Effect or would not have a Limiting Effect. "Call Data" means the data provided separately with each call, including without limitation ANI, CPN or other such data, that is used to route the call to its proper destination and to classify the call as Interstate, Intrastate IntraLATA, or another such classification.

## 2.6 No Conflict of Transaction With Obligations and Laws.

(a) Except as set forth on Schedule 2.6, neither the execution, delivery and performance of this Agreement or any Ancillary Agreement, nor the performance of the transactions contemplated hereby, will: (i) contravene, conflict, with or constitute a breach or violation of any provision of the Charter or bylaws of Seller or any resolutions of Seller's Board of Directors; (ii) require any consent, approval or authorization of or declaration, filing or registration with any person other than a governmental agency as described in paragraph (b) below, including consents of parties to loans, contracts, leases, licenses and other agreements; (iii) conflict with or constitute (with or without the passage of time or the giving of notice) a breach of, or default under, any debt instrument to which Seller is a party, or give any person the right to accelerate any indebtedness or terminate, modify or cancel any right; (iv) constitute (with or without the passage of time or giving of notice) a default under or breach of any other agreement, instrument or obligation to which Seller is a party or by which it or its assets are bound; (v) result in the creation of any lien, option (including right of first refusal or first offer), encumbrance, charge, restriction, mortgage, pledge, security interest, title exception, restriction, claim or charge of any kind or character (each an "Encumbrance") upon any of the Subject Assets; (vi) contravene, conflict with, or result in a violation of any Court Order or Law, or give any governmental authority, whether foreign, federal, state, local or other political subdivision or agency of any of the foregoing (each a "Government Authority"), the right to exercise any

remedy or obtain any relief under any Court Order or Law, to which Seller is subject or by which the Subject Assets are bound, except for such violation that would not have a Limiting Effect or (vii) contravene, conflict with or result in a violation of any of the terms or requirements of, or give any Governmental Authority the right to revoke, withdraw, suspend, cancel, terminate or modify, any Government Authorizations, except for such violation that would not have a Limiting Effect.

(b) The execution, delivery and performance of this Agreement and the transactions contemplated hereby by Seller do not require the consent, waiver, approval, authorization, exemption of or giving of notice to any Governmental Authority with respect to any Governmental Authorizations, except as set forth on Schedule 2.6 or with respect to which any nonoccurrence or failure to obtain would not result in a Material Adverse Effect or a Limiting Effect;

## 2.7 Financial Statements.

(a) Attached as Schedule 2.7 hereto are the following financial statements of Seller, together with all related other reports issued by Seller's independent certified public accountants with respect thereto, all of which statements (including the footnotes thereto) are complete and correct and present fairly the assets, liabilities, financial position of Seller on the date of such statements, and the results of operations and changes in the financial condition of Seller for the periods covered thereby, and such financial statements have been prepared in accordance with GAAP consistently applied throughout the periods involved and prior periods identified and/or referenced therein except as disclosed in the notes to such financial statements:

- Audited balance sheets and statements of profit and loss for the twelve (12) months ended as of and at December 31 1999.
- Internally generated balance sheets and statements of profit and loss for the six (6) months ended as of and at June 30, 2000.

(b) The balance sheet dated June 30, 2000 (the "Base Balance Sheet Date") included in the above financial statements is sometimes referred to hereinafter as the "Base Balance Sheet."

(c) The books of account of Seller since its organization are complete and correct in all material respects and have been maintained on a consistent basis. All auditor's letters to management of Seller respecting the Business and/or Seller since its date of organization, if any, are attached as Schedule 2.7 hereto.

(d) In preparing its financial statements, Seller uses the following in connection with its aging of Receivables: (i) Receivables aged over ninety (90) days from invoice are reserved at 90%; and (ii) Receivables aged under ninety (90) days from invoice are reserved at 6% for direct billed and 22% for Integretel billed (the "Aging Policy").

2.8 Absence of Undisclosed Liabilities. Seller has no liabilities of any nature, whether accrued, absolute, contingent or otherwise (including without limitation liabilities as guarantor or otherwise with respect to obligations of others, or liabilities for taxes due or then accrued or to become due), except: (a) liabilities stated or adequately reserved against on the Base Balance Sheet, (b) liabilities incurred since the Base Balance Sheet Date in the ordinary course of business consistent with past practices (none of which is a claim for breach of contract, breach of duty, breach of warranty, tort, or infringement of an intellectual property right), which liabilities, to the extent outstanding at the Closing, will be reflected on the Estimated Closing Date Balance Sheet (as subsequently adjusted by the Final Closing Date Balance Sheet), and (c) liabilities disclosed on Schedule 2.8 hereto. To Seller's Knowledge, there is no fact which materially adversely affects, or may in the future (so far as can now be reasonably foreseen), materially adversely affect, the Business and/or the Subject Assets which has not been specifically disclosed herein or in a schedule hereto.

2.9 Conduct of Business; Absence of Certain Changes. Except as disclosed on Schedule 2.9, since the Base Balance Sheet Date, Seller has conducted its business only in the ordinary course of business, consistent with prior practices and, whether or not in the ordinary course of business, there has not been any change in the financial condition, including working capital, earnings, reserves, properties, assets, liabilities, business or operations, of Seller which change, by itself or in conjunction with all other such changes, whether or not arising in the ordinary course of business, has been materially adverse with respect to Seller. Without limiting the generality of the foregoing, except as disclosed on Schedule 2.9 hereto, since the Base Balance Sheet Date there has not been:

- (a) any amendment to the Charter or bylaws of Seller;
- (b) any contingent liability incurred by Seller as guarantor or otherwise with respect to the obligations of others;
- (c) any Encumbrance placed on any of the properties of Seller which remains in existence on the date hereof;
- (d) any obligation or liability incurred by Seller other than obligations and liabilities incurred in the ordinary course of business consistent with past practice (none of which is a claim for breach of contract, breach of duty, breach of warranty, tort or infringement of an intellectual property right);
- (e) any sale or other disposition, or any agreement or other arrangement for the sale or other disposition, of any of the properties or assets of Seller other than in the ordinary course of business;
- (f) any capital expenditure or commitment in excess of Twenty Thousand Dollars (\$20,000) with respect to any individual item or in excess of Fifty Thousand Dollars (\$50,000) with respect to all such items, or any lease or agreement to lease any assets with an annual rental in excess of Twenty Thousand Dollars (\$20,000) with respect to any individual

item or in excess of Fifty Thousand Dollars (\$50,000) with respect to all such items; without limitation, Seller shall include in Schedule 2.9 any leases for office space and computer equipment (including servers):

(g) any damage, destruction or loss, whether or not covered by insurance, of any of the assets of the Business of Seller having a value in excess of Ten Thousand Dollars (\$10,000.00);

(h) any declaration, setting aside or payment of any dividend on, or the making of any other distribution in respect of, Seller's capital stock; any direct or indirect redemption, purchase or other acquisition by Seller of its capital stock or any issuance of any securities of Seller;

(i) any claim of unfair labor practices involving Seller or any claims, legal actions or proceedings that are made, pending or Threatened (as such term is hereinafter defined) against or otherwise involving the Seller;

(j) any material change in the compensation or other amounts payable or to become payable by Seller to any of its officers, employees or agents other than in the ordinary course of business consistent with past practice; or any change in any bonus, pension or profit sharing payment, made to or with any of such officers, employees or agents; or any grant of any loans or severance or termination pay (other than as set forth on Schedule 2.9 consistent with Seller's established severance pay practices); or any entrance into or variation of the terms of any employment agreement or adoption of or increase in the benefits under any Benefit Plan (as defined in Section 2.17);

(k) any change with respect to the management or supervisory personnel of Seller;

(l) any payment or discharge of a material lien, claim, obligation or liability of Seller which was not (i) shown on the Base Balance Sheet or (ii) incurred in the ordinary course of business thereafter;

(m) any obligation or liability incurred by Seller to any of its officers, directors or shareholders or any loans or advances made by Seller to any of its officers, directors or shareholders, except normal compensation and expense allowances payable to officers of such amount comparable to preceding months;

(n) any write-offs as uncollectible of any notes or accounts receivable, except for write-downs or write-offs that are in the aggregate less than Ten Thousand Dollars (\$10,000) incurred in the ordinary course of business that are not covered by the allowance for doubtful accounts set forth on the Base Balance Sheet;

(o) any sale, assignment, license or lapse of any rights to the use of any trademark, tradename, patent, copyright, license, or domain name, or sale, assignment, or license



of or disclosure to any person, other than Buyer, of any trade secret, technology, formula, process, know-how or other confidential information not theretofore a matter of public knowledge other than pursuant to confidentiality agreements;

(p) any change in any method of accounting or accounting practice, whether or not such change was permitted by GAAP; or

(q) any agreement, whether in writing or otherwise, to take any action described in this Section 2.09.

#### 2.10 Payment of Taxes.

(a) Each of Seller and its subsidiaries has duly and timely filed all Tax Returns required to be filed by it. To Seller's Knowledge, all of the Tax Returns were complete and correct in all respects. Copies of all such Tax Returns filed by Seller since its organization have been delivered to Buyer. All Taxes owed by Seller and its subsidiaries (whether or not shown on any Tax Return) have been paid or are being contested in good faith by Seller and such contest is being diligently pursued, all of which contested Taxes are listed on Schedule 2.10. All Taxes and other assessments and levies which Seller is required to withhold or collect have been timely withheld or collected and paid over or will be timely paid over to proper governmental authorities as required. Except as specifically provided in this Agreement, all transfer, excise and other taxes payable to any jurisdiction by reason of the sale and transfer of the Subject Assets pursuant to this Agreement shall be paid or provided for by Seller after the Closing out of the consideration payable by Buyer hereunder.

(b) Except as set forth on Schedule 2.10, the Tax Returns have never been examined by any governmental agency, including the Internal Revenue Service and the California, New Jersey and New York Departments of Revenue; Seller has no Knowledge of any intention on the part of any governmental agency to examine any of the Tax Returns, and does not expect any such examination; no deficiencies have been asserted or assessments made against Seller, nor is the Internal Revenue Service nor any other taxing authority now asserting, or Threatening to assert, against Seller any deficiency or claim for additional Taxes or interest thereon or penalties in connection therewith; Seller has not extended the time for the filing of any Tax Return or the assessment of deficiencies or waived any statute of limitations for any year, which extension or waiver is still in effect; and no claim has been made by an authority in a jurisdiction where any of Seller and its subsidiaries does not file Tax Returns that it is or may be subject to taxation by that jurisdiction.

(c) Neither Seller nor any of its subsidiaries has made any payment, is obligated to make any payment, or is a party to any agreement that under certain circumstances could obligate it to make any payment that will be an "excess parachute payment" under Section 280G of the Code. Neither Seller nor any of its subsidiaries has filed a consent under Code Section 341(f) concerning collapsible corporations.

(d) Neither Seller nor any of its subsidiaries has any actual liability for any Taxes of any person (other than Seller and its subsidiaries) under Treasury Regulation Section 1.1502-6 (or any similar provision of federal, state, local, or foreign law), or as a transferee or successor, by contract, or otherwise. Neither Seller nor any of its subsidiaries is a party to any Tax allocation or Tax sharing agreement.

(e) Neither Seller nor any of its subsidiaries has undergone a change in its method of accounting resulting in an adjustment to its taxable income pursuant to Section 481(h) of the Code.

(f) There are no Encumbrances on any of the assets of Seller and its subsidiaries that arose in connection with any failure (or alleged failure) to pay any Tax.

(g) The unpaid Taxes of Seller and its subsidiaries (1) did not, as of June 30, 2000, exceed the reserve for Tax liability (rather than any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the Base Balance Sheet (rather than in any notes thereto), and (2) do not exceed that reserve as adjusted for the passage of time through the Closing Date in accordance with the past custom and practice of Seller and its subsidiaries in filing their Tax Returns.

(h) Neither Seller nor any of its subsidiaries has been a United States real property holding corporation within the meaning of Code section 897(c)(2) during the applicable period specified in Code section 897(c)(1)(A)(ii).

(i) For purposes of this Agreement, the term "Tax" shall mean any federal, state, local, or foreign income, gross receipts, profits, franchise, capital stock, license, payroll, employment, withholding, social security (or similar), unemployment, disability, excise, severance, stamp, occupation, premium, windfall profits, environmental, alternative or add-on minimum, real property, personal property, sales, use, transfer, registration, value added, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not.

(j) For purposes of this Agreement, the term "Tax Return" shall mean any return, report, declaration, claim for refund, or information statement or other statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

#### 2.11 Title to Properties; Liens; Condition of Properties.

(a) Set forth on Schedule 2.11 hereto is a listing of all leases under which Seller leases real property (collectively, the "Real Property Leases"). Also set forth on Schedule 2.11 is a complete description of the machinery, equipment and other tangible personal property included in the Subject Assets with an individual original cost in excess of Ten Thousand Dollars (\$10,000) each used or owned by Seller and a listing of all leases under which Seller leases any such personal property so listed in connection with the Business as of the Closing Date (collectively, the "Material Personal Property"). Schedule 2.11 lists all locations where Material

Personal Property (other than goods in transit in the ordinary course of business) are located. The Real Property, the Real Property Leases and the Material Personal Property include all properties and assets (whether real, personal or mixed, tangible or intangible) reflected on the Base Balance Sheet or purchased by Seller since the Base Balance Sheet (except for such properties or assets sold since the Base Balance Sheet Date in the ordinary course of business).

(b) To the extent in possession of Seller, subleases and licenses, title insurance policies, title reports, surveys and environmental reports, together with all amendments, modifications and renewals thereof, related to any of the Real Property, the Real Property Leases, or the Material Personal Property have been delivered to Buyer. All of the foregoing agreements are valid, subsisting and enforceable in accordance with their terms against the parties thereto. Seller is in material compliance with all terms and conditions of such agreements and no event has occurred nor does any circumstance exist that (with or without notice or the passage of time or both) would constitute a substantial violation or default under any such agreements and Seller has not given nor received notice of any alleged violation or of any default under any such agreement.

(c) Except as specifically disclosed on Schedule 2.11 or on the Base Balance Sheet, Seller has (i) good, marketable, insurable title in fee simple to the Real Property, subject to the Permitted Exceptions, (ii) valid leasehold interests in all Real Property Leases, subject to the terms of the applicable lease, and (iii) subject to all applicable leases, good, clear, marketable and insurable title to the balance of the Subject Assets. Except as herein set forth and except for such liens and encumbrances as arise in the normal course of business, none of the real or personal property owned or used by Seller in connection with the Business shall be subject at Closing to any Encumbrance (other than for Taxes not yet due and payable), or other adverse claim or charge or interest of any kind, except as specifically disclosed on Schedule 2.11 or on the Base Balance Sheet. It is understood and agreed by the parties that Buyer shall accept title to the Subject Assets subject to such identified Encumbrances existing in the form of outstanding financing agreements and/or leases on certain personal property with an appropriate credit against the Purchase Price to reflect the present value of any such payment obligations thereunder (the "Leased Equipment Adjustment"). All financing statements under the Uniform Commercial Code previously filed with respect to any of the Subject Assets in any jurisdiction, together with the security interests and rights created thereby, shall be legally terminated when the liens applicable thereto have been paid in full and properly delivered to the party holding same pursuant to the terms of this Agreement and the Closing Escrow Agreement, and Seller has not signed any other such financing statement or any security agreement authorizing any secured party thereunder to file any such financing statement.

(d) Except as set forth on Schedule 2.11, all buildings, machinery and equipment used or owned by Seller in connection with the Business, including without limitation the Real Property and the premises leased under the Real Property Leases: (i) are in reasonably satisfactory condition, based on age and usage of same, working order and repair, normal wear and tear excepted, and (ii) where such compliance is an obligation of Seller, substantially conform with all applicable ordinances, regulations and zoning, safety or other laws. All utilities (including, but not limited to gas, sewer, water, electricity, telephone, drainage and other

facilities) necessary for the operation of the Business at the Real Property as currently constituted and the premises leased under the Real Property Leases are currently available, and to Seller's Knowledge, in working order.

(e) To Seller's Knowledge, the ownership or lease of real property by Seller or the use thereof, as presently used by the Business, does not violate any local zoning or similar land use laws or governmental regulations. Seller enjoys peaceful and undisturbed possession under all Real Property Leases. To Seller's Knowledge, Seller is not in substantial violation of or in substantial noncompliance with any covenant, condition, restriction, order or easement affecting the real property owned, leased or occupied by Seller in connection with the Business.

(f) To Seller's Knowledge, there are no condemnation, environmental, zoning or other land use regulation proceedings, either instituted or planned to be instituted, that would detrimentally affect the value of the Real Property or the use and operation of the Real Property for its current use or the right of Buyer to acquire the Real Property. There are no ownership, boundary line, easement location, claim of easement or other such disputes affecting the Real Property or, to Seller's Knowledge, the premises leased under the Real Property Leases, and Seller has received no written notice of any such claim or dispute.

(g) There are no outstanding contracts made by Seller for the major construction or repair of any improvements to the Real Property or the premises leased under the Real Property Leases that have not been fully paid for and Seller shall cause to be discharged all mechanics' or materialmen's liens arising from any labor or material furnished to the Real Property at the request of Seller.

(h) There are no adverse or other parties in possession of the Real Property, or of any part thereof, except Seller, and no party has been granted any license, lease or other right relating to the use or possession of the Real Property or any part thereof by Seller. Seller has not granted any license, lease or other right relating to the use or possession of the premises leased under the Real Property Leases.

(i) To Seller's Knowledge, no facts or conditions exist which would result in the termination of the current access from the Real Property or any premises leased under the Real Property Leases to any currently existing highways and roads adjoining or situated on the Real Property or the premises leased under the Real Property Leases, to which access currently exists or to Seller's Knowledge, to any existing utility facilities servicing, the Real Property or the premises leased under the Real Property Leases.

(j) Except as otherwise set forth on Schedule 2.11, to Seller's Knowledge, (i) neither the Real Property nor any premises leased under the Real Property Leases has been used for the generation, storage or disposal of any Hazardous Materials, (ii) there is no pending or Threatened action or proceeding arising out of the condition of the Real Property, or any premises leased under the Real Property Leases, (iii) there is no alleged violation of any Environmental Law with respect thereto, or (iv) neither the Real Property nor any premises

leased under the Real Property Leases contains any underground storage tanks(s) or equipment containing poly-chlorinated biphenyls (PCBs).

2.12 Collectibility of Receivables. Except as set forth on Schedule 2.12 to Seller's Knowledge (i) all of the accounts receivable (including, without limitation, the Customer Receivables), trade accounts, notes receivable, contract receivables, unbilled invoices and other receivables of Seller in connection with the Business (the "Receivables") shown or reflected on the Base Balance Sheet, less a reserve for bad debts in the amount shown on the Base Balance Sheet are, and those to be reflected on the Estimated Closing Date Balance Sheet (as subsequently adjusted by the Final Closing Date Balance Sheet), will be, and those existing on the Closing Date, will be, (a) valid and enforceable claims, (b) which arose out of transactions with unaffiliated parties, (c) billed and are to be payable, in accordance with Seller's procedures, within sixty (60) days of invoice date through normal means of collection, and (d) subject to no set-off, defense or counterclaim of which Seller has received notice; and (ii) it is Seller's policy, as a general rule, to place with collection Receivables once aged 120 days from date of invoice. The reserves for doubtful accounts and the values at which Receivables are accrued on the Base Balance Sheet and on the Estimated Closing Date Balance Sheet (as subsequently adjusted by the Final Closing Date Balance Sheet) are, and will be, accrued in accordance with GAAP applied on a basis consistent with prior financial statements of Seller and based upon the Aging Policy. A complete and accurate list of each Receivable accrued on Seller's books on June 30, 2000, which lists the name, age and amount thereof, has been delivered to Buyer. An accurate summary of the aging of Seller's Receivables on June 30, 2000 is attached as Schedule 2.12. Since, June 30, 2000 there has not been a material change in Seller's Receivables' aging practice.

2.13 Inventories. Seller has no inventories of finished goods or raw materials.

2.14 Intellectual Property Rights.

(a) For purposes of this Section 2.14, "Intellectual Property" means all (i) patents and patent applications, (ii) trademarks, service marks, trade dress, logos, trade names, and corporate names and registrations and applications for registration thereof, (iii) copyrights and registrations and applications for registration thereof, (iv) computer software, data, and documentation, (v) trade secrets and confidential business information including formulas, compositions, inventions (whether patentable or unpatentable and whether or not reduced to practice), know-how, mask works, inventions, employee invention disclosures, including rights embodied in computer software (in both source code and object code form), manufacturing and production processes and techniques, research and development information, drawings, specifications, designs, plans, proposals, technical data, copyrightable works, financial, marketing, and business data, pricing and cost information, business and marketing plans, and customer and supplier lists and information, (vi) Internet domain names and applications for domain names, and (vii) copies and tangible embodiments thereof (in whatever form or medium); all of the foregoing as owned or used by Seller to the extent relating to, or used or held for use in connection with the Business.

(b) All rights of ownership of, or material licenses to use, Intellectual Property held by Seller are listed on Schedule 2.14. To Seller's Knowledge, there are no Intellectual Property rights other than those set forth on Schedule 2.14, necessary to or regularly used in the conduct of the Business as presently conducted, and all such Intellectual Property rights are being transferred as part of the Subject Assets except as specifically described in Section 1.1(b).

(c) Except as set forth on Schedule 2.14, all rights to Intellectual Property required to be listed in Schedule 2.14:

(i) have been duly registered, filed in, or issued by, the United States Patent Office, United States Register of Copyrights, or the corresponding offices of other countries identified on said schedule;

(ii) have been properly maintained and renewed in accordance with all applicable laws and regulations in the United States and such foreign countries;

(iii) in the case of copyrightable works of authorship, were developed and authored as original works of authorship either by full-time employees of Seller within the normal scope of their duties as works for hire, or by third persons as works for hire under an express written agreement so stating or under a written agreement expressly transferring and assigning all rights to Seller;

(iv) in the case of patents or patent applications, have been, or will at the time of Closing be, duly assigned to Seller and such assignment(s) have been recorded in the appropriate government offices.

(v) are owned exclusively by Seller, free and clear of any attachments, licenses, sub-licenses or Encumbrances, such that no other person has any right or interest in or license to use or right to license others to use any of the Intellectual Property;

(vi) are freely transferable (except as otherwise required by law); and

(vii) are not subject to any outstanding order, decree, judgment or stipulation.

(d) All licenses and other agreements pursuant to which any item of Intellectual Property, as well as any computer software, included in the Subject Assets is licensed or used by Seller are valid, binding and enforceable and, to Seller's Knowledge, (i) there does not exist thereunder a default or event or condition which, after notice or lapse of time or both, would constitute a default by any party thereto, and (ii) no such License or other agreement is subject to any outstanding or Threatened dispute or disagreement.

(e) No proceedings to which Seller is a party have been commenced which (i) challenge the rights of Seller in respect of the Intellectual Property listed on Schedule 2.14, or (ii)

charge Seller with infringement of any other person's rights in Intellectual Property and, to Seller's Knowledge, no such proceeding to which Seller is not a party has been filed, nor are any such proceedings Threatened to be filed.

(f) Seller is not infringing upon any Intellectual Property rights of any other person and, none of the rights in Intellectual Property listed on Schedule 2.14 is being infringed by any other person, except where such infringement would not reasonably likely to have a Material Adverse Effect.

(g) Except as set forth on Schedule 2.14, no director, officer or employee of Seller owns, directly or indirectly, in whole or in part, any Intellectual Property right which Seller has used, is presently using, or the use of which is reasonably necessary to the conduct of the Business as now conducted.

(h) To Seller's Knowledge, in addition to the Intellectual Property described above, Seller has the right to use, free and clear of any claims or rights of others, except claims or rights described in Schedule 2.14, all trade secrets, customer lists, and manufacturing and other secret processes and technologies (collectively "Trade Secrets") used by Seller in the manufacture or marketing of all products formerly or presently produced by Seller, including products licensed from others. Seller has disclosed to Buyer all written documentation in the possession and control of Seller relating to its Trade Secrets. To Seller's Knowledge, except as listed on Schedule 2.14, all employees of and technical consultants to Seller, who have contributed to or have access to Intellectual Property relating to or used or held for use in connection with the Business have entered into proprietary information and invention agreements with Seller and copies of such agreements have been provided to Buyer. Except as set forth on Schedule 2.14, to Seller's Knowledge, no employee of Seller has entered into any agreement that prohibits him from performing the work in which the employee is presently engaged or requires the employee to transfer, assign, or disclose information concerning his work to anyone other than Seller. Copies of all forms of noncompetition, nonsolicitation, confidentiality, nondisclosure and related covenants and agreements to which Seller is a party or which benefit Seller are listed on Schedule 2.14 and copies of all such agreements have been delivered to Buyer. Seller is not, to Seller's Knowledge, using or in any way making use of any Trade Secrets of any third party, including without limitation, a former employer of any present or past employee of Seller.

(i) Except as set forth on Schedule 2.14, Seller has not deposited, and is not obligated to deposit, any source code regarding its products, to the extent such products or source code are a part of the Business, into any source code escrows or similar arrangements and Seller is not under any contractual or other obligation to disclose the source code; or, other than to end-users or bundlers, any other material proprietary information included in or relating to the Subject Assets.

## 2.15 Contracts and Commitments.

(a) Schedule 2.15 contains a complete and accurate list, and Seller has delivered to the Buyer true, correct and complete copies, of all agreements, contracts, licenses, commitments, undertakings and the like (whether written or oral and whether express or implied) that relate to the Business, other than those that have been terminated other than by default of any party thereto (each of such items as set forth in this Section, a "Contract") as follows:

(i) each Contract involving payments of at least Twenty-Five Thousand Dollars (\$25,000) annually that involves performance of services or delivery of goods or materials by Seller;

(ii) each Contract involving payments of at least Twenty-Five Thousand Dollars (\$25,000) annually that involves performance of services or delivery of goods or materials to Seller;

(iii) each Contract providing for the purchase of all or substantially all of Seller's requirements of a particular product from a supplier;

(iv) each Contract for joint marketing, teaming or development;

(v) each Contract with any dealer, franchiser, original equipment manufacturer, value-added reseller, or manufacturer's representative;

(vi) each Contract pertaining to Seller's maintenance or support of its products and/or the Subject Assets involving payments of at least Twenty-Five Thousand Dollars (\$25,000.00) annually;

(vii) each Contract not made in the ordinary course of business;

(viii) each Contract with any sales agent or distributor of products of Seller;

(ix) each Contract for a license (other than off-the-shelf, fully paid up, shrink wrap software licenses) or franchise (as licensor or licensee or franchisor or franchisee);

(x) each Contract involving any arrangement or obligation with respect to the return of products other than on account of a defect in condition, or failure to conform to the applicable Contract;

(xi) each Contract with a Government Authority;

(xii) each lease, license and other Contract affecting any leasehold or other interest in any real or personal property to which Seller is a party;

(xiii) each licensing agreement, whether oral or in writing, with respect to patents, trademarks, copyrights, trade secrets or other Intellectual Property, including



agreements with current or former employees, consultants or contractors regarding the use or disclosure of any Intellectual Property;

(xiv) each collective bargaining agreement, whether oral or in writing, to or with any labor union or other employee representative of a group of employees involving or affecting Seller;

(xv) each joint venture, partnership agreement, whether oral or in writing, involving a sharing of profits, losses, costs or liabilities by Seller with any other person or entity or requiring Seller to make a capital contribution;

(xvi) each Contract containing covenants (including, without limitation, non-competition covenants) that in any way purport to restrict the business activity of Seller or, to the extent Seller has Knowledge of same, any of the employees of Seller, or to limit the freedom of Seller or, to the extent Seller has Knowledge of same, any of the employees of Seller to engage in any line of business or to compete with any person or hire any person;

(xvii) each employment or consulting agreement, whether oral or in writing, between Seller and its employees and consultants (other than agreements that are terminable on less than thirty (30) days notice without contingent liabilities);

(xviii) each agreement, whether oral or in writing, between Seller and an officer or director of Seller, or any Affiliate of any of the foregoing;

(xix) each power of attorney granted by Seller that is currently effective and outstanding;

(xx) each Contract for capital expenditures by Seller in excess of Twenty-Five Thousand Dollars (\$25,000);

(xxi) each agreement, whether oral or in writing, of Seller under which any money has been or may be borrowed or loaned or any note, bond, factoring agreement, indenture or other evidence of indebtedness has been issued or assumed (other than those under which there remain no ongoing obligations of Seller), and each guaranty by Seller of any evidence of indebtedness or other obligation, or of the net worth of any person or entity (other than endorsements for the purpose of collection in the ordinary course of business);

(xxii) each stock purchase, merger or other agreement pursuant to which Seller acquired assets (other than capital expenditures) for consideration in excess of Two Hundred Fifty Thousand Dollars (\$250,000) in any individual transaction;

(xxiii) each other agreement, whether oral or in writing, to which Seller is a party having an indefinite term or a fixed term of more than one (1) year (other than those that are terminable at will or upon not more than sixty (60) days' notice by Seller without penalty);

(xxiv) each Customer Contract; and

(xxv) each standard form of agreement pursuant to which Seller provides services or goods to customers.

(b) Except as set forth on Schedule 2.15, each Contract identified or required to be identified in Schedule 2.15 is in full force and effect and, except where such failure would not be reasonably likely to have a Material Adverse Effect, is valid and enforceable against Seller and against the other parties thereto in accordance with its terms.

(c) Except as set forth in Schedule 2.15, Seller is in compliance in all material respects with all applicable terms and requirements of each Contract under which Seller has any obligation or liability or by which Seller or any of the Subject Assets is or was bound.

(d) Except as set forth in Schedule 2.15, each other person or entity that has or had any obligation or liability under any Contract under which Seller has any rights is in compliance in all material respects with all applicable terms and requirements of such Contract.

(e) To Seller's Knowledge, no event has occurred and no circumstance exists that (with or without notice or lapse of time or both) is likely to or will by service of notice or lapse of time or fulfillment of condition result in a violation or breach of any Contract.

(f) Except as set forth on Schedule 2.15, Seller is not a party to any Contract or order for the sale of goods or the performance of services which, if performed by Seller in accordance with its terms, could only be performed by Seller with a negative gross profit margin or which has no reasonable likelihood of being performed within the time limits therein provided.

(g) Except as set forth on Schedule 2.15, Seller is not a party to any Contract containing covenants that would or could restrict Buyer from operating the Business as presently conducted by Seller and Seller's employees, or limit the freedom of Buyer, or any of the employees of Buyer, to engage in the Business upon the Closing of this transaction.

(h) Except as set forth on Schedule 2.15, since January 1, 2000, Seller has not experienced any termination, cancellation or limitation in any business relationship with the material suppliers or customers of Seller specifically identified as such on Subsection (h) of Schedule 2.15, nor has Seller received notice or otherwise have Knowledge that any such identified material customer or supplier intends to cease, or materially reduce or change the terms of, doing business with Seller, or to terminate any agreement with Seller where such action has had or would have a Material Adverse Effect.

## 2.16 Labor and Employee Relations.

(a) Except as shown on Schedule 2.16 hereto, there are no currently effective consulting or employment agreements or other agreements with individual consultants or employees to which Seller is a party or of which Seller is a beneficiary (including noncompetition covenants). Complete and accurate copies of all such written agreements are

attached to Schedule 2.16. Also shown on Schedule 2.16 are the name and rate of compensation (including all bonus compensation and other remunerative payments of any kind) of each officer, employee or agent of the Business. Except as listed on Schedule 2.16, none of said persons are currently receiving short-term or long-term disability benefits pursuant to any Benefit Plans.

(b) Except as listed on Schedule 2.16, none of the employees of Seller is covered by any collective bargaining agreement with any trade or labor union, employees' representative; no labor organization or group of employees has made a pending demand for recognition; there are, to Seller's Knowledge, no labor representation questions involving Seller and there is no organizing activity involving Seller pending by any labor organization or group of employees; there are no representation elections, arbitration proceedings, labor strikes, slowdowns or stoppages, material grievances, lockouts, or other labor troubles pending, or Threatened, with respect to the employees of Seller, nor has Seller experienced any work stoppage or other material labor difficulty since its organization.

(c) Except as set forth on Schedule 2.16, Seller has complied in all material respects with all applicable Laws relating to the employment of labor, including, without limitation, those relating to wages, hours, unfair labor practices, discrimination, civil rights, plant closings, immigration and the collection and payment of social security and similar taxes, except for such non-compliance that would not be reasonably likely to have a Material Adverse Effect.

(d) Except as set forth on Schedule 2.16, there are no complaints, proceedings, investigations or charges against Seller pending or Threatened before any Government Authority, court or arbitrator, including the National Labor Relations Board or any similar state or local labor agencies, or the Equal Employment Opportunity Commission or any similar state or local agency, by or on behalf of any employee or former employee of Seller who performs or performed services in connection with the Business.

(e) Seller has paid in full (or made provisions for payment in full) to its employees, agents and contractors all wages, salaries, commissions, bonuses and other direct compensation for all services performed by them in connection with the Business. Except as set forth on Schedule 2.16, Seller does not have, and will not have as of the Closing Date, any contingent liability for sick leave, vacation time, holiday pay, severance pay or similar items not set forth on the Base Balance Sheet or on the Estimated Closing Date Balance Sheet (as subsequently adjusted by the Final Closing Date Balance Sheet); and the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will not trigger any severance pay obligation under any contract or at law.

(f) Except as set forth on Schedule 2.16, there has not been any citation, fine or penalty imposed or asserted against Seller under any foreign, federal, state or local law on regulations relating to employment, immigration or occupational safety matters.

2.17 ERISA and Employee Benefits. Schedule 2.17 sets forth a true and complete list of all agreements, arrangements, commitments, policies or understandings of any kind (whether written or oral) (i) which relate to employee or fringe benefits; (ii) which pertain to Seller's

employees (or their beneficiaries, dependents or spouses); and (iii) which are currently maintained by, sponsored by or contributed to by the Seller on behalf of employees of the Business (collectively, "Benefit Plans"), including, but not limited to, all: (A) employee benefit plans as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"); and (B) all other deferred compensation, early retirement, incentive, profit-sharing, thrift, stock ownership, stock appreciation rights, bonus, stock option, stock purchase, welfare or vacation, or other nonqualified benefit plans or arrangements.

2.18 Environmental Matters. Except as set forth on Schedule 2.18, Seller does not generate, use, store, treat or dispose of any oil, petroleum products, chemicals, waste oil, hazardous waste, hazardous substances, toxic substances or hazardous materials (collectively, "Hazardous Materials") at any of the properties or facilities owned or leased by Seller; Seller has no Knowledge of and has received no written correspondence, claim, notice or complaint (i) alleging any violations of any Environmental Laws; (ii) asserting any potential liability under Environmental Laws; or (iii) requesting an investigation or remediation under any Environmental Laws. For purposes of this Agreement, "Environmental Laws" means any and all federal, state, or local laws, rules, and/or regulations related to the protection of public health, worker safety, the environment, or the management of pollution or Hazardous Materials.

2.19 Government Authorizations. To Seller's Knowledge, Seller holds all Government Authorizations which are required to own the Subject Assets and to permit it to conduct the Business as presently conducted. All such Government Authorizations are listed on Schedule 2.19 hereto, together with the applicable expiration date. To Seller's Knowledge, all Governmental Authorizations are now, and will be after the Closing, valid and in full force and effect and Buyer shall have full benefit of the same, and no proceeding is pending or Threatened seeking the revocation or limitation of any Government Authorizations. Schedule 2.19 also includes all Carrier Identification Codes ("CIC") which Seller uses, or is otherwise authorized to use, in the Business.

2.20 Customer Relationships; Protection of Qualified Customer Accounts. Except as set forth on Schedule 2.20, there is no Qualified Customer Account that has been terminated or, to Seller's Knowledge, is expected to be terminated, in whole or part, nor is there any existing or Threatened claim, or any facts upon which a claim is likely to be asserted against Seller, for services which fail to meet any service warranties; no claim has been asserted against Seller for material renegotiation or price redetermination of any business transaction, and Seller has no Knowledge of any facts upon which any such claim is likely to be asserted. Seller has used reasonable commercial efforts to ensure that all information related to the Qualified Customer Accounts, including, but not limited to, all customer lists, mailing lists, books, records, files, data, and letters of agency, has not been disclosed to anyone other than employees, directors and agents of Seller and any of Seller's Affiliates, and that no such employees, directors or agents will possess and/or control any right, adverse to Buyer, to such information following the Closing that would be reasonably likely to have a Material Adverse Effect.

2.21 Litigation. Except for matters described in Schedule 2.21 hereto, there is no action, suit, claim, proceeding, investigation or arbitration proceeding currently pending, or

which has been Threatened against or otherwise involving Seller, the Business or any of the Subject Assets or any of the officers, directors, former officers or directors, employees, shareholders or agents of the Seller (in their capacities as such) and there are no outstanding Court Orders to which Seller is a party or by which any of its assets are bound, any of which (a) question this Agreement or any Ancillary Agreement or any action to be taken hereby or thereby or affect the transactions contemplated hereby, or (b) materially restrict the Business of Seller and/or the Subject Assets or (c) will result in any materially adverse change in the Subject Assets or the operations of the Business.

2.22 Borrowings and Guarantees. Except as shown on Schedule 2.22 hereto, there are no agreements or undertakings pursuant to which Seller (a) is borrowing or is entitled to borrow any money, (b) is lending or has committed itself to lend any money, or (c) is a guarantor or surety with respect to the obligations of any person. Complete and accurate copies of all such written agreements have been delivered to Buyer and are either attached to or expressly referenced in Schedule 2.22.

2.23 Financial Service Relations and Powers of Attorney. All of the arrangements which Seller has with any bank depository institution or other financial services entity, whether or not in Seller's name, which are used in any manner in connection with the Business are described on Schedule 2.23 hereto indicating, with respect to each of such arrangements, the type of arrangement maintained (such as checking account, borrowing arrangements, safe deposit box, etc.) and the current balance as of the date reported, banking institution and person or persons authorized in respect thereof. Except as identified on Schedule 2.23, Seller does not have any outstanding power of attorney.

2.24 Insurance. Schedule 2.24 contains a complete and correct list of all policies of insurance maintained by Seller (including insurance providing benefits for employees) in effect on the date hereof, copies of which have been delivered to Buyer. Except for amounts deductible under policies of insurance described on such Schedule or with respect to risks assumed as a self-insurer and described on such Schedule, Seller is not, nor has Seller been at any time, subject to any liability as a self-insurer of the Business or the Subject Assets likely to have a material adverse effect upon the Subject Assets on the Business. Except as set forth on Schedule 2.24, there are no claims pending or overtly Threatened under any of said policies, or disputes with insurers, and all premiums due and payable thereunder have been paid and, to Seller's Knowledge, all such policies are in full force and effect in accordance with their respective terms. No notice of cancellation has been received by Seller with respect to any such policy.

2.25 Intentionally Omitted.

2.26 Finder's Fee. Except as set forth on Schedule 2.26 (which will be the sole and exclusive responsibility of Seller), Seller has not incurred or become liable for any broker's commission or finder's fee relating to or in connection with the transactions contemplated by this Agreement.

2.27 Transactions with Interested Persons. Except as set forth on Schedule 2.27, no officer, supervisory employee, director or stockholder of the Seller, or their respective spouses or children, (i) owns, directly or indirectly, on an individual or joint basis, any interest in, or serves as an officer or director of, any customer, competitor or supplier of the Seller or any organization which has a contract or arrangement (written or oral) with the Seller, or (ii) has any contract or agreement (written or oral) with the Seller, and all such agreements are on arms-length terms.

2.28 Absence of Certain Payments/Action. To Seller's Knowledge, Seller has not, nor have any of Seller's directors, officers, agents, stockholders or employees or any other person associated with or acting on behalf of Seller:

(a) made or agreed to make any solicitations, contributions, payments or gifts of funds or property to any governmental official, employee or agent where either the payment or the purpose of such solicitation, contribution, payment or gift was or is illegal under the laws of the United States, any state thereof, or any other jurisdiction (foreign or domestic);

(b) established or maintained any unrecorded fund or asset for any purpose, or has made any false or artificial entries on any of its books or records for any reason;

(c) made or agreed to make any contribution or expenditure, or reimbursed any political gift or contribution or expenditure made by any other person to candidates for public office, whether federal, state or local (foreign or domestic) where such contributions were or would be a violation of applicable Law;

(d) engaged in any activity or action which would violate in any material respect any laws, rules, regulations, administrative decisions or pronouncements of the FCC or DPUC, including, but not limited to all applicable FCC and DPUC rules regarding customer slamming and cramming, the violation of which could result in severe penalties and adverse consequences which the FCC or DPUC may attempt to impose upon Buyer and the Closing of this transaction.

2.29 Copies of Documents. Complete and correct copies of any underlying documents listed or described in this Article 2 or any Schedules delivered pursuant to this Article, together with all amendments, renewals and modifications related thereto, have been delivered to Buyer, unless such Schedule indicates the non-delivery thereof.

2.30 Disclosure of Material Information. Neither this Agreement nor any Ancillary Agreement, the financial statements (including any footnotes thereto), any Schedule, any exhibit, document or certificate delivered by or on behalf of Seller pursuant hereto contains any untrue statement of a material fact, or omits to state a material fact known to Seller necessary to make the statements herein or therein not misleading. There is no fact known to Seller that has specific application to Seller (other than general economic or industry condition) which materially adversely affects the Business, the Subject Assets of Seller which has not been set forth herein.

2.31 Definitions. For purposes of this Agreement, including this Article 2:

“Cleanup” – means financial responsibility under any Environmental Law (as defined in Section 2.18), occupational safety or health law, and/or any other legal requirement for cleanup costs or corrective action, including any investigation, cleanup, removal, containment or other remediation or response action(s), and/or for any natural resource damages, occasioned by, resulting from and/or related to the presence of Hazardous Materials in the Environment.

“Environment” – means soil, land surface or subsurface strata, surface waters (including navigable waters, ocean waters, streams, ponds, drainage basins, and wetlands), groundwaters, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life, and any other environmental medium of natural resource.

“Environmental, Health and Safety Liabilities” – means any cost, damage, expense, liability, losses, obligation, or other responsibility arising from or under any Environmental Law, occupational safety and health law, common law and/or other legal requirement and consisting of or relating to:

(a) any environmental, health, or safety matters or conditions (including on-site or off-site contamination, occupational safety and health, and regulation of chemical substances or products);

(b) fines, penalties, judgments, awards, settlements, legal or administrative proceedings, damages, losses, claims, demands and response, investigative, remedial, or inspection costs and expenses arising under any Environmental Law or occupational safety and health law;

(c) financial responsibility under any Environmental Law or occupational safety and health law for Cleanup costs or corrective action, including any investigation, Cleanup, removal, containment, or other remediation or response actions required by any applicable Environmental Law or occupational safety and health law (whether or not such Cleanup has been required or requested by any Governmental Body or any other person) and for any natural resource damages; or

(d) any other compliance, corrective, investigative, or remedial measures required under any Environmental Law or occupational safety and health law.

The terms “removal”, “remedial”, and “response action”, include the types of activities covered by the United States Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq., as amended (“CERCLA”).

“Knowledge” - An individual will be deemed to have “Knowledge” of a particular fact or other matter if (a) such individual is actually aware of such fact or other matter or (b) a prudent individual could be expected to discover or otherwise become aware of such fact or other matter without in any manner making or undertaking a special investigation concerning the

existence of such fact or other matter. In the context of this Agreement, Seller will be deemed to have "Knowledge" of a particular fact or other matter if any or all of Christopher Janis, Wayne Phipps, Frank Borrelli, Victor J. Bakunoff, III, Tom Collins, Dan Reganatta or Jill Pappenhausen have or at any time have had actual "Knowledge" of such fact or other matter.

"Threatened" - A claim, proceeding, dispute, action or other matter will be deemed to have been "Threatened" if any demand or statement has been made (orally or in writing) or any notice has been given (orally or in writing), or if any other event has occurred or circumstance exists that would lead a prudent person to conclude that such a claim, proceeding, dispute, action or other matter is likely to be asserted, commenced, taken or otherwise pursued in the future.

2.32 Securities Matters. Except as set forth on Schedule 2.32 Seller represents and warrants that it is an "accredited investor" as defined in Rule 501 of Regulation D promulgated under the U.S. Securities Act of 1933, as amended (the "Securities Act"). Seller further acknowledges that the Shares to be issued in connection with the transactions contemplated hereby will not have been registered under the Securities Act or any U.S. state securities laws, and that the Parent and Buyer have made no commitment to register such securities under the Securities Act, and that such securities may not be sold in the United States except pursuant to an effective registration statement or an exemption from registration under the Securities Act.

2.33 Seller's Disclosure Schedule. The Seller's Schedules to this Agreement ("Disclosure Schedule") will be delivered after the date hereof in accordance with Section 6.16(a). After delivery of the complete Disclosure Schedule in accordance with Section 6.16(a), Seller shall provide further updates to the Disclosure Schedule as appropriate until Closing. Buyer reserves the right to request additional adjustments through the Purchase Price based upon additional disclosures in the Disclosure Schedule if delivered subsequent to Seller's completion of the delivery of the Disclosure Schedule as set forth in Section 6.16(a) provided that (i) if the additional disclosures result in an increase to the annual operating costs of the Business relating to matters that should have been disclosed prior to the Schedule Disclosure Deadline (as defined in Section 6.16(a)) in excess of \$240,000, Buyer shall have the right to terminate this Agreement; and (ii) if the additional disclosures require the Buyer to incur costs in excess of \$10,000 to bring the Subject Assets (as represented by the initial (unamended) Disclosure Schedule) into the condition as represented by the initial Disclosure Schedule, the Purchase Price shall be decreased by the amount in excess of \$10,000. Information set forth in the Disclosure Schedule shall be deemed to have been disclosed with respect to any other party and/or any other article or section of this Agreement and for any other purpose if set forth with specific cross-references on the Schedule upon which it appears or if its application to other sections is discernable in the context of the Disclosure Schedule as a whole. Terms appearing in the printed and responsive text of the Disclosure Schedule shall have the same meanings and/or definitions provided for in this Agreement unless otherwise expressly noted in the Disclosure Schedule.

### ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF BUYER AND PARENT

Buyer and Parent hereby represent and warrant to Seller as follows:



### 3.1 Organization of Buyer and Parent.

(a) Buyer is a corporation duly organized, validly existing and in good standing under the laws of Delaware with full corporate power and authority to own, lease and operate its properties and to conduct its business in the manner and in the places where such properties are owned or leased or such business is conducted by it. The copies of Buyer's Certificate of Incorporation as amended to date (the "Charter"), certified by the Delaware Secretary of State, and of Seller's bylaws as amended to date, certified by Buyer's Secretary, attached as Schedule 3.1(a) hereto, are complete and correct.

(b) Parent is a corporation duly organized, validly existing and in good standing under the laws of Bermuda with full corporate power and authority to own, lease and operate its properties and to conduct its business in the manner and in the places where such properties are owned or leased or such business is conducted by it. The copies of Parent's Certificate of Incorporation as amended to date (the "Charter"), certified by the Bermuda Monetary Authority or a Bermuda Attorney at Law, whatever is the customary practice with respect to Bermuda corporations, and of Parent's bylaws as amended to date, certified by Parent's Secretary, which shall be delivered at the Closing, shall be complete and correct.

### 3.2 Authorization of Transaction.

(a) Buyer has all requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder and to carry out the transactions contemplated hereby. The execution and delivery of this Agreement and the performance of this Agreement and the consummation by Buyer of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action on the part of Buyer. This Agreement has been duly and validly executed and delivered by Buyer and constitutes a valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms.

(b) Other than the consents referred to in Section 6.21, Parent has all requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder and to carry out the transactions contemplated hereby. The execution and delivery of this Agreement and the performance of this Agreement and the consummation by Parent of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action on the part of Parent. This Agreement has been duly and validly executed and delivered by Parent and constitutes a valid and binding obligation of Parent, enforceable against Parent in accordance with its terms.

### 3.3 No Conflict of Transaction With Obligations and Laws.

(a) Other than the consents referred to in Section 6.21, neither the execution, delivery and performance of this Agreement, nor the performance of the transactions contemplated hereby, will: (i) constitute a breach or violation of the Buyer's or Parent's Charter, Certificate of Incorporation or bylaws; (ii) require any consent, waiver, exemption, approval or

authorization of, declaration, filing or registration with, or giving of notice to, any person, court, arbitration tribunal, or Governmental Authority other than a Governmental Authority described in paragraph (b) below; or (iii) result in a violation of any Law or Court Order applicable to Buyer or Parent, except for such violation that would not be reasonably likely to have a material adverse effect on the business of the Buyer or Parent, respectively.

(b) Other than the consents referred to in Section 6.21, the execution, delivery and performance of this Agreement and the transactions contemplated hereby by Buyer and Parent do not require the consent, waiver, approval, authorization, exemption of or giving of notice by Buyer and/or Parent to any Governmental Authority, except for such consents, approvals, orders, authorizations, registrations, declarations and filings as may be required under applicable state securities laws and the laws of any foreign country.

3.4 Finder's Fee. Neither Buyer nor Parent has incurred and become liable for a broker's commission or finder's fee relating to or in connection with the transactions contemplated by this Agreement, except for such fees payable to Marketplace Analysts, Inc., payment for which shall be the sole and exclusive responsibility of Buyer and/or Parent.

3.5 Certain Proceedings. There is no pending proceeding that has been commenced against Buyer and/or Parent and that challenges, or may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the contemplated transactions. To Buyer's and/or Parent's knowledge, no such proceeding has been Threatened.

3.6 Independent Evaluation. Buyer and Parent have made such investigations and evaluations as it considers appropriate and has reached independent judgment of the terms of the contemplated transactions and has not relied on any representations and warranties of Seller except those expressly set forth in this Agreement and the Schedules attached hereto. Such evaluation has included, without limitation, retention by Buyer of its own independent consultant(s), review and/or inspection of the Subject Assets and Seller's facilities and review of existing public records and various documents and records provided by Seller respecting the Business and the Subject Assets.

3.7 Sufficient Funds. Buyer, through funds made available to it by Parent, has available and will have available at the Closing sufficient funds (i) to pay at the Closing the Purchase Price as required pursuant to Section 1.3 and (ii) to pay any adjustment to the Purchase Price in accordance with Section 1.4.

3.8 Validity of Shares of Parent. The Shares referenced in Section 1.3(f), if any are so issued, will, upon issuance and delivery thereof, constitute legally and validly authorized and issued, fully paid and non-assessable ordinary shares of HK \$0.02 par value of Parent. The Shares, if issued and delivered, will be free and clear of any and all claims, liens, restrictions, pledges, charges, rights of third parties or encumbrances and will be tradable at the Stock Exchange of Hong Kong Limited.

3.9 Securities Matters. The Shares, if issued pursuant to the terms of this Agreement, will be duly issued in compliance with applicable provision(s) of the rules, regulations, laws, policies and/or other enactments of any securities exchange with which Parent is registered, and any and all legal requirements of the jurisdiction within which such securities exchange is situated (collectively, the "Securities Reporting Requirements"). During any period in which Parent has been subject to the Securities Reporting Requirements, Parent has filed with the applicable securities exchange and/or Governmental Authority all documents required to be filed by Parent. At the time of Closing, current documents filed by Parent will comply in all material respects with any applicable Securities Reporting Requirements, and will not contain any untrue statement of material fact or omit to state a material fact required to be stated therein or necessary to make the statement therein, in light of the circumstances under which they were made, not misleading.

#### ARTICLE 4. COVENANTS OF THE SELLER.

Seller hereby covenants and agrees with Buyer as follows:

4.1 Conduct of Business. Between the date of this Agreement and the Closing, Seller will do the following, unless Buyer shall otherwise consent in writing:

- (a) conduct the Business only in the ordinary course consistent with past practice and refrain from changing or introducing any method of management or operations with respect to the Business except in the ordinary course of business and consistent with prior practices;
- (b) withhold or remit with respect to all employees of Seller all employment taxes;
- (c) use commercially reasonable efforts to prevent any change with respect to the banking arrangements of Seller;
- (d) use commercially reasonable efforts to keep intact its business organization, to keep available its present officers, agents and employees and to preserve the goodwill of all customers and others having business relations with it;
- (e) have in effect and maintain at all times all insurance of the kind, in the amount and with the insurers set forth in Schedule 2.24 or equivalent insurance with any substitute insurers approved by Buyer;
- (f) perform in the ordinary course consistent with past practice all of its obligations under all Contracts and other agreements relating to the Business, including the discharge of all accounts payable, according to the terms and conditions of all invoices therefore, except when the amount thereof is being contested in good faith, by appropriate proceedings and with adequate reserves therefore being set aside on the books of Seller;

(g) maintain true, correct and complete books of accounts and records relating to the Business;

(h) comply in all material respects with all Laws applicable to the conduct of the Business or the Subject Assets;

(i) promptly, upon its Knowledge thereof, advise Buyer in writing of the termination or resignation of any key employee and the circumstances therefor;

(j) pay all Taxes, assessments, governmental charges or levies imposed upon Seller or its income, profits or assets, or otherwise required to be paid by it, and to pay when due any liability or charge that if, unpaid, might become an Encumbrance upon any of the Subject Assets;

(k) promptly, upon its Knowledge thereof, advise Buyer in writing of (i) any material adverse change in the financial condition of Seller or with respect to the operations of the Business; (ii) any event, condition or circumstance that Seller becomes aware of or occurring from the date hereof until the Closing Date that causes or would constitute a violation or breach of any representation, warranty, covenant, agreement or provision contained in this Agreement provided, however, that such disclosure shall not be deemed to cure any violation or breach of any such representation, warranty, covenant, agreement or provision, or (iii) any event, occurrence, transaction or other item that would have been required to have been disclosed on any Schedule delivered hereunder, had such event, occurrence, transaction or item been known to Seller or existed on the date hereof (in which event, Seller will promptly deliver to Buyer a supplement to the Schedules specifying such change as provided for in Section 2.33 hereof);

(l) refrain from making any purchase, sale or disposition of any asset or property other than in the ordinary course of business, from purchasing any capital asset costing more than Twenty-Five Thousand Dollars (\$25,000) and from mortgaging, pledging, subjecting to a lien or otherwise encumbering any of the Subject Assets;

(m) refrain from incurring any contingent liability as a guarantor or otherwise with respect to the obligations of others, and from incurring any other contingent or fixed obligations or liabilities except those that are usual and normal in the ordinary course of business;

(n) refrain from entering into any material agreement or amending or terminating any material contract, agreement or license or waiving or releasing any material right or claim;

(o) refrain from taking any action which may jeopardize the validity or enforceability of any Governmental Authorizations, specifically including, but not limited to, any FCC or DPUC license or permit, except that Seller has informed Buyer that Seller is not paying current, among other obligations of Seller, its past due Universal Service Fund obligations;

(p) refrain from entering into any employment contract (other than as may be contemplated by this Agreement) or making any change in the compensation payable or to become payable to any of its officers, employees or agents of the Seller, except in the ordinary course of business and consistent with past practices;

(q) refrain from making any change in accounting methods or practices;

(r) refrain from merging, consolidating or reorganizing with, or acquiring, any entity;

(s) refrain from agreeing to any audit assessment by any taxing authority or filing any federal or state income or franchise Tax Return or amendment thereto, unless copies of such Tax Returns have been delivered to the Buyer for its review and consultation prior to filing, or from revoking any tax election or making any agreement or settlement with any taxing authority;

(t) refrain from entering into any contract or commitment providing for payments in excess of Twenty-Five Thousand Dollars (\$25,000) in any fiscal year, except in the ordinary course of business after consultation with Buyer; and

(u) not take and use commercially reasonable efforts not to permit to be taken, any action that would cause any of the representations and warranties as set forth in Article 2 hereof to become untrue, or otherwise result in a breach thereof.

(v) not enter into any further leases, contracts or other obligations relating to the Real Property or the premises leased under the Real Property Leases which will affect such properties or bind Buyer after the Closing;

(w) not enter into any contracts, leases, easements, or other agreements affecting the use, title, occupancy, or development of the Real Property or the premises leased under the Real Property Leases;

(x) maintain insurance in connection with the risk of loss with respect to the Real Property and only to the extent required by any applicable lease the premises leased under the Real Property Leases;

(y) continue to maintain the Real Property and the premises leased under the Real Property Leases in substantially the same manner as it is maintaining the same as of the date hereof and maintain and keep the Real Property and the premises leased under the Real Property Leases insured, as presently maintained and insured; and

(z) to the extent permitted by this Agreement, allow Buyer and its representatives to have access to the Real Property and the premises leased under the Real Property Leases and at Buyer's sole risk and expense.

#### 4.2 Access to Information; Right of Entry.

(a) General. From and after the date hereof, at reasonable times and upon reasonable notice to Seller, Buyer shall be entitled, through its employees, advisors and representatives, to make such investigation of the assets, properties, facilities, personnel, business and operations of Seller and the Business, and to make such examination of the books, records and financial condition of Seller and the Business, as Buyer reasonably requests. No investigation by Buyer shall diminish, obviate or constitute a waiver of, the enforcement of any of the representations, warranties, covenants or agreements of Seller under this Agreement or any of the Ancillary Agreements. Seller shall furnish the representatives of Buyer during the period between signing this Agreement and the Closing with all information and copies of documents concerning the affairs of the Business as such representatives may reasonably request and shall cause the appropriate officers, employees, consultants, agents, accountants and attorneys to cooperate fully with such representatives in connection with such review and examination.

(b) Environmental. During the period extending from the date of this Agreement until thirty (30) days thereafter (the "Environmental Evaluation Period"), Buyer, at Buyer's expense, shall have a limited license to enter upon the Real Property during normal business hours upon not less than two (2) business days advance notice to Seller of its intention so to enter the Real Property (the "License") for purposes of facilitating Buyer's inspection and evaluation of the Real Property. Buyer may request an extension of time for the Environmental Evaluation Period up to and including an additional thirty (30) days. Buyer's inspection shall include the right to have a reputable nationally or regionally recognized environmental consultant reasonably acceptable to Seller conduct a Phase 1 environmental inspection or assessment of the Real Property. Seller acknowledges and agrees that Buyer's Phase 1 environmental inspection or assessment shall include the inspection, analysis and sampling of the drinking water wells and septic tanks for the Real Property. It is expressly understood and agreed by the parties that the scope of any environmental inspection other than a Phase 1 environmental inspection (to the extent and upon the condition that Buyer's environmental engineer and/or consultant expressly recommends and delineates the proposed scope of same as a result of a Phase 1 environmental inspection or assessment) shall be subject to the prior written approval of Seller, which approval shall not be unreasonably withheld. If Seller refuses to permit Buyer to perform such further inspection, Buyer shall have the right to terminate this Agreement. It is further understood and agreed by the parties that the information gathered, results obtained and/or reports produced relating to any such Phase 1 or, if consented to by Seller, Phase 2 environmental inspection or assessment shall be handled and managed by Buyer in strict compliance with the terms and conditions of the existing Confidentiality Agreement previously executed by the parties dated as of April 20, 2000 and shall not be disclosed to any party, including any Governmental Authority, unless (i) such disclosure is legally required of Buyer pursuant to an applicable Environmental Law and, in the event such requirement is imposed, (ii) only after not less than three (3) business days prior written notice to Seller of such proposed disclosure, unless the Environmental Law requires a more prompt disclosure. Seller may have the right to have a representative present during any inspection(s), and/or any subsequently consented to tests or investigations. Seller's representatives shall not unreasonably

interfere with the activities of Buyer or Buyer's environmental engineer and/or consultant. After any entry, Buyer shall immediately restore the Real Property to substantially its condition before any such entry, and Buyer shall not allow any dangerous or hazardous condition to be created or arise from or in connection with Buyer's entry on the Real Property. Buyer shall comply with all legal requirements applicable to its entry to the Real Property, and shall keep the Real Property free and clear of all mechanics' liens and materialmen's liens arising out of any of Buyer's activities. The License may be revoked by Seller at any time, with at least two (2) days prior written notice to Buyer, and shall in any event be deemed revoked upon any termination of this Agreement. If the License is revoked prior to Buyer completing its work contemplated by this Section 4.2(b), Buyer may terminate this Agreement.

(c) Buyer shall indemnify, defend and hold harmless Seller's Indemnified Persons and the Real Property from and against all claims, Losses (as hereinafter defined), liens and/or liabilities arising from or relating to the entry of Buyer, or its representatives, agents and contractors, on the Real Property; provided, however, that the indemnity hereunder in no way limits or impair Buyer's ability to pursue third parties, its environmental engineer or consultant or any insurance carriers for claims related to this indemnity. Buyer's obligations under this paragraph shall survive the Closing and/or the termination of this Agreement and shall not be limited by any insurance required under subsection 4.2(d) hereafter.

(d) Buyer's environmental engineer and/or consultant shall maintain either Comprehensive General Liability insurance or Commercial General Liability insurance to cover Buyer's activities on the Real Property. At least two (2) business days before entering on the Real Property, Buyer shall deliver to Seller a Certificate of Insurance evidencing compliance with the terms of this paragraph. The liability insurance policy shall have a combined single limit per occurrence liability limit of at least \$1,000,000.00 for premises liability, bodily injury, personal injury and Real Property damage, shall be primary and noncontributing with any insurance which may be carried by Seller, shall name the Seller as an additional insured, and shall be written by companies rated A+ or better in "Best's Insurance Guide" and authorized to do business in the State of New Jersey. The insurance policy shall be maintained and kept in effect by Buyer's environmental engineer and/or consultant at all times during the term of this License.

4.3 Governmental Permits and Approvals; Consents. Seller shall use commercially reasonable efforts (with the reasonable assistance of Buyer to the extent required to obtain such approvals) to obtain promptly all permits and approvals from any governmental or regulatory body required to be obtained by the parties for the lawful consummation of the Closing, it being understood and agreed, however, that any and all costs and/or expense for filing, transfer and/or other fees required or to be incurred in connection with gaining such permits and/or approvals shall be paid by and be the exclusive responsibility of Buyer. Seller shall use commercially reasonable efforts (with the reasonable assistance of Buyer to the extent required to obtain such consents to obtain (i) the consents set forth on Schedule 2.6 and (iii) appropriate estoppel representation letters in form and substance reasonably satisfactory to Buyer from the lessors of the Real Property. Seller shall promptly file applications with the appropriate state regulatory

authorities or other appropriate persons requesting their consent to the assignment of the licenses, OCN and NXX numbers and CIC set forth in Schedule 1.1(a)(ii) and Schedule 2.19 from Seller to Buyer. The parties hereto will diligently take, or fully cooperate in the taking of, all necessary and proper steps, and provide any additional information reasonably requested in order to obtain promptly the requested consents and approvals of the applications by the appropriate state regulatory authorities and other persons; provided, however, that none of the parties hereto shall have any obligation to take any unreasonable steps to satisfy complainants, if any. Seller agrees to comply with all notice and other requirements of state regulatory authorities and other persons applicable to the assignment of the licenses, OCN and NXX numbers and CIC to Buyer and to discontinuance of such Seller's telecommunications services.

4.4 Assignment of Licenses/Contracts. To the extent that the transactions contemplated by this Agreement require the consent of any third party under the terms of any license or contract to which Seller is a party (including the leases for Real Property) or Governmental Authorizations which requires the consent of another party, Seller agrees to use commercially reasonable efforts (with the reasonable assistance of the Buyer to the extent necessary to obtain such consents) to obtain the consent of such other party to an assignment in all cases in which consent is required and obtainable.

4.5 Maintenance of Government Authorizations. Seller shall at all times prior to the Closing Date use commercially reasonable efforts to preserve and maintain each of Seller's Government Authorizations free and clear of all Encumbrances. Seller shall not take any action which would cause any governmental or regulatory body to institute proceedings regarding any of the Government Authorizations or take any other action which would result in Seller being in noncompliance in any material respect with the requirements of any governmental or regulatory body having jurisdiction thereof.

4.6 Collection of Receivables. Between the date hereof and the Closing Date, Seller will use prudent measures consistent with past practices in collection procedures in order to collect the Receivables so as not to jeopardize Buyer's future customer relations.

4.7 Breach of Representations and Warranties. Promptly upon the occurrence of, or promptly upon Seller gaining Knowledge of the impending or Threatened occurrence of, any event which would cause or constitute a breach, or would have caused or constituted a breach had such event occurred or been known to Seller prior to the date hereof, of any of the representations and warranties of Seller contained in or referred to in this Agreement, Seller shall give detailed written notice thereof to Buyer and shall use all commercially reasonable efforts to prevent or promptly remedy the same.

4.8 Consummation of Agreement. Seller shall use all reasonable efforts to perform and fulfill all conditions and obligations on its part to be performed and fulfilled under this Agreement, to the end that the transactions contemplated by this Agreement shall be fully carried out. To this end, Seller shall obtain all necessary authorizations or approvals of its stockholders and Board of Directors in order to consummate the transactions contemplated hereby. Seller further agrees to consult with Buyer in obtaining such stockholder approval, provide Buyer with



an opportunity to comment upon any notice being provided to the same, and to endeavor to ensure that all actions reasonably requested by Buyer are taken. Seller also agrees to use all commercial reasonable efforts to have all documents reasonably requested by Buyer executed by each of the stockholders of Seller and Furst Holdings, Inc. in the form and substance reasonably requested by Buyer, including, at a minimum, but not limited to, the Purchaser Representative Letter substantially in the form attached hereto as Exhibit F (the "Purchaser Representative Letter"). Seller shall take reasonable steps, in good faith, to verify that all of the representations contained in Purchaser Representative Letter shall be true and accurate as of the Closing Date.

4.9 Exclusivity. From the date hereof until the earlier of: (i) October \_\_, 2000 (subject to extension to the Closing Date if such date is extended pursuant to Section 9.1), or (ii) termination of this Agreement by Buyer pursuant to Section 9.1, Seller shall not, and shall not permit any, officer, director, shareholder, employee, investment banker or other agent or representative of Seller, to directly or indirectly, (A) solicit, initiate or engage in discussions or negotiate with any person or entity (whether or not such discussions or negotiations are initiated by Seller), or take any other action intended or designed to facilitate or encourage the efforts of any person or entity, other than Buyer or Parent, relating to the possible acquisition of the Subject Assets or the Business (whether by way of merger, purchase of capital stock, purchase of assets or otherwise) (with any such efforts by any such person or entity to make such an acquisition referred to as an "Alternative Acquisition"), (B) provide information with respect to Seller to any person or entity, other than Buyer, relating to a possible Alternative Acquisition by any person or entity, other than Buyer, (C) enter into an agreement with any person or entity, other than Buyer, providing for a possible Alternative Acquisition, (D) make or authorize any statement, recommendation or solicitation in support of any possible Alternative Acquisition by any person or entity, other than by Buyer, or (E) enter into an agreement, arrangement or understanding requiring it to abandon, terminate or fail to consummate the transaction contemplated by this Agreement. Seller shall advise the Buyer orally and in writing of all the terms and conditions of any inquiries or proposals relating to an Alternative Acquisition and the identity of the party making any such inquiry or proposal or on whose behalf such inquiry or proposal is being made, PROMPTLY following Seller's receipt of any such inquiry or proposal. The prohibition on Alternative Acquisitions shall not apply to the Excluded Assets, nor shall Buyer have any unique rights or options with respect to the purchase of the Excluded Assets or capital stock of Seller.

4.10 Cooperation. Seller shall work cooperatively with Buyer to determine the staffing of the Business necessary to support Buyer's operations after the Closing.

4.11 Seller to Act as Buyer's Agent With Respect to Certain Matters.

(a) At the request of and upon the written instruction of Buyer (delivered in a reasonably timely manner to Seller), at the expense of Buyer, Seller agrees to take such action, in the name of Seller but on behalf of Buyer and/or Parent, as Buyer and/or Parent reasonably requests with respect to the Subject Assets and/or the Business to enforce any and all of Seller's rights under and with respect to (i) any confidentiality or nondisclosure agreement by and between Seller and its employees relating to the operations of the Business, including those

agreements set forth on Schedule 2.14; (ii) any non-competition or non-compete agreement running in favor Seller with respect to any third party; and/or (iii) any acquisition (or similar) agreements and all documents and agreements executed in connection therewith to which Seller is a party as the acquirer or surviving entity.

(b) Seller shall utilize counsel as directed by Buyer, at Buyer's expense, and Buyer shall have controlling decision-making authority, in each instance after consultation with Seller, as to all matters relating to the enforcement of such rights as necessary to assert and enforce Buyer's rights pursuant to Section 4.12(a) above.

4.12 Key Employees. Seller shall use its reasonable efforts to assist Buyer in its effort to employ those employees of Seller that Buyer desires to employ.

4.13 Transition Services. From and after the Closing, Seller shall provide Buyer, at Buyer's sole cost and expense, (i) access to and use of Seller's "800", "888" and any other toll-free numbers, until such time as the transfer of said numbers to Buyer as contemplated hereunder has been completed, and (ii) the right to buy services from Seller's carriers, Sprint and Talk.com, under Seller's agreements with such parties.

4.14 Technology Services. The parties acknowledge that from time to time from the date hereof, either party may be requested to provide certain technology, know-how, information, data and implementation services to the other. Each party agrees to pay the other a license fee (the "License Fee") in consideration for such services to be chargeable by such party to the other and upon such terms and conditions to be mutually agreed between the parties.

## ARTICLE 5. COVENANTS OF BUYER AND PARENT

5.1 Consummation of Agreement. Buyer and Parent shall use all commercially reasonable efforts to perform and fulfill all conditions and obligations on its part to be performed and fulfilled under this Agreement, to the end that the transactions contemplated by this Agreement shall be fully carried out. To this end, each of Buyer and Parent shall obtain any approvals of its Board of Director as are necessary in order to consummate the transactions contemplated hereby,

5.2 FCC 214 License. Buyer agrees to use commercially reasonable efforts (with the reasonable assistance of Seller to the extent required to obtain such approval) to obtain promptly for itself, or shall cause its immediate parent company, Zone USA, Inc., to obtain, at Buyer's sole cost and expense and with Buyer's submission of its application to secure such approvals occurring not later than fifteen (15) business days after passage of the Due Diligence Deadline referenced in Section 6.16, its 214 license from the FCC and to seek the approval of the FCC for the transfer of the Subject Assets hereunder. The parties hereto will diligently take, or fully cooperate in the taking of, all necessary and proper steps, and provide any additional information reasonably requested in order to obtain promptly such 214 license and transfer approval from the

FCC. Upon Seller's inquiry, Buyer agrees to keep the Seller fully informed with respect to its 214 license application with the FCC.

### 5.3 Employees and Employee Benefits.

(a) Effective on the Closing Date, Buyer shall, in good faith consultation with Seller, be entitled to offer to hire, on an at-will basis, any or all of the employees of Seller as of the Closing (such employees actually hired by Buyer, the "Business Employees") upon the compensation plan as exists between such Business Employees and Seller and its employees as of the date hereof and described on Schedule 5.3, which such Schedule 5.3 shall be updated by Seller prior to the Closing. Buyer agrees to assume all employment-related obligations with respect to the Business Employees accruing on and after the Closing Date.

(b) Seller shall be responsible for the health care claims of former employees with respect to the Business who, as of the Closing Date, are receiving (or are eligible to receive by virtue of a qualifying event occurring prior to the Closing Date) continuation of health care coverage as required by the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") under Seller's health plans covering employees of the Business. Buyer shall be responsible for providing health care continuation coverage as required by COBRA to any Business Employees terminated on or after the Closing Date.

(c) Business Employees shall be eligible for participation in any health coverage, insurance, retirement and other benefit plans, programs, policies and/or arrangements sponsored by Buyer for which similar situated employees of Buyer are eligible (the "Buyer's Plans"). Buyer will give the Business Employees credit under the Buyer's Plans for Past Service (as hereinafter defined) for purposes of (i) determining when participation/eligibility standards in the Buyer's Plans have been met, (ii) determining the accrued or available benefit or amount of any benefit under any Buyer's Plans (including, without limitation, short-term disability, severance and vacation benefits) with the sole exception of benefit accruals under any Buyer's Plans which is a defined benefit pension plan, and (iii) determining vesting of benefits, rights or features (including, without limitation, eligibility for early retirement, disability and benefit options and forms) under any Buyer's Plans; provided, however, that Past Service shall not be considered in determining option vesting or acceleration rights. "Past Service" means service with regard to the Business (i) as an employee of Seller and (ii) as an employee of predecessor companies prior to the acquisition of the Business by Seller, but only to the extent that such service is recognized by Seller for similar purposes immediately prior to the Closing Date.

(d) Buyer assumes no obligation or liability under Sellers' medical and other welfare benefit plans (as defined in Section 3(1) of ERISA; "Welfare Plans"). Subject to the provisions of this section, Business Employees shall be eligible to participate in Buyer's Plans which are Welfare Plans in accordance with the terms of such plans. In particular, but without limitation (i) claims for medical, hospital or other health care expenses incurred by Business Employees or their dependents on or after the Closing Date shall be covered under Buyer's Welfare Plans in accordance with the terms of such plans (subject to the waiver of preexisting conditions and exclusions and recognition of Past Service credit), and claims for medical

expenses incurred by any of Seller's employees (including Business Employees) or their dependents prior to the Closing Date, shall be covered under Sellers' Welfare Plans in accordance with the terms of such plans; and (ii) claims of Business Employees or their beneficiaries for life insurance, accidental death and dismemberment, and disability benefits with respect to death, disability or other injury occurring on or after the Closing Date shall be covered under Buyer's Welfare Plans in accordance with the terms of such plans, and claims for such benefits with respect to death, disability or injury occurring prior to the Closing Date shall be covered under Sellers' Welfare Plans in accordance with the terms of such plans. The amount and type of benefits payable in any case shall be determined in accordance with the terms of the applicable Welfare Plan.

5.4 Breach of Representations and Warranties. Promptly upon the occurrence of, or promptly upon Buyer or Parent gaining knowledge of the impending or Threatened occurrence of, any event which would cause or constitute a breach, or would have caused or constituted a breach had such event occurred or been known to Buyer or Parent prior to the date hereof, of any of the representations and warranties of Buyer or Parent contained in or referred to in this Agreement, Buyer or Parent shall give detailed written notice thereof to Seller and shall use all commercially reasonable efforts to prevent or promptly remedy the same.

#### ARTICLE 6. CONDITIONS TO OBLIGATIONS OF BUYER.

The obligations of Parent and Buyer to consummate this Agreement and the transactions contemplated hereby are subject to the condition that on or before the Closing the actions required by this Article 6 will have been accomplished.

6.1 Lack of Adverse Change. Since June 30, 2000, there shall not have occurred any incident or event which, individually or in the aggregate, has had or is reasonably likely to result in a material adverse effect on the Subject Assets or the Business, including, without limitation (i), the failure to maintain or get the consent to transfer any and all Governmental Authorizations, (ii) material errors in operation or systems failure of the hardware, software or embedded systems used by Seller in connection with the Business or the software or other technology developed by Seller as a result of the transition to the calendar year 2000 or (iii) fire, casualty or act of God, whether covered by insurance or not.

6.2 Representations; Warranties; Covenants. Each of the representations and warranties of Seller contained in Article 2 and the Schedules to this Agreement, as same may be amended and/or supplemented through the day of Closing in accordance with Section 2.33 hereof, shall be true and correct in all material respects as though made on and as of the day of the Closing and Seller shall, on or before the Closing, have performed in all material respects all of its obligations hereunder which by the terms hereof are to be performed on or before the Closing. Seller shall have delivered to Buyer a certificate dated as of the Closing to the foregoing effect.

6.3 Opinion of Counsel. At the Closing, Buyer and Parent shall have received from Scarinci & Hollenbeck, LLC an opinion dated as of the Closing, with respect to the matters set forth on Exhibit G attached hereto with respect to Seller.

6.4 Secretary's Certificates. Seller shall have delivered to Buyer a certificate dated as of the Closing Date by the Secretary or Assistant Secretary of Seller certifying as to the truth and correctness of Seller's Charter and bylaws and the resolutions of the Board of Directors and consent of the shareholder of Seller. Such certificate shall also contains such other customary provisions.

6.5 Employment Matters. Victor J. Bakunoff, III shall be available at Closing to become an employee of Buyer on terms satisfactory to Buyer. Buyer acknowledges that the terms set forth in Buyer's and/or Parent's offer letter dated August 1, 2000 are satisfactory to Buyer.

6.6 Management Agreement. Seller shall have executed and delivered to Buyer the Management Agreement in the form of Exhibit H attached hereto (the "Management Agreement").

6.7 Bill of Sale/Deed. Seller shall have executed and delivered to Buyer or Buyer's nominee (i) the Bill of Sale in the form of Exhibit E attached hereto and (ii) a Bargain and Sale Deed for the Real Property in the form of Exhibit I attached hereto.

6.8 Nonsolicitation and Noncompetition Agreement. Seller shall have executed and delivered to Buyer the Nonsolicitation and Noncompetition Agreement in the form of Exhibit J attached hereto (the "Nonsolicitation and Noncompetition Agreement").

6.9 Escrow Agreements. There shall have been executed and delivered to Buyer the Closing Escrow Agreement and the Stock Escrow Agreement in the forms attached hereto as Exhibit A and B, respectively, and any other documents required to be executed and delivered as contemplated by the terms of such agreements.

6.10 Consents.

(a) Seller shall have obtained and delivered to Buyer:

(i) all material licenses, permits, consents, approvals, waivers or other authorizations necessary to be obtained by it to consummate the transactions contemplated by this Agreement, and effected all registrations, filings and notices necessary to be effected by it to consummate the transactions contemplated by this Agreement, which shall include, without limitation, those set forth on Schedule 6.10 to be prepared by Buyer, in good faith consultation with Seller, but as to which Buyer shall have sole and absolute discretion, on or before the date ten (10) days after the Due Diligence Deadline (as hereinafter defined) hereto; and

(ii) The North American Numbering Plan Administrator's approval of the transfer of CIC 5014 and 6833 from Seller to Buyer.

(b) Buyer shall have obtained an FCC 214 license.

6.11 Absence of Certain Litigation. There shall not be any Court Orders issued by any court of competent jurisdiction which directs that this Agreement or any material transaction contemplated hereby shall not be consummated as herein provided.

6.12 No Bankruptcy. Seller or its parent organization shall not: (i) have commenced a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or substantially all of its property, or have consented to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or have made a general assignment for the benefit of its creditors; or (ii) have an involuntary case or other proceeding commenced against it seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereinafter in effect or seeking the appointing of a trustee, receiver, liquidator, custodian or similar official of it or substantially all of its property; or (iii) have an attachment placed on all or a significant portion of its assets.

6.13 Release of Liens, Security Interests and Other Encumbrances. Seller shall have delivered to the Buyer evidence satisfactory to the Buyer and its counsel that the Seller is able to deliver the Subject Assets free and clear of all liens (other than for taxes not yet due and payable), attachments, mortgages, security interests or other encumbrances of any nature whatsoever other than the Assumed Liabilities or as otherwise provided for pursuant to this Agreement.

6.14 Lock-Boxes. Seller shall have terminated (or modified if so requested by Buyer) any "lock-box" or similar arrangements with any party, including Seller's or its parent's lenders, with respect to the Subject Assets, including the Receivables, and such other parties have agreed in writing to turnover any such collections on account of the Subject Assets to Buyer in a manner satisfactory to Buyer (including that any financial institution at which Seller maintains any accounts into which proceeds of Receivables are deposited, whether by wire transfer or otherwise, shall be instructed to, and shall agree in writing to, sweep daily the funds received into such accounts and deposit or direct the proceeds to an account designated by Buyer). Any such lock-boxes shall be pointed to an account in the name of Buyer as of, or as soon as practical after, the Closing. All proceeds received into such lock-boxes after the Closing shall belong to Buyer subject to the terms and conditions elsewhere provided for in this Agreement.

6.15 Seller's Liabilities. Seller's total liabilities as of the Closing as set forth on the Estimated Closing Date Balance Sheet shall not exceed the Purchase Price determined at Closing after making any adjustment thereto pursuant to Section 1.4(a) by more than \$1,000,000.00.

6.16 Due Diligence.

(a) General. Buyer shall have completed its business, accounting, legal and environmental due diligence with respect to the Business and the Subject Assets and the results thereof shall have been satisfactory to Buyer, in its sole and absolute discretion (Buyer's satisfaction shall be referred to as the "Due Diligence Condition"). Buyer shall have liberty to conduct said due diligence until five (5) business days after Seller has delivered to Buyer all of the Schedules required hereunder (the "Due Diligence Deadline," with such delivery of the Schedules by Seller five (5) days prior to the Due Diligence Deadline being the "Schedule Disclosure Deadline") and responded, in all commercially reasonable respects, to all of Buyer's reasonable due diligence requests. Seller shall notify Buyer in writing at the time it delivers to Buyer the last Schedules required hereunder that Buyer has delivered all required Schedules. Buyer shall notify Seller in writing prior to the Due Diligence Deadline if the Due Diligence Condition has not been satisfied, in which event Buyer may terminate this Agreement and its obligations hereunder (a "Due Diligence Termination Notice"). If Buyer does not timely deliver a Due Diligence Termination Notice, the Due Diligence Condition shall be deemed satisfied (except for the Buyer's environmental due diligence which is covered by Section 6.16(b)).

(b) Environmental. Buyer shall have completed its environmental due diligence with respect to the Business and the Subject Assets during the Environmental Evaluation Period and the results thereof shall have been satisfactory to Buyer. To the extent the results of Buyer's "Phase 1" environmental site assessment (as defined in Section 4.2(b)) or, to the extent permitted by Seller, Buyer's "Phase 2" site assessment indicate the presence of areas of concern and/or Cleanup required by any applicable Environmental Law to address environmental conditions at and/or respecting the Real Property, Buyer shall require its environmental consultant to prepare, in good faith, a commercially reasonable estimate of the costs anticipated to be incurred so as to address any such Cleanup requirement in the least costly manner so as to satisfy the requirements of any such applicable Environmental Law and/or to satisfy any valid directive issued by a Governmental Authority with jurisdiction over any such Cleanup (the "Most Cost Effective Remediation"). It is expressly understood and agreed by the parties that in developing any cost estimate respecting such Most Cost Effective Remediation, any such Cleanup strategy shall utilize, to the maximum extent legally permissible, institutional and engineering controls to effect any such Cleanup (including, without limitation, the use of a deed of environmental restriction or similar institutional control limiting the use of the Real Property to non-residential use) upon the condition that such agreed upon restriction does not limit the use of the Real Property, as of and after the Closing, in a manner prohibiting its present use as a commercial office facility. Buyer shall use commercially reasonable efforts to cause its environmental consultant to prepare and deliver such reasonable estimate of the Most Cost Effective Remediation, if any, to Buyer and to Seller, within the Environmental Evaluation Period. At the time of such delivery, Buyer and Seller shall collaboratively review any such cost estimate in good faith in an effort to reach a mutually acceptable cost estimate of the Most Cost Effective Remediation. In the event that the Most Cost Effective Remediation estimate sets forth an amount up to but not exceeding \$50,000, Buyer shall proceed to Closing. In the event that the Most Cost Effective Remediation estimate as contemplated by Section 1.3(c) exceeds \$50,000, Buyer shall have the option, exercisable in its sole and absolute discretion, (i) to terminate this Agreement in accordance with Article 9 (the "Environmental Walk-Away") or (ii) to elect not to

exercise its Environmental Walk-Away option and to proceed to Closing. In the event of a Closing, Buyer shall be entitled to a credit against the Purchase Price, as provided for in Section 1.3(c), subject to adjustment as provided for in Section 1.4, in the amount of the Most Cost Effective Remediation estimate; provided, however, that in no event may said amount exceed the greater of: (i) \$400,000; or (ii) the amount allocated to the Real Property pursuant to Section 1.11 hereof. Seller agrees to defend, indemnify and hold harmless Buyer's Indemnified Persons from and against all Losses directly or indirectly incurred and resulting from or arising out of any Environmental, Health and Safety Liabilities in any manner relating to the Real Property, and/or the condition of the Environment, at, about or relating to the Real Property which existed or was caused prior to the Closing (collectively, a "Pre-Existing Environmental Condition"). Buyer agrees to defend, indemnify and hold harmless Seller's Indemnified Persons from and against all Losses directly or indirectly incurred and resulting from or arising out of any Environmental, Health and Safety Liabilities in any manner relating to the Real Property, and/or the condition of the Environment, at, about or relating to the Real Property which comes to exist or be caused subsequent to the Closing (collectively, a "Post-Closing Environmental Condition"). Seller shall undertake such filing of initial notices as may be required under the Industrial Site Recover Act, N.J.S.A. 13:1K-6, et seq. ("ISRA") (or, as the case may be, provide an ISRA nonapplicability letter from the appropriate agency), provided, however, that if Buyer shall not terminate this Agreement pursuant to Article 9 and this Section 6.16(b), any Cleanup as may be required in order to comply with ISRA, and/or to satisfy such other requirements as may be imposed by Environmental Law and/or other legal requirements, shall be the responsibility of Buyer, at Buyer's sole cost and expense, pursuant to a remediation agreement or other agreement with the New Jersey Department of Environmental Protection and any other Governmental Authority having jurisdiction as is reasonably satisfactory to Buyer; provided, however that the costs associated with such Cleanup are included in the Most Cost Effective Remediation. The provision of this Section 6.16 will survive closing as provided for in Article 8 hereof.

6.17 Title Insurance. Buyer's title insurance company shall be in a position to issue an ALTA Owner's Policy of title insurance, effective as of the Closing Date, which shall insure good, marketable, fee simple title to the Real Property in the name of Buyer or its assignee for the amount of the Purchase Price ("Title Policy"). The Title Policy shall contain no exceptions to title to the Real Property other than the Permitted Exceptions as set forth in this Agreement. Provided Buyer has secured and paid for an ALTA Survey of the Real Property. Buyer may require as a condition to its obligations to purchase the Real Property that the Title Policy form as is commonly required by institutional purchasers of real property.

6.18 Customer Accounts. There shall have been delivered to Buyer the Qualified Customer Accounts list and the Customer Receivables list, as required by Section 1.1(a) (iii) and (iv).

6.19 Assignment of Licenses and Permits. To the extent legally assignable, a duly executed assignment and assumption, of any permits, licenses, governmental approvals and similar items relating to the use and occupancy of the Real Property and the premises leased under the Real Property Leases, together with the originals or copies of any such items in Seller's possession.



6.20 Assignment of Real Property Leases. A duly executed assignment and assumption agreement with respect to all Real Property Leases.

6.21 Board and Regulatory Approval. The Parent and Buyer shall have obtained:

(i) approval of the Parent's Board of Directors for the transactions contemplated by this Agreement and the documents executed herewith and to be executed as of and/or in connection with the Closing;

(ii) if necessary, the consent of the Hong Kong Stock Exchange Limited or other relevant authorities to the allotment, issue and trading of the Shares; and

(iii) if necessary, the consent of the Bermuda Monetary Authority to the allotment and issue of the Shares.

6.22 Purchaser Representative Letter. There shall have been executed and delivered to Buyer by each of the four (4) principal stockholders of Furst Holdings, Inc. the Purchaser Representative Letter substantially in the form of Exhibit F attached hereto.

6.23 Other Documents. At the Closing, Parent and Buyer shall receive such other certificates and documents as they shall have reasonably requested.

#### ARTICLE 7. CONDITIONS TO OBLIGATIONS OF SELLER

The obligations of Seller to consummate this Agreement and the transactions contemplated hereby are subject to the condition that on or before the Closing the actions required by this Article 6 will have been accomplished.

7.1 Representations; Warranties; Covenants. Each of the representations and warranties of Buyer and of Parent contained in Article 3 shall be true and correct in all material respects as though made on and as of the day of the Closing and Buyer and Parent shall, on or before the Closing, have performed in all material respects all of its obligations hereunder which by the terms hereof are to be performed by it on or before the Closing. Buyer and Parent shall have delivered to Seller a certificate dated as of the Closing to the foregoing effect.

7.2 Opinion of Counsel. At the Closing, Seller shall have received from Brown, Rudnick, Freed & Gesmer an opinion dated as of the Closing, with respect to the matters set forth on Exhibit G attached hereto with respect to Buyer and from counsel to Parent with respect to the matters set forth on Exhibit G attached hereto with respect to Parent.

7.3 Secretary's Certificates. Buyer and Parent each shall have delivered to Seller certificates dated as of the Closing Date by its Secretary or Assistant Secretary certifying as to the truth and correctness of its Certificate of Incorporation and bylaws and the resolutions of its Board of Directors. Such certificate shall also contain such other customary provisions.

7.4 Assumption of Liabilities Agreement. Buyer and Parent shall have executed and delivered to Seller the Assumption of Liabilities Agreement in the form of Exhibit D attached hereto.

7.5 Releases. Buyer and Parent shall have executed and delivered the Release(s) in the form of Exhibit K attached hereto.

7.6 Employment Offer Letter. Buyer shall have not withdrawn, revoked or cancelled its Offer Letters of Employment to Christopher Janis, Wayne Phipps and Frank Borrelli dated as of July 24, 2000 and to Victor J. Bakunoff, III, dated as of August 1, 2000, except withdrawal, revocation or cancellation for "cause." For purposes of the Section 7.6, "cause" shall mean criminal misconduct, conviction of a crime, or material dishonesty with respect to the business affairs of Seller.

## ARTICLE 8. INDEMNIFICATION.

8.1 Definitions. For purposes of this Article 8:

"Losses" means all losses, damages, liabilities, payments and obligations, and all expenses related thereto. Losses shall include any reasonable attorneys' fees and legal costs incurred by any of the Indemnified Persons subsequent to the Closing in defense of or in connection with any alleged or asserted liability, payment or obligation, whether or not any liability or payment, obligation or judgment is ultimately imposed against the Indemnified Persons and whether or not the Indemnified Persons are made or become parties to any such action; provided that Losses shall include punitive and consequential damages only with respect to third party actions.

"Buyer's Indemnified Persons" means the Buyer, Parent, their subsidiary and affiliated corporations, and their respective directors, officers, employees, and agents.

"Indemnified Person" means any person entitled to be indemnified under this Article 8.

"Indemnifying Person" means any person obligated to indemnify another person under this Article 8.

"Seller's Indemnified Persons" means the Seller, Furst Holdings, Inc. its subsidiary and affiliated corporations, and their respective directors, officers, employees, and agents.

"Third Party Action" means any written assertion of a claim, or the commencement of any action, suit, or proceeding, by a third party as to which any person believes it may be an Indemnified Person hereunder.

8.2 Indemnification by Seller. Seller agrees to defend, indemnify and hold harmless Buyer's Indemnified Persons from and against all Losses directly or indirectly incurred by or sought to be imposed upon any of them:

(i) resulting from or arising out of any breach of any of the representations or warranties (other than Sections 2.1, 2.10 and 2.18) made by Seller in or pursuant to this Agreement or in any agreement, document or instrument executed and delivered pursuant hereto or in connection with the Closing; provided that, for purposes of this Section 8.2(i), any qualifications of such representations or warranties by reference to Material Adverse Effect or other materiality of matters stated therein shall be disregarded in determining any inaccuracy, untruth, incompleteness or breach thereof;

(ii) resulting from or arising out of any breach of any of the representations or warranties under Sections 2.1, 2.10 and 2.18 made by Seller in or pursuant to this Agreement or in any agreement, document or instrument executed and delivered pursuant hereto or in connection with the Closing; provided that, for purposes of this Section 8.2(ii), any qualifications of such representations or warranties by reference to Material Adverse Effect or other materiality of matters stated therein shall be disregarded in determining any inaccuracy, untruth, incompleteness or breach thereof;

(iii) resulting from or arising out of any breach of any covenant or agreement made by Seller in or pursuant to this Agreement or in any agreement, document or instrument executed and delivered pursuant hereto or in connection with the Closing;

(iv) in respect of any liability or obligation of Seller resulting from or arising out of the conduct of the Business prior to Closing, not included in the Assumed Liabilities;

(v) resulting from or arising out of the actual fraud of Seller.

8.3 Indemnification by Buyer and Parent. From and after the Closing Date, Buyer and Parent shall indemnify and hold harmless Sellers' Indemnified Persons from any and all Losses directly or indirectly incurred by them:

(i) resulting from or arising out of any breach of any of the representations or warranties (other than Sections 3.1 or 3.2) made by Buyer, in or pursuant to this Agreement or in any agreement, document or instrument executed and delivered pursuant hereto or in connection with the Closing;

(ii) resulting from or arising out of any breach of any covenant or agreement made by Buyer in or pursuant to this Agreement or in any agreement, document or instrument executed and delivered pursuant hereto or in connection with the Closing, or resulting from or arising out of any breach of any of the representations or warranties made by Buyer in Sections 3.1 or 3.2 hereof;

(iii) resulting from or arising out of any liability or obligation included in the Assumed Liabilities;

(iv) in respect of any liability, or obligation of Buyer, Parent, the Business and/or respecting the Subject Assets resulting from, accruing and/or arising out of the conduct of the Business after the Closing (including, in connection with Buyer's obligations under the Management Agreement) and based upon or attributable to facts and circumstances that arise after the Closing; or

(v) resulting from or arising out of actual fraud of Buyer.

#### 8.4 Limitations on Indemnification.

(a) Period. Neither Seller, Buyer nor Parent shall have any indemnification liability under Sections 8.2 or 8.3, respectively, unless one or more of the Indemnified Persons gives written notice to the Indemnifying Persons asserting a claim for Losses in accordance with Section 8.5 hereof, on or before the expiration of the date or the period set forth below:

(i) for claims under clauses (i) of Section 8.2 and Section 8.3, respectively, for a period ending twelve (12) months following the date of the Closing; and

(ii) for claims under clause (ii) of Section 8.2, the longer of five (5) years or the expiry of any applicable statute of limitations

(iii) for claims under clauses (iii) through (v) of Section 8.2 and clauses (ii) through (vi) of Section 8.3, respectively, without limitation as to time except under any applicable statute of limitations.

(b) Amounts. The aggregate liability of an Indemnifying Party resulting from or arising out of any breach of any of the representations or warranties made by the Indemnifying Party, in or pursuant to this Agreement and/or in any agreement, document or instrument executed and delivered by the Indemnifying Party pursuant hereto or in connection with the Closing, shall not exceed forty (40%) of the Purchase Price. Indemnification claims resulting from or arising out of any breach of any of the representations or warranties made by the Indemnifying Party, in or pursuant to this Agreement or in any agreement, document or instrument executed and delivered by the Indemnifying Party pursuant hereto or in connection with the Closing, shall be payable hereunder only if and to the extent the aggregate amount of all such claims exceeds Fifty Thousand Dollars (\$50,000). Upon reaching such amount, the Indemnifying Party shall be liable for all such claims in excess of Fifty Thousand Dollar (\$50,000). Notwithstanding the foregoing, there shall be no limitation as to amount on the parties' respective obligations to indemnify pursuant to Section 8.2 (iii) through (v) and 8.3 (ii) through (v).

(c) Right of Set-Off. Buyer may, at its option, upon at least ten (10) days' prior written notice to Seller, recover such indemnification claims by set-off against any amounts that may otherwise be due from the Buyer, Parent or any of their affiliated corporations to the Seller, whether hereunder or otherwise, provided that Buyer shall not be required to recover said claims in such manner and may proceed against the Indemnifying Party at any time or times for

recovery of indemnification claims consistent with the provisions of this Agreement. Notwithstanding the foregoing, Buyer shall in no event have any such right of set-off respecting the funds constituting the Balance as defined in Section 1.3(d).

8.5 Notice. The Indemnified Person shall give prompt written notice to the Indemnifying Person of each claim for indemnification hereunder, specifying in reasonable detail the amount and nature of the claim, and of any matter which in the opinion of the Indemnifying Person is likely to give rise to an indemnification claim. Subject to the provisions of Section 8.4(a) hereof, the omission to give such notice to the Indemnifying Person will not relieve the Indemnifying Person of any liability hereunder unless and only to the extent the Indemnifying Person was prejudiced thereby under this Article 8.

8.6 Defense of Third Party Actions.

(a) Promptly after receipt of notice of any Third Party Action, any person who believes he, she or it may be an Indemnified Person will give notice to the potential Indemnifying Person of such action. Subject to the provisions of Section 8.4(a) hereof, the omission to give such notice to the Indemnifying Person will not relieve the Indemnifying Person of any liability hereunder unless and only to the extent the Indemnifying Person was prejudiced thereby, nor will it relieve the Indemnifying Person of any liability which it may have other than under this Article 8.

(b) Upon receipt of a notice of a Third Party Action, the Indemnifying Person shall have the right, at its option and at its own expense, to participate in and be present at the defense of such Third Party Action, but not to control the defense, negotiation or settlement thereof, which control shall remain with the Indemnified Person, unless the Indemnifying Person makes the election provided in paragraph (c) below.

(c) Subject to paragraph (d) below, by written notice within forty-five (45) days after receipt of a notice of a Third Party Action, an Indemnifying Person may elect to assume control of the defense, negotiation and settlement thereof, with counsel reasonably satisfactory to the Indemnified Person; provided, however, that the Indemnifying Person agrees (i) to promptly indemnify the Indemnified Person for its reasonable expenses to date, and (ii) to hold the Indemnified Person harmless from and against any and all Losses, caused by or arising out of any settlement of the Third Party Action or any judgment in connection with that Third Party Action. The Indemnifying Persons shall not, in the defense of the Third Party Action, enter into any settlement which does not include as a term thereof the unconditional release by the third party claimant of the Indemnified Person, or consent to entry of any judgment, except with the consent of the Indemnified Person which consent shall not be unreasonably withheld by such Indemnified Person.

(d) Upon assumption of control of the defense of a Third Party Action under paragraph (c) above, the Indemnifying Person will not be liable to the Indemnified Person hereunder for any legal or other expenses subsequently incurred by the Indemnified Person in connection with the defense of the Third Party Action, other than reasonable expenses of

investigation, unless the Indemnified Person shall have reasonably concluded, after due consultation with the Indemnifying Person that there are defenses available to it that are different from or additional to those available to the Indemnifying Person, in which case the Indemnified Person may retain counsel of its own to participate in the defense and the Indemnifying Person shall reimburse the Indemnified Person for expenses reasonably incurred in connection with the defense of such Third party Action, as and when the same shall be incurred by the Indemnified Person.

(e) If the Indemnifying Person does not elect to control the defense of a Third Party Action under paragraph (c), the Indemnifying Person shall promptly reimburse the Indemnified Person for expenses reasonably incurred by the Indemnified Person in connection with defense of such Third Party Action, as and when the same shall be incurred by the Indemnified Person.

(f) Any person who has not assumed control of the defense of any Third Party Action shall have the duty to cooperate with the party which assumed such defense.

#### 8.7 Miscellaneous.

(a) Buyer's Indemnified Persons shall be entitled to indemnification under Section 8.2 and Sellers' Indemnified Persons shall be entitled to indemnification under Section 8.3, regardless of whether the matter giving rise to the applicable liability, payment, obligation or expense may have been previously disclosed to any such person, unless such disclosure was in writing herein in the Disclosure Schedule.

(b) If any Loss is recoverable under more than one provision hereof, the Indemnified Person shall be entitled to assert a claim for such Loss until the expiration of the longest period of time within which to assert a claim for Loss under any of the provisions which are applicable.

8.8 Payment of Indemnification. Claims for indemnification under this Article 8 shall be paid or otherwise satisfied by the Indemnifying Persons within thirty (30) days after notice thereof is given by the Indemnified Person. Any amount which may become due and payable to any of the Buyer's Indemnified Persons under Section 8.2 shall first be paid or otherwise be satisfied out of the Closing Escrow Fund until the same has been exhausted, provided that such claims may be satisfied, at Buyer's election, pursuant to Buyer's right of set-off as set forth in Section 8.4(c) before proceeding against the Closing Escrow Fund. Any claim(s) of any Indemnified Person(s) may be satisfied by whatever remedy available at law or equity.

8.9 Sole Remedy. The sole remedy of Buyer, Parent and Sellers for any breach of and/or default in performance respecting the representations, warranties, covenants and agreements set forth in this Agreement shall be pursuant to the provision(s) of this Article 8 of the Agreement.

### ARTICLE 9. TERMINATION OF AGREEMENT.

9.1 Termination. At any time prior to the Closing, this Agreement may be terminated (a) by mutual consent of the parties, (b) by either side if there has been a material misrepresentation, breach of warranty or breach of covenant by the other side in its representations, warranties and covenants set forth herein, (c) by Buyer if the conditions stated in Article 6 have not been satisfied at or prior to the Closing, (d) by Seller if the conditions stated in Article 7 have not been satisfied at or prior to the Closing, (e) by Buyer in the event that it decides to exercise its Environmental Walk-Away option pursuant to Section 6.16(b) by delivering written notice to Seller of such election within five (5) business days after expiration of the Environmental Evaluation Period, (f) by Buyer pursuant to Sections 4.2(b) or 6.16(a), or (g) if the Closing shall not have occurred and the transactions contemplated hereby consummated by October \_\_, 2000, provided that either Buyer or Seller may extend the Closing for a period of not more than sixty (60) days by notifying the other party prior to October \_\_, 2000 in the event that notwithstanding such parties efforts in compliance with the terms hereof, the conditions set forth in Section 6.10 have not been satisfied (subject to the other party's right to waive any one or more of such conditions if said condition(s) is a condition to Closing for the other party); further provided that the right to terminate under this clause (g) shall not be available to any parties whose willful and knowing breach has been the cause of such failure to close.

9.2 Effect of Termination. If this Agreement shall be terminated as above provided, all obligations of the parties hereunder shall terminate but, subject to Section 9.4 hereof, any breaching party shall remain liable to a nonbreaching party for its actual damages. In the event that this Agreement is so terminated, each party will return all papers, documents, financial statements and other data furnished to it by or with respect to each other party to such other party (including any copies thereof made by the first party). Notwithstanding such termination, the provisions of Article 8 and Sections 11.5, 11.6, 11.12, 11.15 and 11.16 shall survive the termination of this Agreement; provided that any such termination shall not relieve any party from liability for any willful breach of this Agreement (which includes without limitation the making of any representation or warranty by a party in this Agreement that the party knew was not true and accurate when made) and the provisions of Article 8 and Sections 11.5, 11.6, 11.12, 11.15 and 11.16.

9.3 Right to Proceed. Anything in this Agreement to the contrary notwithstanding, if any of the conditions specified in Article 6 hereof have not been satisfied, Buyer shall have the right to proceed with the transactions contemplated hereby without waiving its rights hereunder and have all obligations, undertakings, agreements and other provisions of this Agreement specifically performed by Seller and Buyer shall have the right to obtain and order such specific performance in any of the Courts in the United States or any state or political subdivision thereof. If any of the conditions specified in Article 7 hereof have not been satisfied, Seller shall have the right to proceed with the transactions contemplated hereby without waiving its rights hereunder.

## ARTICLE 10. RIGHTS AND OBLIGATIONS SUBSEQUENT TO CLOSING

10.1 Survival of Representations, Warranties, Agreements, Covenants and Obligations. All representations, warranties, agreements, covenants and obligations herein or in any Schedule, certificate or financial statement delivered by either party to the other party incident to the transactions contemplated hereby shall survive the Closing for the applicable periods of indemnification under Article 8, and shall not merge in the performance of any obligation by either party hereto.

10.2 Collection of Assets. Subsequent to the Closing, Buyer shall have the right and authority to collect all Receivables and other items transferred and assigned to it by Seller hereunder and to endorse with the name of Seller any checks received on account of such receivables or other items, and Seller agrees that it will promptly transfer or deliver to Buyer, from time to time, any cash or other property that Seller may receive after the Closing with respect to any claims, contracts, licenses, leases, commitments, sales orders, purchase orders, Receivables of any character or any other items included in the Subject Assets and required to be transferred by it to Buyer pursuant to the provisions hereof.

#### ARTICLE 11. MISCELLANEOUS

11.1 Bulk Sales Law. Buyer and Seller waive compliance with the provisions of any applicable bulk sales, fraudulent conveyance or other law for the protection of creditors.

11.2 Fees and Expenses. Except as herein specifically provided, all fees and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expenses, whether or not the transactions contemplated hereby are consummated.

11.3 Notices. All notices, requests, demands and other communications required or permitted to be given (i) hereunder by any party hereto shall be in writing and shall be deemed to have been duly given when received if delivered personally, or (ii) on the business day following the business day sent if sent by prepaid domestically recognized overnight receipted courier if sent domestically, or (iii) on the third business day following the day sent if sent by prepaid internationally recognized overnight receipted courier if sent internationally, or (iv) when receipt telephonically acknowledged if sent by telecopier transmission on a business day or, if not a business day, on the next following business day, or (v) when answered back if sent by telex, if on a business day, or if not a business day, or the next following business day, to the parties at the following addresses (or at such other addresses as shall be specified by the parties by like notice):

(a) if to Buyer, to:

Zone Telecom, Inc.  
279 Harvard Street, #21  
Cambridge, MA 02139  
Attention: Mr. Lawton Bloom  
Telephone: (617) 876-3002



Facsimile: (617) 687-7791

with a copy to:

e-Kong Group Limited  
Suite 2101-3, K. Wah Centre  
191 Java Road  
North Point, Hong Kong  
Attention: : Derrick Bulawa, CEO  
Telephone: +852 2296 9777  
Facsimile: +852 2429 7116

with a copy to:

Brown, Rudnick, Freed & Gesmer  
One Financial Center  
Boston, MA 02111  
Attention: Steven D. Pohl, Esq.  
Telephone: (617) 826-8200  
Facsimile: (617) 856-8201

(b) if to Seller, to:

The Furst Group, Inc.  
459 Oakshade Road  
Shamong, NJ 08088  
Telephone: (609) 268-8000  
Facsimile: (609) 268-8713  
Attention: Victor J. Bakunoff, III

with a copy to:

Scarinci & Hollenbeck, LLC  
500 Plaza Drive  
Secaucus, NJ 07094  
Telephone: (201) 392-8900  
Facsimile: (201) 348-3877  
Attention: Victor E. Kinon, Esq.

and in any case at such other address as the addressee shall have specified by written notice. All periods of notice shall be measured from the date of delivery thereof.

11.4 Publicity and Disclosures. Parent and Buyer, on the one hand, and Seller, on the other hand, may issue or approve any news release or other public announcement concerning this

Agreement (or any schedules or exhibits hereto) upon execution of this Agreement as such party deems necessary or desirable, provided that each party shall give the other advance notice and a draft of any such release prior to issuance and give the other party a reasonable opportunity to comment on same; and further provided that if such news release or other public announcement is required under any law, regulation, the rules of the relevant stock exchange and/or other regulating authorities or order of a court of competent jurisdiction, such disclosures may be made without the need to give the other party advance notice and a draft of any such release.

11.5 Confidentiality. The Parties agree that they will keep confidential and not disclose or divulge any confidential, proprietary or secret information which they may obtain from Seller, Parent or Buyer in connection with the transactions contemplated herein, or pursuant to inspection rights granted hereunder, or reveal the financial or other terms and conditions of this Agreement unless such information is or hereafter becomes public information through means other than a default hereof by such party or is required to be disclosed by applicable law, including applicable securities laws or stock exchange rules or regulations. The obligations of this Section 11.5 shall survive any termination of this Agreement.

11.6 Time Period. The parties acknowledge that time is of the essence with respect to the fulfillment of the respective obligations of the parties hereto and the Closing of the purchase and sale of the Subject Assets as contemplated by this Agreement.

11.7 Entire Agreement. This Agreement (including all exhibits or schedules appended to this Agreement and all documents delivered pursuant to or referred to in this Agreement, all of which are hereby incorporated herein by reference) constitutes the entire agreement between the parties, and all promises, representations, understandings, warranties and agreements with reference to the subject matter hereof and inducements to the making of this Agreement relied upon by any party hereto, have been expressed herein or in the documents incorporated herein by reference.

11.8 Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision hereof.

11.9 Assignability. This Agreement may not be assigned otherwise than by operation of law: (a) by Buyer, provided, however, that Buyer, upon prior written notice to Seller, may assign any of its rights under this Agreement or in any agreement, document or instrument executed and delivered pursuant hereto or in connection with the Closing (without the prior written consent of Seller): (i) to one or more banks or other lenders which provide financing to Buyer from time to time; (ii) to any successor to all or substantially all of its business and assets relating to the subject matter of this Agreement, to the extent that such entity agrees to assume all of Buyer's obligations hereunder; (iii) to one or more subsidiaries (including subsidiaries of subsidiaries) or affiliates of Buyer, to the extent that such entity agrees to assume all of Buyer's obligations hereunder, provided that in all circumstances Buyer and Parent shall remain liable for payment of the Purchase Price and Buyer's and/or Parent's obligations pursuant to Article 8 hereof; or (b) by Seller without the prior written consent of Buyer. This Agreement shall inure to

the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns.

11.10 Amendment. This Agreement may be amended only by a written agreement executed by Buyer, Parent and Seller.

11.11 Governing Law; Jurisdiction; Service of Process. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey (other than the choice of law principles thereof), except that any representations and warranties with respect to real property shall be governed by and construed in accordance with the laws of the jurisdiction where such property is situated. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may be brought against any of the parties in the courts of either the State of New Jersey or the Commonwealth of Massachusetts or, if it has acquired or can acquire jurisdiction, in the United States District Court for the District of New Jersey or for the District of Massachusetts, and each of the parties consents to the jurisdiction of such Courts (and of the appropriate Appellate Courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

11.12 Remedies. Seller and Buyer acknowledge that the remedy at law for any breach of the obligations undertaken by either party hereto is and will be insufficient and inadequate and that the non-defaulting party shall be entitled to equitable relief, in addition to remedies at law. In the event of any action to enforce the provisions of this Agreement, Seller and Buyer shall waive the defense that there is an adequate remedy at law. Without limiting any remedies Buyer or Seller may otherwise have hereunder or under applicable law, in the event a party refuses to perform its obligations under this Agreement, the non-defaulting party shall have, in addition to any other rights at law or equity, the right to specific performance.

11.13 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

11.14 Effect of Table of Contents and Headings. Any table of contents, title of an article or section heading herein contained is for convenience of reference only and shall not affect the meaning of construction of any of the provisions hereof.

11.15 Guarantee of Parent. Parent hereby irrevocably, absolutely and unconditionally guarantees to Seller's Indemnified Persons the timely payment and performance of all of Buyer's obligations hereunder.

11.16 Furst Holdings, Inc. Consent. As the majority stockholder of Seller, Furst Holdings, Inc. hereby consents to the transactions contemplated herein, authorizes Seller to sell substantially all of its assets to Buyer and agrees to take all actions required by the New Jersey Corporation law to evidence same.

[The remainder of this page is intentionally left blank]

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed as an instrument under seal in multiple counterparts as of the date set forth above by their duly authorized representatives.

ZONE TELECOM, INC.

By: \_\_\_\_\_  
Name:  
Title:

e-KONG GROUP LIMITED

By: \_\_\_\_\_  
Name:  
Title:

THE FURST GROUP, INC.

By: \_\_\_\_\_  
Name:  
Title:

TELEVISTA, INC.

By: \_\_\_\_\_  
Name:  
Title:

CROSS COMMUNICATIONS, INC.

By: \_\_\_\_\_  
Name:  
Title:

ALLIED GLOBAL TELECOM, INC.

By: \_\_\_\_\_  
Name:  
Title:

FURST HOLDINGS, INC.  
(solely with respect to Section 11.16 hereof)

By: \_\_\_\_\_  
Name:  
Title:

FROM :

FAX NO. :

Aug. 05 2000 01:14PM P1

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed as an instrument under seal in multiple counterparts as of the date set forth above by their duly authorized representatives.

ZONE TELECOM, INC.

THE FURST GROUP, INC.

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

e-KONG GROUP LIMITED

TELEVISTA, INC.

By:   
Name: Derrick F Blawa  
Title: CEO

By: \_\_\_\_\_  
Name:  
Title:

CROSS COMMUNICATIONS, INC.

By: \_\_\_\_\_  
Name:  
Title:

ALLIED GLOBAL TELECOM, INC.

By: \_\_\_\_\_  
Name:  
Title:

FURST HOLDINGS, INC.  
(solely with respect to Section 11.16 hereof)

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed as an instrument under seal in multiple counterparts as of the date set forth above by their duly authorized representatives.

ZONE TELECOM, INC.

By: [Signature]  
Name: Lawton Bloom  
Title: Vice President

e-KONG GROUP LIMITED

By: \_\_\_\_\_  
Name:  
Title:

THE FURST GROUP, INC.

By: [Signature]  
Name: Victor J. Bakunoff, III  
Title: President

TELEVISTA, INC.

By: [Signature]  
Name: Victor J. Bakunoff, III  
Title: President

CROSS COMMUNICATIONS, INC.

By: [Signature]  
Name: Victor J. Bakunoff, III  
Title: President

ALLIED GLOBAL TELECOM, INC.

By: [Signature]  
Name: Victor J. Bakunoff, III  
Title: President

FURST HOLDINGS, INC.

(solely with respect to Section 11.16 hereof)

By: [Signature]  
Name: Victor J. Bakunoff, III  
Title: President

**EXHIBIT B**



Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Subscriber Carrier	)	
Selection Changes Provisions of the	)	CC Docket No. 94-129
Telecommunications Act of 1996	)	
	)	
Zone Telecom, Inc.	)	
Petition for Waiver	)	

**ORDER**

Adopted: August 31, 2000

Released: September 1, 2000

By the Associate Chief, Accounting Policy Division, Common Carrier Bureau:

**I. INTRODUCTION AND BACKGROUND**

1. In its *Carrier Change Orders*,<sup>1</sup> the Commission adopted rules applicable to carriers changing a consumer's preferred carrier.<sup>2</sup> In this Order, we grant Zone Telecom, Inc. (Zone) a limited waiver of the authorization and verification requirements of the Commission's rules and

<sup>1</sup> *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 10674 (1997), Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*); *stayed in part*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); *First Order on Reconsideration*, FCC 00-135 (released May 3, 2000), 65 Fed. Reg. 47678 (August 3, 2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, FCC 00-255 (released August 15, 2000); *reconsideration pending*; *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *stayed in part*, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993) (*PIC Change Recon. Order*); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911 (*Allocation Order*), 101 F.C.C.2d 935 (*Waiver Order*), *reconsideration denied*, 102 F.C.C.2d 503 (1985) (*Reconsideration Order*) (the *Reconsideration Order* denied reconsideration of both the *Allocation Order* and the *Waiver Order*). We refer to these orders collectively as the *Carrier Change Orders*.

<sup>2</sup> 47 C.F.R. §§ 64.1100 - 64.1190.

*Carrier Change Orders.*<sup>3</sup> We grant this limited waiver to the extent necessary to enable Zone to become the preferred carrier of the consumers currently presubscribed to TFG, without first obtaining the consumers' authorization and verification.

2. Section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such procedures as the Commission shall prescribe."<sup>4</sup> The goal of section 258 is to eliminate the practice of "slamming," the unauthorized change of a subscriber's preferred carrier. Pursuant to section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with the Commission's verification procedures.<sup>5</sup> In the *Section 258 Order*, the Commission revised its procedures to ensure that carriers obtain the requisite authority prior to changing a customer's preferred carrier. The Commission requires that carriers follow one of the Commission's prescribed verification procedures before submitting carrier changes on behalf of consumers.<sup>6</sup>

3. Zone seeks a waiver of our verification rules to allow Zone to be designated the preferred long distance carrier for the customers of TFG without first obtaining each customer's authorization and verification. Because we conclude that, under the circumstances presented, it is in the public interest to grant the waiver, we grant Zone a waiver, subject to the conditions represented in its filings.

## II. DISCUSSION

4. Generally, the Commission's rules may be waived for good cause shown.<sup>7</sup> As noted by

<sup>3</sup> On August 7, 2000, Zone filed an Emergency Petition for Waiver relating to Zone's acquisition of the interLATA subscriber base of The Furst Group, Inc. (TFG) (Waiver Petition). On August 9, 2000, Zone filed a Supplement to its Waiver Petition, which included a draft of its post-transfer customer notification letter (Supplement).

<sup>4</sup> 47 U.S.C. § 258.

<sup>5</sup> The Commission's rules and orders clearly contemplate that a switchless reseller may be a customer's preferred carrier. Therefore, changes to a customer's preferred carrier that do not involve a change in the customer's underlying facilities-based carrier are nonetheless subject to the Commission's authorization and verification rules. See *Section 258 Order* at paras. 145-146; *WATS International Corp. v. Group Long Distance (USA), Inc.*, 12 FCC Rcd 1743, 1752 (1997) (citing *PIC Change Recon. Order*, 8 FCC Rcd at 3218).

<sup>6</sup> Pursuant to these procedures, a carrier must: (1) obtain the subscriber's written authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order. See 47 C.F.R. § 64.1150.

<sup>7</sup> 47 C.F.R. § 1.3.

the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.<sup>8</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>9</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>10</sup> Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.<sup>11</sup>

5. We find that Zone has demonstrated that good cause exists to justify a limited waiver of the Commission's authorization and verification requirements to the extent necessary to enable Zone to transfer to its own customer base the affected TFG customers. Zone is a subsidiary of e-Kong Group Limited (e-Kong Group), a Hong Kong-based Internet and telecommunications company that, through affiliates, offers resold international telecommunications services in Hong Kong and Singapore. Zone intends to provide facilities-based and resold international, interstate, and intrastate interexchange services in the United States. TFG, a financially troubled company, is a provider of resold international, interstate, and intrastate interexchange services in the United States. In the Waiver Petition, Zone states that it has entered into an agreement with TFG to acquire selected assets, including the customer base of TFG.<sup>12</sup> Upon discontinuance of service by TFG, Zone will provide interexchange services on a presubscription basis to the former customers of TFG.

6. We conclude that special circumstances exist to justify a waiver. Without this waiver, the service of some former TFG customers might temporarily be interrupted when TFG, a failing company, ceases doing business and thereby ceases providing presubscribed service to customers who fail to respond in a timely fashion to requests for preferred carrier change authorization; those customers might also pay potentially higher casual calling rates after the discontinuance of presubscribed service. We conclude that a waiver of the Commission's carrier change rules and orders is necessary to provide a seamless transition with no disruption of service to the transferred customers.

7. We find that Zone has demonstrated that a limited waiver of the authorization and verification rules is in the public interest because it will prevent consumers from temporarily

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<sup>8</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

<sup>9</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>10</sup> *WAIT Radio*, 418 F.2d at 1157.

<sup>11</sup> *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

<sup>12</sup> Waiver Petition at 2-3.

losing service or paying significantly higher rates, and because Zone has agreed to notify the affected customers as described below. Zone states that it will undertake a two-step process to notify the affected customers of the transfer. In a first letter, Zone will inform customers of the proposed transfer and assure them that no charges or rate increases will be imposed as a result of the transfer.<sup>13</sup> Zone states that it will also advise the affected customers that they can choose a different preferred carrier, should they desire to do so.<sup>14</sup> In addition, customers will be given a toll-free number to call with any questions they may have about the transition. According to Zone, once the proposed transfer has been consummated, Zone will notify these customers of that event and reiterate the foregoing information, assurances, and advice.<sup>15</sup> Zone has agreed that, if the Commission waives its rules to permit Zone to provide service to TFG's former customers, Zone will work with the complainants and the Commission to investigate and resolve any outstanding customer complaints regarding services provided by TFG.<sup>16</sup> We conclude that these conditions will adequately protect the rights of the transferred customers of TFG.

8. We note that TFG, the carrier selling its customer base in this instance, has a history of delinquency in its contributions to the Universal Service Fund. Carriers pay into the Fund in order to provide financial support for various programs, including the High Cost, Schools and Libraries, and Rural Health Care programs. These programs were established by the Commission under Section 254 of the Communication Act of 1934, as amended, and are administered by the Universal Service Administration Company, in order to ensure the delivery of affordable telecommunications service to all Americans.<sup>17</sup> While we recognize the undue burden that delinquent carriers like TFG put on the Universal Service Fund, we believe that transferring TFG's customer base to Zone, a responsible carrier contributing to the Fund as required under the Commission's rules, would be in the public interest.

9. For the foregoing reasons, we grant Zone a waiver of the authorization and verification

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<sup>13</sup> Zone filed sample notification letters. See Waiver Petition, Attachment B; Supplement, Attachment (Notification Letters); Waiver Petition at 4.

<sup>14</sup> Waiver Petition at 4.

<sup>15</sup> Notification Letters; Waiver Petition at 4.

<sup>16</sup> Waiver Petition at 2.

<sup>17</sup> See, e.g., *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997), as corrected by *Federal-State Joint Board on Universal Service, Errata*, CC Docket No. 96-45, FCC 97-157 (rel. June 4, 1997), *affirmed, reversed, and remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) *motion for stay granted in part* (Sept. 28, 1999), *petitions for rehearing and rehearing en banc denied* (Sept. 28, 1999) (*Universal Service Order*).

requirements of our rules for the limited purposes described above. The grant of this waiver is conditioned upon Zone's provision of customer notification and handling of customer complaints, as described above and further detailed in the Waiver Petition and Supplement.

### III. ORDERING CLAUSES

10. Accordingly, pursuant to authority contained in Sections 1, 4, and 258 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 258, and the authority delegated under sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, the emergency waiver request filed by Zone Telecom, Inc. on August 7, 2000, and supplemented on August 9, 2000, IS GRANTED to the extent indicated herein.

11. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

K. Michele Walters  
Associate Division Chief,  
Accounting Policy Division,  
Common Carrier Bureau

Before the  
**FEDERAL COMMUNICATIONS COMMISSION** RECEIVED  
WASHINGTON, D.C. 20554

AUG 7 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Implementation of the Subscriber )  
Carrier Selection Change )  
Provisions of the )  
Telecommunications Act of 1996 )  
)  
Zone Telecom, Inc. )  
Petition for Waiver )

CC Docket No. 94-129

**EMERGENCY PETITION FOR WAIVER  
OF THE SUBSCRIBER CHANGE PROVISIONS OF THE  
TELECOMMUNICATIONS ACT OF 1996 AND THE FCC'S RULES**

Zone Telecom, Inc. ("Zone"), by its attorneys and pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, hereby respectfully requests a limited waiver of the Commission's authorization and verification rules, 47 C.F.R. §§ 64.1100-64.1190, to the extent necessary to enable the expeditious transfer of the interLATA subscriber base of The Furst Group, Inc. ("TFG") to Zone without first obtaining such subscribers' authorization and verification.

As demonstrated below, TFG is a failing company whose customers risk losing telecommunications service in the absence of the Commission's expeditious grant of this waiver request. Zone fully satisfies the Commission's good cause standard for securing a waiver of the authorization and verification rules. Thus, grant of this Emergency Petition is in the public interest. 1/

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1/ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

## BACKGROUND

Zone is an indirect wholly-owned subsidiary of e-Kong Group Limited ("e-Kong Group"), a Hong Kong-based Internet and telecommunications company that, through affiliates, engages in the resale of international telecommunications services in Hong Kong and Singapore. e-Kong Group provides service through a unique scalable and portable service portal that provides its customers with access to a wide range of international carriers at a single source, thereby enabling users to select the most competitive prices for their calls.

Zone is in the process of obtaining all requisite Federal and State regulatory authority relating to the provision of facilities-based and resold international, interstate and intrastate interexchange telecommunications services in the United States. <sup>2/</sup> As explained above, Zone's ultimate corporate parent, e-Kong Group, is a leader in the development and deployment of innovative competitive telecommunications service offerings that aim, above all, to provide customers with flexibility and choice. Zone will be guided by the same principles as it enters the telecommunications marketplace in the United States.

Zone has entered into an agreement to purchase selected assets, including the customers, of TFG, a provider of resold international, interstate and intrastate interexchange services in the United States. Grant of the instant Petition

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<sup>2/</sup> Pending before the Commission is an application by Zone USA, Inc., Zone's immediate parent, for authority to provide global facilities-based and resold switched and private line telecommunications services between the U.S. and all permitted international points pursuant to Section 214 of the Communications Act, as amended. See Application No. IB2000000515 (filed July 14, 2000). Zone USA, Inc.'s application was placed on Public Notice on July 28, 2000. See Report No. TEL-00266S.

will allow Zone to acquire TFG's interLATA customer base in a manner that minimizes the impact on consumers while ensuring full compliance with the Commission's anti-slamming rules.

As noted above, TFG is, from a financial perspective, *in extremis*. Without immediate relief in the form of a qualified buyer, TFG is at risk to default on its senior credit facility, lose its key managerial employees, and suspend service to its customers:

- As of the date of this Petition, TFG has drawn \$6.8 million on a \$7 million line of credit that is scheduled to expire on August 31, 2000. <sup>3/</sup>
- The total amount available to TFG under the line of credit is being reduced, resulting in the likelihood that the company will have overdrawn the facility by the end of this month.
- TFG, a reseller, owes past due amounts in excess of \$1.5 million to its underlying facilities-based carrier hosts. Because of these arrearages, the underlying carriers have the right under the parties' contracts to terminate service to TFG, thereby resulting in a loss of service to TFG's customers.
- In view of TFG's precarious financial position, absent immediate relief in the form of a sale to a qualified purchaser, the company is at risk of losing its key managerial and technical employees.

Provided the Commission is in a position to grant the relief requested in this Emergency Petition in an expeditious manner, Zone intends to send letters

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<sup>3/</sup> See Fourth Amendment to Amended and Restated Loan and Security Agreement between Commerce Bank and The Furst Group, Inc., attached hereto as Exhibit A.



to the subscribers being acquired from TFG to notify them of the carrier change. Presubscribed customers that have not already given their consent to a carrier change will be informed that (1) a carrier change is taking place; (2) the carrier change will not result in any charges to the customer; (3) the customer has the right to select a carrier other than Zone, but that changing to another provider may result in the customer incurring a fee; and (4) Zone has established an 800 number that customers can call with any questions. A copy of the form of this letter is attached hereto as Exhibit B.

Following the transfer to Zone of TFG's customer base, Zone also will provide customers with a follow-up letter which will contain additional information about Zone, as well as the service offerings available to customers.

#### DISCUSSION

Under Sections 64.1000-64.1190 of the Commission's rules, carriers are required to verify all preferred carrier change orders before executing such changes. The Commission has discretion and authority to grant a waiver of this requirement, however, if special circumstances exist and approval will serve the public interest. <sup>4/</sup> Zone requests a waiver because requiring it to obtain verification from each of the thousands of subscribers being transferred from TFG, before Zone can begin to provide service to those subscribers – and particularly in view of the risk that TFG will be forced to suspend service to its customers if a transaction with Zone is not completed in the near future – would impede the seamless transfer of those customers and disrupt their ability to place long distance and other calls.

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<sup>4/</sup> *WAIT Radio*, 418 F.2d at 1159.

Considering the size of TFG's subscriber base, Zone is unlikely to be able to affirmatively contact, solicit and obtain appropriate verification from each subscriber on an expeditious basis. Therefore, absent a waiver, in order to avoid running afoul of the Commission's slamming rules, Zone would be required to discontinue service to any subscriber that it is unable to contact before acquiring the assets of TFG.

As mentioned above, the TFG subscribers from whom verification would otherwise be required will receive prior notification of the change in service providers, and they will be informed that they are free to select another carrier. Customers will again be notified following the transfer through receipt of a follow up letter. Zone also will address and attempt to resolve all customer inquiries regarding the impact of the migration of their service and the change in providers. TFG will retain responsibility for addressing and resolving any customer complaints or other customer issues arising from the service provided prior to the transfer date. These steps will ensure that the rights of these subscribers are adequately protected.

Finally, the circumstances justifying this waiver request are similar to those the Commission has found sufficient as to many other similar petitions for waiver of the authorization and verification rules.<sup>5/</sup> In fact, the precarious

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<sup>5/</sup> See, e.g., *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 - Sprint Comms. Co., Petition for Waiver*, CC Docket No. 94-129, Order, DA 99-2178 (rel. Oct. 20, 1999); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 - AT&T Corp. Petition for Waiver*, CC Docket No. 94-129, Order, 14 FCC Rcd 13925 (1999); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 - MCI*

financial position of TFG suggests an even greater urgency than exhibited in those cases for expeditious grant of this request.

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*WorldCom, Inc., Petition for Waiver, CC Docket No. 94-129, Order, 14 FCC Rcd 12264 (1999).*

**CONCLUSION**

For the foregoing reasons, Zone respectfully requests that the Commission waive Sections 64.1100-64.1190 of its rules to the extent necessary to permit the expeditious transfer of the interLATA subscriber base from TFG to Zone without first obtaining such subscribers' authorization and verification.

Respectfully submitted,

**ZONE TELECOM, INC.**



---

Mace J. Rosenstein  
Yaron Dori  
Hogan & Hartson L.L.P.  
555 Thirteenth Street, N.W.  
Washington, D.C. 20004  
Tel: (202) 637-5600

Its Attorneys

Dated: August 7, 2000

ATTACHMENT A

Gerard L. Grady  
Vice President



August 1, 2000

Mr. Christopher J. Janis  
Executive Vice President & CFO  
The Furst Group, Inc.  
459 Oakshade Road  
Shamong, NJ 08088

Dear Chris:

Enclosed for you records is a fully executed (2 signature pages) copy of the Fourth Amendment to Amended and Restated Loan and Security Agreement, which extended the maturity date of the \$8,000,000 facility to August 31, 2000.

Sincerely,

A handwritten signature in cursive script that reads "Jerry".

Gerard L. Grady  
Vice President

Enclosure

GLG/tas

Commerce Bank, NA  
1701 Route 70 East  
Cherry Hill, New Jersey 08034-5400  
856-751-7519 Tel.  
856-751-8284 Fax.  
E-mail: [gigrady@yeebank.com](mailto:gigrady@yeebank.com)

**FOURTH AMENDMENT TO AMENDED AND  
RESTATED LOAN AND SECURITY AGREEMENT**

This Fourth Amendment to Amended and Restated Loan and Security Agreement ("Amendment") is made this 31st day of July, 2000 by and between The First Group, Inc., a New Jersey corporation ("Borrower"), and Commerce Bank, N.A., a national banking association ("Lender").

**BACKGROUND**

A. Borrower and Lender are parties to a certain Amended and Restated Loan and Security Agreement dated October 8, 1998 (as has been, and may hereafter be, amended or modified from time to time, the "Loan Agreement") pursuant to which Lender established certain financing arrangements for the benefit of Borrower.

B. Borrower has requested that Lender modify certain of the terms and conditions of the Loan Agreement and Lender has agreed to such modifications pursuant to the terms hereof and subject to the strict and timely compliance with the conditions set forth herein.

C. All terms not otherwise defined herein shall have the respective meanings ascribed thereto in the Loan Agreement.

NOW, THEREFORE, with the foregoing Background incorporated by reference herein and made a part hereof, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Amendment to Loan Agreement. Section 1.1 of the Loan Agreement is hereby amended by deleting the definition of "Revolving Credit Maturity Date" and replacing it with the following:

Revolving Credit Maturity Date - August 31, 2000.

2. Affirmation of Collateral. Borrower hereby covenants, confirms and agrees that as security for the repayment of all Obligations, whether principal, interest, premium, fees or Expenses, Lender has and shall continue to have a continuing lien on and first security interest in the Collateral and a first priority mortgage on Borrower's Real Property and in the rents, issues and profits of the Real Property, all whether now existing or hereafter acquired, created or arising including, without limitation, proceeds, including insurance proceeds thereof. Borrower acknowledges and agrees that nothing herein contained in any way impairs Lender's existing rights or priority in such security.

3. Affirmation of Existing Documents. Borrower hereby ratifies and confirms all of the terms, conditions and provisions of the Loan Agreement and the other Loan Documents and agrees that except as expressly modified hereby, all such terms, conditions and provisions

continue unchanged and in full force and effect, without any defense, set-off, counterclaim or deduction of any nature. All references to the Loan Agreement in any other document shall mean the Loan Agreement, as amended hereby. To the extent of any inconsistency between the terms hereof and the Loan Agreement, the terms hereof shall control. Borrower agrees that nothing contained herein constitutes a novation of any of Borrower's Obligations to Lender.

4. Representations and Warranties. Borrower hereby represents and warrants to Lender that:

(a) Prior Representations. By execution of this Amendment, Borrower reconfirms all warranties and representations made to Lender under the Loan Agreement and the other Loan Documents and restates all such warranties and representations as of the date hereof, all of which shall be deemed continuing until all Obligations to Lender are paid and satisfied in full.

(b) Authorization. The execution and delivery by Borrower of this Amendment and the performance by it of the transactions herein contemplated are and will be within its powers, have been duly authorized by all necessary corporate action, and are not and will not be in contravention of any order of court or other agency of government, of law or, its articles of incorporation, bylaws or any indenture, agreement or undertaking to which it is a party or by which its property is bound, or be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or undertaking or result in the imposition of any lien, charge or incumbrance of any nature or any of the properties of Borrower.

(c) Valid, Binding and Enforceable. This Amendment and any other instrument, document or agreement executed and delivered in connection herewith will be valid, binding and enforceable in accordance with its terms.

5. Covenants.

(a) Covenant Compliance. Borrower shall continue to observe and maintain compliance with all covenants of the Loan Agreement, the other Loan Documents and this Amendment.

(b) Costs and Expenses. Borrower shall pay on demand all costs and expenses, including, without limitation, the fees and expenses of Lender's counsel incurred by Lender in connection with (i) the preparation, documentation and negotiation of this Amendment and any subsequent amendments or modifications hereto and any other instrument, document or agreement required hereunder; or (ii) the enforcement, protection, perfection, preservation and defense of Lender's rights hereunder.

(c) Upset Fee. Borrower shall pay a nonrefundable fee ("Upset Fee") to Lender



in an amount equal to \$10,000 if the transactions contemplated under that certain \_\_\_\_\_ ("Definitive Agreement") between Borrower and e-KONG Group Limited dated as of July \_\_\_\_, 2000 have not been consummated, as determined by Lender (in its sole discretion), on or before August 31, 2000, with such Upset Fee due and payable to Lender on September 1, 2000. Borrower hereby acknowledges that a true, complete and correct copy of the Definitive Agreement is attached hereto and made part hereof as Exhibit A, and that the Definitive Agreement has not been amended or modified in any manner. The Definitive Agreement shall be in form and substance satisfactory to Lender (as determined in Lender's sole and absolute discretion). Nothing herein contained constitutes Lender's consent to the transfer of any Collateral free and clear of Lender's Liens.

6. Acknowledgment of Indebtedness and Obligations. Borrower hereby acknowledges and confirms that as of the date of this Amendment, Borrower is indebted to Lender, without defense, setoff or counterclaim, under the Revolving Credit in the aggregate principal amount of \$ 6,821,478.29, plus continually accruing interest and all fees, costs and expenses, including reasonable attorneys' fees, incurred through the date hereof.

7. Effectiveness Conditions. The effectiveness of this Amendment is subject to the satisfactory completion, as determined by Lender, of the following conditions (all documents required to be delivered to Lender shall be in form and substance satisfactory to Lender and its counsel):

(a) Amendment. This Amendment executed and delivered by Borrower and Lender.

(b) Event of Default. There are no Defaults or Events of Default outstanding under the Loan Agreement.

(c) Acknowledgment of Sureties. Borrower shall cause each of the Sureties to execute and deliver their acknowledgment to this Amendment as set forth on the signature pages hereto.

(d) Lender's Expenses. Borrower shall have paid all expenses incurred by Lender (including, without limitation, attorneys' fees) in the preparation, negotiation and documentation of this Amendment.

(e) Extension Fee. Borrower shall have paid a nonrefundable extension fee to Lender in an amount equal to \$6,666

8. Miscellaneous Headings.

(a) Headings. The headings of any paragraphs of this Amendment are for reference only and shall not be used to interpret any provision of this Amendment.

(b) Successors and Assigns. This Amendment shall inure to the benefit of and be binding upon the successors and assigns of all of the parties hereto. No rights are intended to be created hereunder or under any related instruments, documents or agreements for the benefit of any third party beneficiary.

(c) Governing Law. This Amendment and all related agreements and documents shall be governed by and construed in accordance with the laws of the State of New Jersey.

(d) Severability. The validity or enforceability of any provision of this Amendment shall not affect the validity or enforceability of the remaining provisions.

(e) Consent to Jurisdiction. Borrower and Lender irrevocably consent to the jurisdiction of the courts of the State of New Jersey or the United States District Court for the State of New Jersey and any and all actions and proceedings whether arising hereunder or under any other agreement or undertaking and irrevocably agree to service of process by certified mail, return receipt requested to the address of Borrower and Lender contained in each other party's records.

(f) Waiver of Jury Trial. Borrower and Lender each hereby irrevocably waive any and all rights either may have to a jury trial in connection with any litigation commenced by or against Lender with respect to rights and obligations of the parties hereto.

(g) Counterparts. This Amendment may be executed in any number of counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument. Signature by facsimile shall bind the parties hereto.

(h) Release. In consideration for Lender entering into this Agreement, Borrower, and by their execution below, Sureties, hereby waive and release and forever discharge and agree to indemnify and hold harmless Lender and its officers, directors, attorneys, agents and employees from any liability, damage, claim, loss or expense of any kind, that they may now have arising out of or relating to this Amendment, the Loan Agreement or any of the other Loan Documents or Lender's financing arrangements with Borrower and Sureties.

**SIGNATURES ON FOLLOWING PAGE**

IN WITNESS WHEREOF, the undersigned parties have executed this Amendment the day and year first above written.

THE FURST GROUP, INC.

By: [Signature]  
Name: Christopher T. Ja  
Title: SUP/CC

COMMERCE BANK, N.A.

By: [Signature]  
Name: GERARD L. GRANT  
Title: VICE PRESIDENT

Each of the undersigned has reviewed the terms of the Amendment in full and hereby consents to Borrower's execution and delivery of the Amendment and Borrower's performance of the obligations contained therein. Each of the undersigned acknowledges and agrees that Borrower's execution and delivery of the Amendment and Borrower's performance of the obligations contained therein do not in any way limit or impair Sureties' obligations to Lender under these certain Surety Agreements dated October 8, 1998, as amended, which are hereby ratified and confirmed.

Witness: \_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
JAMES D. KAYLOR (SEAL)

Witness: \_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
JOANNE M. KAYLOR (SEAL)

Witness: \_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
JOHN S. STREEP (SEAL)

Witness: \_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
KATHLEEN STREEP (SEAL)

IN WITNESS WHEREOF, the undersigned parties have executed this Amendment the day and year first above written.

THE FURST GROUP, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

COMMERCE BANK, N.A.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Each of the undersigned has reviewed the terms of the Amendment in full and hereby consents to Borrower's execution and delivery of the Amendment and Borrower's performance of the obligations contained therein. Each of the undersigned acknowledges and agrees that Borrower's execution and delivery of the Amendment and Borrower's performance of the obligations contained therein do not in any way limit or impair Sureties' obligations to Lender under these certain Surety Agreements dated October 8, 1998, as amended, which are hereby ratified and confirmed.

Witness: Sara Harper  
Name: Sara Harper

James D. Kaylor (SEAL)  
JAMES D. KAYLOR

Witness: Sara Harper  
Name: Sara Harper

Joanne M. Kaylor (SEAL)  
JOANNE M. KAYLOR

Witness: Marlynn K. Kilburn  
Name: Marlynn K. Kilburn

John S. Streep (SEAL)  
JOHN S. STREEP

Witness: Marlynn K. Kilburn  
Name: Marlynn K. Kilburn

Kathleen Streep (SEAL)  
KATHLEEN STREEP

ATTACHMENT B

[ZONE LETTERHEAD]

[Date]

Dear [Customer]:

As President of Zone Telecom, Inc., I want to take this opportunity to welcome you as a new customer. Zone Telecom and its affiliates are committed to providing high quality, technologically advanced telecommunications services to their customers, and we are committed to serving all of your communications needs.

Zone Telecom recently entered into an agreement to purchase selected assets from your existing long distance telecommunications provider, The Furst Group ("TFG"). As a result of this arrangement, Zone Telecom will be assuming the responsibility for handling all domestic long distance and international services currently provided to you by TFG. The transfer from TFG to Zone Telecom is expected to take place at the end of August. You will be notified in a subsequent letter that the transfer has taken place.

Zone Telecom is committed to ensuring that the transfer process is as smooth and transparent to you as possible. No charges will appear on your bill as a result of the transfer. You will continue to receive service under the same rates, terms and conditions that you have enjoyed up to now with TFG. The only change you may notice is that Zone Telecom's name will replace TFG's name on your bill.

The transfer of your account in this manner is subject to the approval of the Federal Communications Commission and the Public Utility Commission in the state in which you reside or in which your business is located. While you have the right to select another long distance carrier for your service needs, I want to assure you that Zone Telecom is committed to satisfying all of your requirements. We plan soon to make available an even wider array of products than you currently enjoy, and we expect that these products will lower the price you pay for domestic long distance and international service.

Zone Telecom is proud of the service it is capable of providing and looks forward to serving you in the future. If you have any questions about the content of this letter or any of the services Zone Telecom provides, please contact us at 1-800-233-4736. We look forward to serving you.

Very truly yours,

Derrick Bulawa  
President and CEO  
Zone Telecom, Inc.

\* [unclear] specific:  
1) PUC [unclear]  
2) NO [unclear]  
3) [unclear]  
- [unclear]

HOGAN & HARTSON  
LLP.

COLUMBIA SQUARE  
555 THIRTEENTH STREET, NW  
WASHINGTON, DC 20004-1109  
TEL: (202) 637-5600  
FAX: (202) 637-5910  
WWW.HHLAW.COM

August 9, 2000

VIA HAND DELIVERY

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

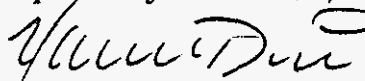
Re: CC Docket No. 94-129 – Emergency Petition for Waiver of the  
Subscriber Change Provisions of the Telecommunications Act of  
1996 and the FCC's Rules

Dear Secretary Salas:

Enclosed for filing are an original and four copies of a supplement to Zone Telecom, Inc.'s Emergency Petition for Waiver of the Subscriber Change Provisions of the Telecommunications Act of 1996 and the FCC's Rules, filed with the Commission on August 7, 2000.

Please date-stamp the additional copy of this letter and return it to the awaiting messenger. Any questions concerning this submission should be addressed to the undersigned.

Respectfully submitted,

  
Yaron Dori

Enclosures

cc: Michele Walters  
William Cox

[ZONE LETTERHEAD]

RECEIVED

AUG 9 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

[Date]

Dear [Customer]:

As President of Zone Telecom, Inc., I want to follow up on my letter to you of August \_\_, 2000, to inform you that Zone Telecom has completed its acquisition of selected assets from your existing long distance provider, The Furst Group ("TFG"). Thus, from now on Zone Telecom will be handling all of your domestic long distance and international communications needs.

As we indicated in our earlier letter to you, no charges will appear on your bill as a result of the transfer from TFG to Zone Telecom. You will continue to receive service under the same rates, terms and conditions that you have enjoyed up to now with TFG. The only change you may notice is that Zone Telecom's name will eventually replace TFG's name on your bill.

The transfer of your account in this manner was approved by the Federal Communications Commission. It may also have been subject to the jurisdiction of the Public Utility Commission in the state in which you reside or in which your business is located. While you have the right to select another long distance carrier for your service needs, I want to assure you that Zone Telecom is committed to satisfying all of your requirements. We plan soon to make available an even wider array of products than you currently enjoy, and we expect that these products will lower the price you pay for domestic long distance and international service.

Zone Telecom is proud of the service it is capable of providing and looks forward to serving you. If you have any questions about the content of this letter or any of the services Zone Telecom provides, please contact us at 1-800-233-4736.

Very truly yours,

Derrick Bulawa  
President and CEO  
Zone Telecom, Inc.