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Counsel for Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re

TELIGENT, INC., et al.,<sup>1</sup>

Debtors.

Chapter 11

Case No. 01-12974 (SMB)  
Jointly Administered

**NOTICE OF (A) AUCTION AT WHICH THE DEBTORS WILL SOLICIT BIDS FOR THE SALE OF SUBSTANTIALLY ALL OF THE ASSETS OF TELIGENT, INC. AND CERTAIN DOMESTIC SUBSIDIARIES FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES; (B) PROCEDURES FOR THE SUBMISSION OF COMPETING OFFERS; AND (C) HEARING TO CONSIDER DEBTORS' MOTION TO APPROVE ASSET PURCHASE AGREEMENT WITH TELIGENT ACQUISITION CORPORATION OR SUCH OTHER HIGHER AND BETTER BIDDER**

DOCUMENT NUMBER-DATE

11157 SEP-7 01

REGISTRATION CLERK

PLEASE TAKE NOTICE that a hearing (the "Sale Hearing") to consider the motion, dated August 24, 2001 (the "Sale Motion") of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of an order pursuant to sections 105(a), 363, 365, and 1146(c) of title 11 of the United States Code (the "Bankruptcy Code") authorizing the sale of substantially all of the assets (collectively, the "Teligent Assets") of Teligent, Inc., and certain domestic operating subsidiaries (collectively, the "Sellers") free and clear of liens, claims, and encumbrances pursuant to an Asset Purchase Agreement (the "Purchase Agreement") dated August 23, 2001, with Teligent Acquisition Corporation

- APP \_\_\_\_\_
- CAF \_\_\_\_\_
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- RGO \_\_\_\_\_
- SEC \_\_\_\_\_
- SER \_\_\_\_\_
- OTH \_\_\_\_\_

<sup>1</sup> The Debtors are the following entities: Teligent, Inc.; Teligent Services, Inc.; American Long Line, Inc.; Association Communications, Inc.; Audtel, Inc.; BackLink, L.L.C.; Easton Telecom Services, Inc.; Executive Conference, Inc.; FirstMark Communications, Inc.; InfiNet Telecommunications, Inc.; JTel, L.L.C.; KalLink, L.L.C.; OMC Communications, Inc.; Quadrangle Investments, Inc.; Telecommunications Concepts, Inc.; Teligent Communications, L.L.C.; Teligent License Co. 1, L.L.C.; Teligent License Co. 2, L.L.C.; Teligent of Virginia, Inc.; Teligent Professional Services, Inc.; and Teligent Telecommunications, L.L.C.

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None  
None

("Buyer"), subject to higher or better offers, is scheduled for October 3, 2001 at 2:00 p.m., New York Time, before the Honorable Stuart M. Bernstein, United States Bankruptcy Judge, in the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY, 10022, Room 723 (the "Court").

PLEASE TAKE FURTHER NOTICE that on October 2, 2001 at 10:00 a.m., New York Time, the Sellers shall conduct an auction of the Teligent Assets at the offices of Kirkland & Ellis, Citigroup Center, 153 East 53rd Street, New York, New York 10022-4675, in accordance with the Bidding Procedures approved by the Court.

PLEASE TAKE FURTHER NOTICE that a copy of the Sale Motion, the Purchase Agreement, the Bidding Procedures and the Bidding Procedures Order are enclosed with this notice.

PLEASE TAKE FURTHER NOTICE that **all interested bidders should carefully read the Bidding Procedures**. To the extent there are any inconsistencies between the Bidding Procedures and the summary description of its terms and conditions contained in this Notice, the terms of the Bidding Procedures shall control.

PLEASE TAKE FURTHER NOTICE that any bidder (a "Bidder") may submit offers to acquire all or substantially all of the Teligent Assets. To be considered, the offer must: (a) be submitted in a writing signed by the Bidder and contain (i) a representation that such Bidder will agree to all terms and conditions set forth in the Purchase Agreement other than matters relating to bidding provisions, and (ii) a mark-up of the Purchase Agreement indicating the specific changes to the Purchase Agreement that the Bidder requires. In addition, the offer must (i) provide for aggregate consideration to the Sellers' estates of at least \$126,500,000, (ii) not contain any contingencies materially greater than what is in the Purchase Agreement; and (iii) include a good faith deposit of 5% in cash or in other form of immediately available U.S. funds.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Bidding Procedures, any Bidder desiring to submit a bid for all or substantially all of the Teligent Assets must deliver its offer in writing to (i) counsel to the Sellers, Kirkland & Ellis, 200 E. Randolph Dr., Chicago, Illinois 60601, Attention: James H.M. Sprayregen and Matthew N. Kleiman; (ii) counsel for the Creditors' Committee, Milbank, Tweed, Hadley & McCloy LLP, Attention: Susheel Kirpalani, One Chase Manhattan Plaza, New York, New York 10005-1413; and (iii) counsel to the Administrative Agent for the Prepetition Lenders, Simpson, Thacher & Bartlett, 425 Lexington Avenue, New York, New York 10017-3954, Attention: Steven M. Fuhrman, such that the bid is actually received by each of the foregoing persons not later than 4:00 p.m., New York Time, on September 28, 2001. Offers received after this deadline may be rejected in the discretion of the Sellers.

PLEASE TAKE FURTHER NOTICE that at the Sale Hearing, the Court will consider the Sellers' request to sell the Teligent Assets to Buyer on the terms and conditions of the Purchase Agreement, or to such other competing bidder(s) having submitted the highest and best offer in accordance with the Bidding Procedures.

PLEASE TAKE FURTHER NOTICE that any objection to any Sale Motion must: (a) be in writing; (b) conform to the requirements of the Bankruptcy Code, the Bankruptcy Rules and Local Rules of the United States Bankruptcy Court for the Southern District of New York; (c) set forth the name of objector, the nature of the objector's claims against or interests in the Sellers' estates or property, and the legal and factual basis for the objection, and (d) be filed with the Court and served so as to be received on or before 5:00 p.m., New York Time, on September 21, 2001 upon (i) counsel to the Debtors, Kirkland & Ellis, 200 E. Randolph Dr., Chicago, Illinois 60601, Attention: James H.M. Sprayregen and Matthew N.

Kleiman; (ii) counsel to the Buyer, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166-0193, Attention: James P. Ricciardi; (iii) counsel for the Creditors' Committee, Milbank, Tweed, Hadley & McCloy LLP, Attention: Susheel Kirpalani, One Chase Manhattan Plaza, New York, New York 10005-1413; (iv) counsel to the Administrative Agent for the Prepetition Lenders, Simpson, Thacher & Bartlett, 425 Lexington Avenue, New York, New York 10017-3954, Attention: Steven M. Fuhrman; and (v) the Office of the United States Trustee, 33 Whitehall Street, 12th Floor, New York, New York 10004, Attention: Paul Schwartzberg.

PLEASE TAKE FURTHER NOTICE that any objection must be served in such a manner that it is actually received prior to the deadline. Any objection not conforming to the foregoing will not be considered by the Court.

PLEASE TAKE FURTHER NOTICE that if there is no other winning Bidder for the Teligent Assets at the Auction, the Sellers intend to ask the Court to approve the Purchase Agreement with the Buyer at the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that, all requests for information concerning the sale of the Teligent Assets should be directed to the undersigned counsel for the Sellers.

Dated: New York, New York  
September 5, 2001

KIRKLAND & ELLIS

/s/ Lena Mandel

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New York, New York 10022-4675  
(212) 446-4800

Hearing: \_\_\_\_\_, 2001, \_\_\_\_\_m.  
Objections Due: \_\_\_\_\_, 2001, \_\_\_\_\_m.

and

Matthew N. Kleiman (MK-3828)  
Anup Sathy (AS-4915)  
KIRKLAND & ELLIS  
200 E. Randolph St.  
Chicago, Illinois 60601  
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Counsel for Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re : Chapter 11  
TELIGENT, INC., et al.,<sup>1</sup> : Case No. 01-12974 (SMB)  
Debtors. : Jointly Administered  
-----X

**MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER: (A) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE ASSETS OF (i) TELIGENT INC. AND (ii) CERTAIN DOMESTIC SUBSIDIARIES OF TELIGENT, INC. TO TELIGENT ACQUISITION CORP., FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES, SUBJECT TO HIGHER AND BETTER OFFERS; (B) APPROVING THE ASSET PURCHASE AGREEMENT WITH TELIGENT ACQUISITION CORP.; AND (C) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

<sup>1</sup> The Debtors are the following entities: Teligent, Inc.; Teligent Services, Inc.; American Long Lines, Inc.; Association Communications, Inc.; Auctel, Inc.; BackLink, L.L.C.; Easton Telecom Services, Inc.; Executive Conference, Inc.; FirstMark Communications, Inc.; InfiNet Telecommunications, Inc.; JTel, L.L.C.; KatLink, L.L.C.; OMC Communications, Inc.; Quadrangle Investments, Inc.; Telecommunications Concepts, Inc.; Teligent Communications, L.L.C.; Teligent License Co. I, L.L.C.; Teligent License Co. II, L.L.C.; Teligent of Virginia, Inc.; Teligent Professional Services, Inc.; and Teligent Telecommunications, L.L.C.

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), by and through their undersigned counsel, respectfully submits this motion (the “Sale Motion”) for entry of an Order (the “Sale Order”): (a) authorizing the sale of substantially all of the assets (the “Teligent Assets”) of (i) Teligent, Inc. and (ii) certain subsidiaries of Teligent, Inc.<sup>2</sup> (collectively, with Teligent, Inc., the “Sellers”), to Teligent Acquisition Corp., (the “Buyer”), free and clear of all liens, claims and encumbrances, and subject to higher and better offers; (b) approving that certain asset purchase agreement with Buyer (the “Purchase Agreement”), substantially in the form attached hereto as Exhibit A; and (c) authorizing the assumption and assignment of certain executory contracts and unexpired leases identified in the Purchase Agreement (collectively, the “Assumed Agreements”).

#### **Jurisdiction**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(b). This proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M), (N) and (O). Venue of this motion is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for this Sale Motion are 11 U.S.C. §§ 363 and 365 and Rules 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure.

#### **Introduction**

3. On May 21, 2001 (the “Petition Date”), the Sellers filed with this Court their petitions for relief under title 11, chapter 11 of the United States Code, 11 U.S.C. § 101 et seq. (the

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<sup>2</sup> The domestic subsidiaries whose assets comprise the Teligent Assets are: Teligent Services, Inc.; BackLink, L.L.C.; JTel, L.L.C.; KatLink, L.L.C.; Teligent Telecommunications, L.L.C.; Teligent Communications, L.L.C.; Teligent License Co. I, L.L.C.; Teligent License Co. II, L.L.C.; Teligent of Virginia, Inc.; and Quadrangle Investments, Inc. The assets of the other Debtors are not being sold under the Purchase Agreement.

“Bankruptcy Code”). An official committee of unsecured creditors (the “Creditors’ Committee”) was appointed on May 30, 2001.

4. The Sellers are in the business of providing telecommunication services in the form of local and long distance telephone, high-speed data, and Internet access service through its SmartWave™ local networks in 23 major domestic markets. The SmartWave™ local networks combine advanced wireless technologies with traditional wireline technologies to provide an efficient method for the delivery of broadband services to small and medium size business customers. This delivery is effected by the use of “fixed wireless” technology, which provides for the wireless transmission of voice and data traffic directly to a customer’s premises, thus obviating the need for the expensive and disruptive deployment of fiber optic cable.

5. As of April 30, 2001, the Sellers had approximately 35,000 customers. For the fiscal year ended December 31, 2000, the Debtors, on a consolidated basis, reported revenues of approximately \$152,072,000 and net losses of approximately \$807,986,000. As of December 31, 2000, the Debtors’ consolidated books and records reflected assets totaling approximately \$1,209,476,000 and liabilities totaling approximately \$2,170,061,000. As of the Petition Date, the Debtors had approximately 1480 full-time and part-time employees.

6. As of the Petition Date, Teligent, Inc. is obligated in the aggregate amount of approximately \$800,000,000, pursuant to that certain secured credit facility, originally dated as of July 2, 1998 (as amended, modified and supplemented from time to time through and including the Petition Date, and inclusive of all collateral, guarantee and other documents executed in connection with the secured credit facility, the “Prepetition Credit Facility”), among Teligent, Inc., as borrower, and The Chase Manhattan Bank, as administrative agent, and the lender parties thereto (collectively,

the "Prepetition Lenders"). Under the terms of the Prepetition Credit Facility, Teligent, Inc.'s obligations to the Prepetition Lenders are secured by a pledge of the stock of substantially all of the Debtors and by liens on and security interests in substantially all of the domestic assets of the Debtors.

7. In November 1997, Teligent, Inc. issued \$300 million of 11 1/2% senior notes due 2007 pursuant to that certain indenture dated November 26, 1997, between Teligent, Inc., as issuer, and First Union National Bank, as trustee (the "Indenture Trustee").

8. Under a 1998 exchange offer, Teligent, Inc. issued \$440 million of 11 1/2% Series B Discount Notes due 2008 (the "Discount Notes"), in exchange for certain previously issued securities. The Discount Notes are governed by that certain Indenture dated February 20, 1998, between Teligent, Inc., as issuer, and the Indenture Trustee.

9. In April 2001, IDT Corporation acquired a 29.2% ownership interest in Teligent, Inc. previously held indirectly by Liberty Media Corporation. As a result, IDT Corporation is currently the largest shareholder of Teligent, Inc.

10. The nature of the Sellers' business requires significant capital expenditures to finance the deployment of services, including purchasing and installing equipment, operating the network, obtaining spectrum licenses, and hiring and retaining employees. However, the rapid expansion of the Sellers' business and the associated expenditures has resulted in operating losses and negative cash flow in every year since the Sellers' inception in 1997.

11. Teligent, Inc. received waivers from the Prepetition Lenders since December 31, 2000, relating to certain covenants in the Prepetition Credit Facility, including covenants regarding the achievement of certain financing and performance targets and the maintenance of certain financial ratios. However, the most recent waiver from the Prepetition

Lenders expires on May 21, 2001. Based on the Debtors' financial condition, liquidity and prospects, the Debtors have determined that a financial restructuring of their businesses through a chapter 11 process is necessary and appropriate.

#### **Background**

12. Upon filing for chapter 11 protection in May of this year, the Debtors and their advisors have been exploring different strategies for resolving their bankruptcy cases. These efforts have been focused on reorganizing the Debtors' business around the core operations, which are operated by the Sellers, and selling the business as a going concern. After approaching several possible sources of capital, including a group of current equity holders, the Debtors and their financial and business advisors concluded that the Debtors would not be able to raise sufficient capital to reorganize their business affairs. Accordingly, the Debtors have determined, after exercising their considered business judgment, that the best way to maximize value for the benefit of their estates and creditors is through an expeditious sale of their assets and businesses as going concerns, through one or more transactions.

13. As the Court is aware, the Debtors have retained The Blackstone Group L.P. ("Blackstone") as their financial advisor to explore strategic sale alternatives. In this capacity, Blackstone has conducted an intensive and extensive marketing campaign in an effort to identify and locate financial and strategic buyers willing to enter into a transaction to acquire the business as a going concern. The efforts to sell the business were primarily focused on a transaction to divest the core operations (i.e., the Teligent Assets), a business operated by the Sellers, separately from the enterprise operations.



14. Through the sale process, Blackstone contacted thirty-four (34) potentially interested parties consisting of twenty-one (21) strategic investors and thirteen (13) financial investors. Due diligence materials were supplied to parties who executed a confidentiality agreement with the Debtors. After preliminary discussions with Blackstone, the majority of the parties initially contacted were not interested and withdrew from the process.

15. In July of 2001, the Buyer and Sellers began discussing a proposed transaction. After the Buyer entered into a confidentiality agreement, the Buyer began conducting its due diligence. Shortly thereafter, the Buyer and Sellers commenced negotiations with respect to the purchase of Teligent Assets.

16. After several months of evaluating various sale options, the Sellers determined that the offer made by the Buyer represented the best opportunity to maximize the value of the Teligent Assets. The Sellers and their advisors and the Buyer then began extensive good-faith, arms-length negotiations and eventually reached an agreement regarding a proposed acquisition of the Teligent Assets by the Buyer. In an exercise of their considered business judgment, after arms-length, good-faith negotiations, the Sellers have entered into the Purchase Agreement with the Buyer.

#### **Summary of Relief Requested**

17. By this Sale Motion,<sup>3</sup> the Sellers seek the entry of an Order: (a) authorizing the sale of the Teligent Assets to the Buyer, free and clear of all liens, claims and encumbrances, and subject to higher and better offers; (b) approving the Purchase Agreement; and (c) authorizing assumption and assignment of the Assumed Agreements.

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<sup>3</sup> Contemporaneously with the filing of this Sale Motion, the Debtors have filed a motion seeking the approval of certain bidding procedures and the authority to conduct an auction according to those procedures (the "Bidding Procedures Motion").

## The Sale To Buyer

### **A. Approval of the Sale of the Teligent Assets**

18. The Sellers seek authority under section 363 of the Bankruptcy Code to sell the Teligent Assets to the Buyer, subject to any higher and better offers received through the proposed auction<sup>4</sup> (“Auction”) for the following reasons. First, the Sellers’ operations are not generating enough revenue to maintain the Sellers’ businesses as a going concern, without additional credit support or other liquidity. Second, the proceeds of a sale of the Teligent Assets, because they are being sold as a going concern, will be greater than if sold by piecemeal liquidation. Third, a prompt sale will aid in minimizing administrative expenses of the Sellers’ estates. Fourth, a sale of the Teligent Assets, because they are being sold as a going concern, will increase the number of jobs that will be preserved. Therefore, the Sellers have determined that the sale of the Teligent Assets to Buyer, subject to higher and better offers, is in the best interests of their estates and creditors.

### **B. Approval of the Purchase Agreement<sup>5</sup>**

19. The Purchase Agreement provides for the sale of the Teligent Assets to the Buyer, free and clear of all liens, claims and encumbrances, for \$112,500,000 in cash and \$5,000,000 worth of Buyer’s common stock. The following is a summary of certain key provisions of the Purchase Agreement, which is qualified entirely by reference to the exact terms of the Purchase Agreement.

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<sup>4</sup> Pursuant to the Bidding Procedures Motion, the Sellers will conduct an auction for the sale of the Teligent Assets.

<sup>5</sup> Unless otherwise stated, capitalized terms used herein and not otherwise defined herein have the respective meanings as ascribed to them in the Purchase Agreement.

**(a) Purchased Assets**

Buyer is acquiring substantially all of the Teligent Assets, including the following:

- (i) all inventories of supplies, materials and critical spares used in connection with the Business;
- (ii) all equipment used in connection with the Business, including (i) DSLAMs, modems, routers, ANXs, Hughes equipment, Hughes OEM equipment, and all other 18 GHz, 23 GHz and 24 Ghz-enabled equipment; (ii) all equipment necessary to render fully operational 2,000 additional Teligent Access Sites beyond those operating in the Operating Business at the Closing; and (iii) all additional equipment necessary to render fully operational 100 additional Teligent Node sites beyond those operating in the Operating Business at the Closing;
- (iii) all machinery, vehicles, furniture and other tangible personal property used in connection with the Business;
- (iv) all of the Sellers' accounts receivable as of the Closing Date;
- (v) the Assumed Agreements, in each case, to the extent the same are assignable under section 365 of the Bankruptcy Code or to the extent consented to by the third party or third parties to such agreements, and any and all customer deposits, customer advances and credits, security deposits and letters of credit related to any such Assumed Agreements;
- (vi) the Permits (including, without limitation, the FCC Licenses and the FCC Analogous Licenses) and the Environmental Permits listed on Schedule 5.9 of the Purchase Agreement, in each case, to the extent the same are assignable (the "Transferable Permits");
- (vii) to the extent assignable under section 365 of the Bankruptcy Code or to the extent consented to by the third party or third parties to such agreements, all confidentiality, noncompete or nondisclosure agreements executed by vendors, suppliers or employees of the Sellers or other third parties, in each case, relating to the Business;

- (viii) all of the shares of the capital stock of ICG Communications, Inc., a Delaware corporation, owned by any of the Sellers;
- (ix) originals or copies of all Transferring Employee Records, books, operating records, operating, safety and maintenance manuals, engineering design plans, blueprints and as-built plans, specifications, procedures and similar items of the Sellers relating specifically to the Teligent Assets, including books of account, all customer lists, billing records and other customer correspondence relating to the Business, all regulatory filings and other books and records relating to the rates and services provided by the Sellers in connection with the operation of the Business;
- (x) except as set forth on Schedule 2.1(i) of the Purchase Agreement and subject to Section 2.2(d) of the Purchase Agreement, all of the rights, claims or causes of action of any of the Sellers against a third party related to the Purchased Assets, the operation of the Operating Business or the Assumed Obligations or Assumed Agreements arising out of transactions occurring prior to the Closing Date, except where such rights, claims or causes of action relate to Excluded Liabilities; to the extent such rights, claims or causes of action relate to both Assumed Obligations and Excluded Liabilities, the Buyer and each Seller shall share such rights, claims or causes of action in the same proportion as their respective liabilities bear to the total liability relating to those rights, claims or causes of action;
- (xi) all Intellectual Property used by the Sellers in connection with the Business, together with all related income, royalties, damages and payments due or payable at the Closing or thereafter (including, without limitation, damages and payments for past or future infringements or misappropriations thereof), the right to sue and recover for past infringements or misappropriations thereof, any and all corresponding rights that, now or hereafter, may be secured throughout the world and all copies and tangible embodiments of any such Intellectual Property; and
- (xii) to the extent assignable under section 365 of the Bankruptcy Code or to the extent consented to by the insurance providers,

the rights of the Sellers under those insurance policies which cover risks covering the Operating Business or the Purchased Assets.

(b) **Purchase Price**

- (i) The aggregate consideration for the Teligent Assets shall be \$117,500,000 (the "Purchase Price"), consisting of: (i) a number of shares of Buyer Common equal to the quotient of: (x) \$5,000,000, divided by (y) the price per share of Buyer Common paid by the investors in the Buyer under the Buyer Equity Offering (the "Stock Consideration") and (ii) \$112,500,000 in cash (the "Cash Consideration").

(c) **Closing**

- (i) *Time and Place of Closing:* Upon the terms and subject to the satisfaction of the conditions contained in Article VIII of the Purchase Agreement, the closing of the sale of the Purchased Assets and the assumption of the Assumed Obligations and Assumed Agreements contemplated by the Purchase Agreement (the "Closing") shall take place at the offices of Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York, at 10:00 A.M. (local time) no later than the fifth (5th) Business Day following the date on which the conditions set forth in Article VIII of the Purchase Agreement have been satisfied (other than the conditions with respect to actions the respective parties hereto will take at the Closing itself) or, to the extent permitted, waived in writing, or at such other place or time as the Buyer and Teligent (on behalf of the Sellers) may mutually agree. The date and time at which the Closing actually occurs is hereinafter referred to as the "Closing Date."
- (ii) *Payment of Purchase Price:* Upon the terms and subject to the satisfaction of the conditions contained in the Purchase Agreement, in consideration of the aforesaid sale, assignment, conveyance, transfer and delivery of the Purchased Assets, at the Closing the Buyer shall: (i) subject to Section 4.4(a) of the Purchase Agreement, pay, or cause to be paid, to Teligent (on behalf of the Sellers) an amount in U.S. dollars equal to the Cash Consideration, by wire transfer of immediately-available funds to such account or accounts specified by

Teligent (such account or accounts shall be specified by Teligent in a written notice to be delivered to the Buyer no later than one (1) Business Day prior to the Closing Date) and (ii) deliver to Teligent (on behalf of the Sellers) stock certificates representing the Stock Consideration registered in the name or names of Persons specified by Teligent in a written notice to be delivered to the Buyer no later than one (1) Business Day prior to the Closing Date.

**(d) Termination and Abandonment**

(i) The Purchase Agreement may be terminated at any time prior to the Closing Date by:

- (1) mutual written consent of Teligent (on behalf of the Sellers) and the Buyer;
- (2) the Buyer, if there has been a material violation or breach by the Sellers of any covenant, representation or warranty made by them contained in the Purchase Agreement which has prevented the satisfaction of any condition to the obligations of the Buyer to effect the Closing and such violation or breach has not been cured by the Sellers within ten (10) Business Days of receipt of written notice thereof or waived by the Buyer;
- (3) the Sellers, if there has been a material violation or breach by the Buyer of any covenant, representation or warranty made by it contained in the Purchase Agreement which has prevented the satisfaction of any condition to the obligations of the Sellers to effect the Closing and such violation or breach has not been cured by the Buyer within ten (10) Business Days of receipt of written notice thereof or waived by the Sellers;
- (4) the Sellers, if on or prior to two (2) days prior to the date of the auction conducted by the Sellers, the Buyer cannot show evidence reasonably satisfactory to the Sellers of the Committed Financing;

- (5) the Buyer or the Sellers, if any event occurs which renders satisfaction of one or more conditions set forth in Section 8.1 of the Purchase Agreement impossible; provided that the Buyer or the Sellers, as the case may be, shall not be entitled to terminate this Agreement pursuant to this Section 9.1(e) of the Purchase Agreement if the impossibility results primarily from such party itself breaching any representation, warranty or covenant contained in the Purchase Agreement;
- (6) the Buyer, if the Bid Procedure is not approved by the Bankruptcy Court with fifteen (15) Business Days after the date of the Purchase Agreement or if the Bid Procedures are stayed, reversed or modified in a manner which materially detracts from the protections of the Buyer thereunder; provided that the Buyer shall not be entitled to terminate the Purchase Agreement pursuant to Section 9.1(f) of the Purchase Agreement if the failure to obtain such approval within such time period results primarily from the Buyer breaching any representation, warranty, or covenant contained in the Purchase Agreement;
- (7) the Buyer or the Sellers, if the Sale Order has not been entered by the Bankruptcy Court on or prior to October 31, 2001; provided that the Buyer or the Sellers, as the case may be, shall not be entitled to terminate the Purchase Agreement pursuant to Section 9.1(g) of the Purchase Agreement if the failure to obtain such approval within such time period results primarily from such party itself breaching any representation, warranty or covenant contained in the Purchase Agreement;
- (8) the Sellers, if the DIP Order<sup>6</sup> has not been entered by the Bankruptcy Court on or prior to October 31, 2001; provided that the Sellers shall not be entitled to terminate the Purchase Agreement pursuant to Section 9.1(h) of the Purchase Agreement if the failure

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<sup>6</sup> The Purchase Agreement contemplates that the Sellers may borrow up to \$25,000,000 from Buyer under certain terms and conditions. The Sellers are not seeking authority to borrow such funds pursuant to the Sale Motion.

to obtain such approval within such time period results from the Sellers' withdrawal of the request for the DIP Order or results primarily from such party itself breaching any representation, warranty or covenant contained in the Purchase Agreement;

- (9) the Buyer, in accordance with Section 7.11 of the Purchase Agreement;
- (10) the Buyer, if, prior to or upon the approval of the Bid Procedures by the Bankruptcy Court, the Buyer has not received written consent or consent on the record at the hearing on the Bid Procedures from the Prepetition Lenders to a carve-out from their liens and their administrative claims for any break-up fee or expense reimbursement which may be due to the Buyer pursuant to Section 7.15 of the Purchase Agreement;
- (11) the Buyer, if the bankruptcy auction to be conducted pursuant to the Bid Procedures is scheduled for a date earlier than 28 days after the approval of the Bid Procedures; or
- (12) the Buyer or the Sellers, if the Closing shall not have occurred on or prior to February 15, 2002 (the "Termination Date"); provided that the Buyer or the Sellers, as the case may be, shall not be entitled to terminate the Purchase Agreement pursuant to Section 9.1(l) thereof if the failure of the Closing to occur on or prior to such date results primarily from such party itself breaching any representation, warranty or covenant contained in the Purchase Agreement.

**(e) Procedure and Effect of Termination**

In the event of termination of the Purchase Agreement and abandonment of the transactions contemplated hereby by either or both of the parties pursuant to Section 9.1 thereof, written notice thereof shall forthwith be given by the terminating party to the other party (it being understood that notice to Teligent shall have the same effect as notice to all of the Sellers) and the Purchase Agreement shall



terminate and the transactions contemplated hereby shall be abandoned, without further action by any of the parties hereto. If the Purchase Agreement is terminated as provided herein:

- (i) said termination shall be the sole remedy of the parties hereto with respect to breaches of any covenant, representation or warranty contained in the Purchase Agreement and none of the parties hereto nor any of their respective trustees, directors, officers or Affiliates, as the case may be, shall have any liability or further obligation to the other party or any of their respective trustees, directors, officers or Affiliates, as the case may be, pursuant to the Purchase Agreement, except in each case as stated in this Section 9.2, Section 10.14 and in Sections 7.4(b), 7.5, 7.8(a), 7.9 and 7.15 thereof, and upon a willful breach by a party, in which case the non-breaching party shall have all rights and remedies existing at law or in equity; provided, however, the Sellers shall not be responsible for liability for any misrepresentation or breach of any warranty or covenant by the Sellers contained in the Purchase Agreement prior to the time of such termination;
- (ii) all filings, applications and other submissions made pursuant to the Purchase Agreement, to the extent practicable, shall be withdrawn from the agency or other Person to which they were made; and
- (iii) all Confidential Information from any and all of the Sellers shall be returned to Teligent, and all Confidential Information from the Buyer shall be returned to the Buyer.

**C. This Sale is Permitted under Section 363 of the Bankruptcy Code.**

20. The Bankruptcy Code permits a debtor to sell its assets outside the ordinary course of business, including significant and important assets. See Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.), 722 F. 2d 1063, 1070 (2d Cir. 1983). Section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Courts have been willing to approve sales under section 363(b)(1) when: (a) they are

supported by the sound business judgement of the debtor's management; (b) interested parties are provided with adequate and reasonable notice; (c) the sale price is fair and reasonable; and (d) the purchaser is acting in good faith. In re Betty Owens Schools, Inc., WL 188127 at \*4 (S.D.N.Y. 1997) (setting forth the foregoing elements of 363(b)(1) inquiry); In re General Bearing Corporation, 136 B.R. 361, 365-66 (Bankr. S.D.N.Y. 1992) (suggesting the factors to be considered under the rule set forth in Lionel are the foregoing four elements).

(a) *The Debtors Have Exercised Sound Business Judgment.*

21. Courts have uniformly held that approval of a proposed sale of property pursuant to section 363(b) of the Bankruptcy Code is appropriate if a court finds that the transaction represents a reasonable business judgment on the part of the debtor. See Lionel, 722 F. 2d at 1070; Stephens Industries, Inc. v. McClung, 789 F. 2d 386, 391 (6<sup>th</sup> Cir. 1986); In re Ionsphere Clubs, Inc., 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989). A debtor's showing of sound business justification need not be unduly exhaustive but, rather a debtor is "simply required to justify the proposed disposition with sound business reasons." In re Baldwin United Corp., 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984). Whether or not there are sufficient business reasons to justify a sale depends on the facts and circumstances of each case. Lionel, 722 F. 2d at 1071. Bankruptcy courts are given a great deal of discretion in deciding whether to authorize a sale of the debtor's assets outside of the ordinary course of business. See In re Chateaugay Corp., 973 F. 2d 141, 133 (2d Cir. 1992).

22. As described above, the Sellers' proposed sale to Buyer is proper, wholly in keeping with the Sellers' strategy of expeditiously selling their assets, and serves the best interests of the Sellers, their estates and their creditors. The proposed sale will enable the Sellers to receive the best value available to date for the Teligent Assets, minimize the additional incurrence of

administrative claims and allow the operations to be transferred as a going-concern. In their considered business judgment, the Sellers believe that the relief requested in this Motion will maximize the recoveries for the creditors of their estates.

(b) *Interested Parties Have Been Provided Adequate Notice.*

23. The Sellers believe that the form and manner of notice proposed and approved in the order granting the Bidding Procedures Motion has provided interested parties with adequate and reasonable notice of the sale and submit such notice should be deemed good and sufficient notice under the circumstances to permit the Court to approve the sale of the Teligent Assets pursuant to section 363 of the Bankruptcy Code.

(c) *The Sale Price is Fair and Reasonable.*

24. The proposed sale to Buyer reflects the highest and best price for the Teligent Assets that the Sellers have been able to achieve to date. The Sellers and their advisors conducted extensive marketing efforts, negotiated at arms-length with Buyer, and further seek to test the value of this transaction by providing adequate notice to interested parties, and inviting any and all prospective bidders to make higher and better offers at the Auction. The Sellers therefore submit that the Purchase Price, whether it be the current price offered by the Buyer or some higher and better offer received at the Auction, through rigorous marketing and ample exposure to interested parties, will emerge as both fair and reasonable.

(d) *The Purchaser is Acting in Good Faith.*

25. As the marketing efforts of the Teligent Assets suggest, and as the Auction process will confirm, the Purchase Agreement is the product of good faith, arms-length and vigorous negotiations between the Sellers and the Buyer. The Sellers request a finding by this Court that these

arms-length negotiations between unrelated, unaffiliated parties were in good faith, and that, therefore, the Buyer is a “good faith purchaser” under section 363(m) of the Bankruptcy Code. The Sellers also request a finding by this Court that the Sellers and Buyer have not engaged in any collusive activities which would make the sale voidable under section 363(n) of the Bankruptcy Code.

**D. Approval of the Sale Free and Clear of All Liens, Claims and Encumbrances.**

26. Pursuant to section 363(f) of the Bankruptcy Code, a debtor’s assets may be sold free and clear of any lien, claim or encumbrance in such property. A sale free and clear of all liens, claims and encumbrances is appropriate under the circumstances because any lien or encumbrance that exists immediately prior to the closing of the sale will attach to the proceeds of the sale with the same validity, priority, force and effect as it had at such time. The Sellers submit that a sale subject to liens, claims and encumbrances will likely result in a lower purchase price, yielding less value for the Sellers, their estates, and their creditors. Accordingly, a sale free and clear of all liens, claims and encumbrances is necessary to maximize the value of the Teligent Assets. For all of the foregoing reasons, the Sellers request the Court to enter an order approving the sale of the Teligent Assets to the Buyer free and clear of all liens, claims and encumbrances.

**Assumption and Assignment of The Assumed Agreements  
Pursuant to Section 365 of the Bankruptcy Code**

27. The Purchase Agreement provides that the Seller will be assigned the Assumed Agreements as part of the sale. Assumption and assignment of the Assumed Agreement is an integral part of the proposed sale to Buyer and should be approved by the Court. Section 365(a) of the Bankruptcy Code<sup>7</sup> authorizes a debtor in possession to assume an executory contract or unexpired

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<sup>7</sup> Section 365(a) of the Bankruptcy Code provides:

(continued...)

lease subject to the bankruptcy court's approval. Section 365(b) of the Bankruptcy Code<sup>8</sup> requires such debtor in possession to satisfy certain requirements at the time of assumption if a default exists under the contract to be assumed.

28. The standard that is applied in determining whether an executory contract or unexpired lease should be assumed is the debtor's "business judgement" that assumption is in its economic best interests. Sharon Steel Corp. v. National Fuel Gas Distrib. Corp. (In re Sharon Steel Corp.), 872 F.2d 36, 40 (3d Cir. 1989); see also NLRB v. Bildisco & Bildisco, 465 U.S. 513, 523 (1984) (describing business judgement test as "traditional"); In re III Enterprises, Inc. V, 163 B.R. 453, 469 (Bankr. E.D. Pa. 1994) (citations omitted) ("Generally, a court will give great deference to a debtor's decision to assume or reject the contract. A debtor need only show that its decision to assume or reject the contract is an exercise of sound business judgment--a standard which we have concluded many times is not difficult to meet.").

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(...continued)

- (a) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.

11 U.S.C. § 365(a)

<sup>8</sup> Section 365(b) of the Bankruptcy Code states, in relevant part:

- (b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee - -
- (A) cures, or provides adequate assurance that the trustee will promptly cure, such default;
- (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
- (C) provides adequate assurance of future performance under such contract or lease.

29. The Sellers submit that the assumption and assignment of the Assumed Agreements are critical to the sale to Buyer. Among the Assumed Agreements identified in the Purchase Agreement are rooftop leases upon which the Sellers' radios and antennas are located, and contracts for critical telecommunications support. Without these Assumed Agreements, Buyer would not be able to operate the Sellers' business.<sup>9</sup> The Sellers are advised that Buyer will have as of the Sale Hearing the financial capabilities of satisfying any and all obligations it will incur in connection with the Assumed Agreements to be assigned to Buyer under the Purchase Agreement.

30. Accordingly, the Sellers respectfully request that the Court approve the assumption and assignment of the Assumed Agreements, as such may be modified or supplemented, with a reservation of rights to add or withdraw any particular Assumed Agreement pursuant to the terms of the Purchase Agreement.

31. With respect to the Sellers' obligations to cure defaults under such Assumed Agreements pursuant to section 365 of the Bankruptcy Code, the Sellers requested that the Court as part of the Bidding Procedures Motion establish a procedure to determine the cure obligations payable under the Assumed Agreements. As finally determined, the Sellers will comply with the obligations to make cure payments with respect to the Assumed Agreements actually assumed.

#### **Exemption from Transfer Taxes**

32. Pursuant to section 1146(c) of the Bankruptcy Code, the "transfer . . . or the making or delivery of an instrument of transfer under a plan confirmed under section 1129 of this title, may not be taxed under any law imposing a stamp or similar tax." This provision has been broadly

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<sup>9</sup> By including any agreement or lease in the Purchase Agreement, the Sellers are not waiving their rights to assert that any of the Assumed Agreements are actually not executory and thus not subject to section 365 of the Bankruptcy Code.

construed to include sales and transfers which occur outside a chapter 11 plan and before or after plan confirmation, provided that such sales and transfers enable the confirmation and consummation of a Chapter 11 plan for the Debtors. See, e.g., City of New York v. Jacoby-Bender, Inc. (In re Jacoby-Bender, Inc.), 758 F.2d 840, 842 (2d Cir. 1985). In so holding, courts have focused upon whether the sale and transfer is “necessary to the consummation of a plan.” Id. at 842.

33. In the instant case, the Sellers’ sale of the Teligent Assets is essential to the consummation of a plan, and therefore should be deemed to be under a plan. Accordingly, the Debtors submit that the sale of the Teligent Assets falls within the scope of the exemption provided for under section 1146(c) of the Bankruptcy Code. See In re Permar Provisions, Inc., 79 B.R. 530, 534 (Bankr. E.D.N.Y. 1987) (sale of property one year prior to plan confirmation was exempt under section 1146(c) where sale proceeds were distributed to secured and unsecured creditors).

**The Agreement Does Not Dictate  
the Terms of a Plan of Reorganization**

34. The Purchase Agreement does not dictate the terms of a plan of reorganization, as it does not attempt to restructure the rights of creditors. Although a sale of assets may not be approved where such sale dictates the terms of a plan of reorganization, thereby denying creditors the procedural protections of the plan process, see Institutional Creditors of Continental Air Lines v. Continental Air Lines (In re Continental Air Lines, Inc.), 780 F.2d 1223, 1227-28 (5th Cir. 1986); Pension Benefit Guaranty Corp. v. Braniff Airways Inc. (In re Braniff Airways, Inc.), 700 F.2d 935, 939 (5th Cir.), reh’g denied, 705 F.2d 450 (5th Cir. 1983), that is not what is proposed here.

35. In the instant case, there are no conditions in the Purchase Agreement that predetermine the rights of creditors under a plan. The Purchase Agreement’s sole impact is to

transform the composition of the Teligent Assets to cash and relieve the Sellers' estates of significant liabilities. The distribution of the proceeds will be managed consistent with the Bankruptcy Code. See In re Naron & Wagner, Chartered, 88 B.R. 85, 88 (Bankr. D. Md. 1988) ("sale proposed here is not a sub rosa plan because it seeks only to liquidate assets, and the sale will not restructure the rights of creditors"); In re Lion Capital Group, 49 B.R. 163, 177 (Bankr. S.D.N.Y. 1985) (settlement agreement does not dictate terms of plan of reorganization where it "frees up assets for an estate and permits formation of a plan").

36. Based upon the foregoing, the Sellers submit that to preserve and maximize the value of their principal assets and insulate them from continuing financial uncertainties surrounding their chapter 11 cases, the transactions contemplated pursuant to the Purchase Agreement or a higher and better offer is an exercise of sound business judgment, is in the best interests of the Sellers and their estates, and should be approved in all respects.

**Waiver of Memorandum of Law**

37. Because there are no novel issues of law presented herein, the Debtors respectfully request that the Court waive the requirement that the Debtors file a memorandum of law in support of this Sale Motion pursuant to Local Bankruptcy Rule for the Southern District of New York 9013-1(b).

**No Prior Request**

38. No prior motion for the relief requested herein has been made to this or any other court.



**Notice**

39. The Debtors propose to send notice of this Sale Motion by first-class mail upon (i) counsel to the Creditors' Committee; (ii) counsel to the Administrative Agent for the Prepetition Lenders; (iii) the United States Trustee; (iv) all entities (or counsel therefor) known to have asserted any lien, claim, charge or encumbrance on the Teligent Assets; (v) all federal, state and local regulatory or taxing authorities which are reasonably ascertainable by the Debtors to have a known interest in the Teligent Assets; (vi) the counter parties to the Assumed Agreement; (vii) all parties who have expressed an interest in acquiring the Teligent Assets; and (viii) those parties who have requested notice pursuant to Fed. R. Bankr. P. 2002. The Debtors submit that no further notice is necessary.

WHEREFORE, the Debtors respectfully request that the Court enter orders substantially in the form of the Sale Order, (i) authorizing the sale of the Teligent Assets to Buyer, subject to higher and better offers, (ii) approving the Purchase Agreement, (iii) authorizing the assumption and assignment of Assumed Agreements and (iv) granting such other and further relief as appropriate.

New York, New York  
Dated: August 24, 2001

Respectfully submitted,

KIRKLAND & ELLIS

/s/ Lena Mandel  
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### Exhibits

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Exhibit B	-	Form of Bill of Sale
Exhibit C	-	Form of Instrument of Assignment and Assumption
Exhibit D	-	Certificate of Incorporation and Bylaws of the Buyer
Exhibit E	-	Form of Governing Documents of the Designated Buyer Subsidiaries
Exhibit F	-	Form of Bid Procedures Order
Exhibit G	-	Form of Sale Order
Exhibit H	-	Terms of Debtor-in-Possession Working Capital Facility
Exhibit I	-	Key Executives' Employment Agreement Terms

### Schedules

### Referenced in:

Schedule 1.1(a)(1)	-	Section 1.1(a)
Schedule 2.1(j)	-	Section 2.1(j)
Schedule 2.2	-	Section 2.2(f)
Schedule 5.8	-	Section 5.8 and Section 5.11
Schedule 5.9	-	Section 2.1(f) and Section 5.9
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Schedule 6.5	-	Section 6.5
Schedule 7.1(a)	-	Section 7.1(a)
Schedule 7.1(c)	-	Section 7.1(c)

**FIRST AMENDED AND RESTATED**

**ASSET PURCHASE AGREEMENT**

**by and among**

**TELIGENT, INC.**

**TELIGENT LICENSE CO. I, L.L.C.,**

**TELIGENT LICENSE CO. II, L.L.C.,**

**TELIGENT SERVICES, INC.,**

**TELIGENT OF VIRGINIA, INC.,**

**QUADRANGLE INVESTMENTS, INC.,**

**BACKLINK, L.L.C.,**

**JTEL, L.L.C.,**

**KATLINK, L.L.C.,**

**TELIGENT TELECOMMUNICATIONS, L.L.C.,**

**TELIGENT COMMUNICATIONS, L.L.C.**

**and**

**TELIGENT ACQUISITION CORP.**

September 4, 2001

## FIRST AMENDED AND RESTATED ASSET PURCHASE AGREEMENT

This First Amended and Restated Asset Purchase Agreement (this "Agreement") is made as of September 4, 2001 by and among Teligent, Inc., a Delaware corporation ("Teligent"); Teligent License Co. I, L.L.C., a Delaware limited liability company; Teligent License Co. II, L.L.C., a Delaware limited liability company; Teligent Services, Inc., a Delaware corporation; Teligent of Virginia, Inc., a Virginia Public Service Company; Quadrangle Investments, Inc., a Delaware corporation; BackLink, L.L.C., a Delaware limited liability company; JTel, L.L.C., a Delaware limited liability company; KatLink, L.L.C., a Delaware limited liability company; Teligent Telecommunications, L.L.C., a Delaware limited liability company; Teligent Communications, L.L.C., a Delaware limited liability company (collectively, the "Sellers"); and Teligent Acquisition Corp., a Delaware corporation (the "Buyer").

WHEREAS, each of the Sellers and the Buyer are parties to the Asset Purchase Agreement, dated as of August 23, 2001 (the "Original Agreement"), and they desire to amend and restate the Original Agreement in its entirety as set forth herein;

WHEREAS, the Buyer desires to purchase from the Sellers, and the Sellers desire to sell to the Buyer, the Purchased Assets (as hereinafter defined) upon the terms and conditions hereinafter set forth in this Agreement; and

WHEREAS, the Buyer desires to purchase from the Sellers the Purchased Assets for the purpose of providing broadband capacity and related services;

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements hereinafter set forth, and intending to be legally bound hereby, the parties hereto agree as follows:

### ARTICLE I DEFINITIONS

#### Section 1.1 *Definitions.*

(a) As used in this Agreement, the following terms have the meanings specified in this Section 1.1(a).

"Actual DIP Financing Amount" means all obligations outstanding under the Debtor-in-Possession Working Capital Facility.

"Affiliate" has the meaning set forth in Rule 12b-2 of the General Rules and Regulations under the Exchange Act.

"Assumed Agreements" means any contract, agreement, real or personal property lease, commitment, understanding or instrument which relates to the Business or the Purchased Assets and which is listed on Exhibit A attached hereto, which Exhibit may be amended from time to time by the Buyer up to the commencement of the Sale Hearing and excluding any contract, agreement, real or personal property lease, commitment, understanding or instrument that the Buyer elects to exclude pursuant to Section 2.5(a).

"Bankruptcy Code" means Title 11 of the United States Code, 11 U.S.C. §§ 101, et. seq.

"Bankruptcy Court" means the United States Bankruptcy Court for the Southern District of New York or such other court having jurisdiction over the Chapter 11 Case originally administered in the Southern District of New York under Case No. 01-12974.

"Bill of Sale" means the Bill of Sale to be executed and delivered by the Sellers at the Closing, substantially in the form of Exhibit B attached hereto.

"Business" means the activities carried on by the Sellers for the purpose of providing local and long distance telephony, high-speed data and Internet access services over local digital networks; *provided* that "Business" shall not include any of the activities carried on by any of the Excluded Subsidiaries.

"Business Day" means any day other than Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or a day on which banking institutions in such state are authorized by law or other governmental action to close.

"Buyer Common" means the Buyer's common stock, par value \$0.01 per share.

"Buyer Equity Offering" means a privately placed equity offering of the Buyer's securities to qualified institutional buyers under Rule 144A or any other equity offering exempt from the registration requirements of the Securities Act in an amount sufficient to fund the Cash Consideration hereunder and to provide sufficient working capital, as determined in the Buyer's sole discretion, for the continued operation of the Operating Business after the Closing.

"Buyer Representatives" means the Buyer's accountants, employees, counsel, environmental consultants, financial advisors and other authorized representatives.

"Cash Collateral Order" means that certain final cash collateral order entered by the Bankruptcy Court, dated June 13, 2001, as may be amended from time to time.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

"Chapter 11 Case" means the Sellers' case commenced under Chapter 11 of the Bankruptcy Code.

"COBRA" means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended and set forth in Section 4980B of the Code and Part 6 of Subtitle B of Title I of ERISA.



"Code" means the Internal Revenue Code of 1986, as amended.

"Committed Financing" means the receipt of binding subscription agreements by the Buyer from investors in the Buyer Common under the Buyer Equity Offering for an aggregate amount of no less than \$250,000,000.

"Confidential Information" shall have the meaning specified in the Confidentiality Agreement.

"Confidentiality Agreement" means the Confidentiality Agreement, dated as of June 20, 2001, between Teligent and Friedman, Billings, Ramsey & Co.

"Disability" means any physical or mental incapacitation which results or will result in a Key Executive's inability to perform his duties and responsibilities for the Sellers for a total of 120 days during the twelve-month period commencing on the date of the Original Agreement, as determined by an Independent Medical Doctor. For the purposes of this definition, an "Independent Medical Doctor" shall be a medical doctor chosen in the following manner: the Buyer and Teligent shall each choose a medical doctor and such medical doctors, together, shall choose a third medical doctor who shall be the Independent Medical Doctor.

"Encumbrances" means any mortgages, pledges, liens, claims, charges, security interests, conditional and installment sale agreements, activity and use limitations, conservation easements, deed restrictions, encumbrances and charges of any kind.

"Environmental Laws" means all federal, state and local laws, statutes, regulations, rules, ordinances, codes, decrees, judgments, or judicial or administrative orders relating to pollution or protection of the environment applicable to the Business.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" means any entity which is treated as a single employer with any of the Sellers for purposes of Section 414 of the Code.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Excluded Subsidiaries" means Executive Conference Inc., a New Jersey corporation, Sawyer Shell Corp. (formerly Infinet Telecommunications, Inc.), an Ohio corporation, Telecommunications Concepts, Inc., a Virginia corporation, American Long Lines, Inc., a Pennsylvania corporation, Easton Telecom Services, Inc., an Ohio corporation, Teligent Professional Services, Inc., a Delaware corporation, Auctel, Inc., a Delaware corporation, OMC Communications, Inc., a Maryland corporation, Association Communications, Inc., a Washington corporation, FirstMark Communications, Inc., an Ohio corporation, Teligent International Ltd., a Bermuda company, and Teligent Canada Ltd., a Canadian corporation.

"FCC" means the Federal Communications Commission.

"FCC Analogous Consents" means any consents from state or local regulatory authorities with respect to the assignment of the FCC Analogous Licenses in connection with the consummation of the transactions contemplated by this Agreement.

"FCC Analogous Licenses" means any licenses, authorizations or permits issued by state or local regulatory authorities which are used or useful in connection with the Business and listed on Schedule 5.13.

"FCC Consents" means the actions by the FCC granting its consent to the assignment of the FCC Licenses in connection with the consummation of the transactions contemplated hereby.

"FCC Licenses" means all, permits, construction permits and other authorizations issued by the FCC which are used or useful in connection with the Business and listed on Schedule 5.13.

"FCC Rules" means the rules and regulations of the FCC, 47 Code of Federal Regulations, Part 1 et seq.

"Final Order" means, (i) for purposes of the FCC Consents, an administrative order issued by the FCC for which (A) the deadline for lodging any administrative appeal, reconsideration, stay or review has expired pursuant to the FCC Rules and (B) such order has not otherwise been reversed, stayed, enjoined, set aside, annulled or suspended; and (ii) for purposes of the consents required from all other Governmental Entities (including, without limitation, the FCC Analogous Consents), an action by any such Governmental Entity that has not been reversed, stayed, enjoined, set aside, annulled or suspended, or where the time period for any further action by such Governmental Entity has expired without further action by such Governmental Entity. Notwithstanding the foregoing, in the case of any consent required of a Governmental Entity, including the FCC Consents, such consent by such Governmental Entity shall be deemed a Final Order even if there is a timely request for stay, appeal, reconsideration, review or rehearing challenging the action by such Governmental Entity, unless (x) such challenge has a substantial probability of success on its merits and (y) such challenge, if successful, would have a Material Adverse Effect.

"Governmental Entity" means any federal, state or local governmental or regulatory authority, department, agency, commission, body or other governmental entity.

"Hazardous Substances" means (i) any petrochemical or petroleum products, oil, coal tar, or coal ash, radioactive materials, radon gas, asbestos in any form that is or could become friable, urea formaldehyde foam insulation or other equipment that contains dielectric fluid which may contain polychlorinated biphenyls, and (ii) any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "solid wastes," "hazardous wastes," "hazardous materials," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "contaminants" or "pollutants" under any applicable Environmental Law.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the relevant rules and regulations thereunder.

**"Income Tax"** means any federal, state, local or foreign Tax (i) based upon, measured by or calculated with respect to net income, profits or receipts (including, without limitation, capital gains Taxes and minimum Taxes), or (ii) based upon, measured by or calculated with respect to multiple bases (including, without limitation, corporate franchise taxes) if one or more of the bases on which such Tax may be based, measured by or calculated with respect to, is described in clause (i), in each case together with any interest, penalties, or additions to such Tax.

**"Instrument of Assignment and Assumption"** means the Instrument of Assignment and Assumption to be executed and delivered by the Buyer and the Sellers at the Closing, substantially in the form of Exhibit C attached hereto.

**"Intellectual Property"** means all of the following in any jurisdiction throughout the world: (i) patents, patent applications and patent disclosures, (ii) trademarks, service marks, trade dress, trade names, corporate names, logos and Internet domain names, together with all goodwill associated with each of the foregoing, (iii) copyrights and copyrightable works, (iv) registrations and applications for any of the foregoing, (v) trade secrets, confidential information and inventions and (vi) rights under any license agreements for any of the foregoing.

**"Key Executives"** means Stuart Kupinsky and Jim Continenza.

**"Knowledge"** means, with respect to each Seller, as to a particular matter, the actual knowledge of the Key Executives, in each case without independent investigation.

**"Material Adverse Effect"** means any change or changes in, or effect on, the Business or the Purchased Assets that is individually, or are in the aggregate, reasonably likely to be materially adverse to the financial condition of the Operating Business or the Purchased Assets, each taken as a whole, taking into account the Sellers' current status as filers under Chapter 11 of the Bankruptcy Code, other than (i) any change or effect in any way resulting from or arising in connection with this Agreement or any of the transactions contemplated hereby (including any announcement with respect to this Agreement or any of the transactions contemplated hereby), (ii) changes in (A) economic, regulatory or political conditions generally or (B) general business or economic conditions relating to any industries in which any of the Sellers participates, which is not specific to such Seller, (iii) any change in or effect on the Purchased Assets or the Operating Business which is cured (including by the payment of money) by the applicable Seller or any of its Affiliates before the Termination Date or (iv) any change or effect resulting from (A) the discontinuance of service referenced in Section 7.1(c) herein or (B) the Seller's plan to decommission the facilities reflected in the letter dated August 21, 2001, from Teligent to the Buyer.

**"Operating Business"** means the activities carried on by the Sellers for the purpose of providing local and long distance telephony, high-speed data and Internet access services over the local digital networks in the following Standard Metropolitan Statistical Areas: Boston, MA, Chicago, IL, Cleveland, OH, Dallas, TX, Hartford, CT, Houston, TX, Los Angeles, CA, New York, NY, Philadelphia, PA, Phoenix, AZ and Washington, D.C; *provided* that "Operating Business" shall not include any of the activities carried on by the Excluded Subsidiaries.

**"Permitted Encumbrances"** means (i) statutory liens for current Taxes or assessments not yet due or delinquent or the validity or amount of which is being contested in good faith by appropriate proceedings, (ii) mechanics', carriers', workers', repairers' and other similar liens arising or incurred in the ordinary course of business relating to obligations as to which there is no default on the part of any of the Sellers or the validity or amount of which is being contested in good faith by appropriate proceedings, or pledges, deposits or other liens securing the performance of bids, trade contracts, leases or statutory obligations (including workers' compensation, unemployment insurance or other social security legislation), (iii) zoning, entitlement, conservation restriction and other land use and environmental regulations by governmental authorities which do not materially interfere with the present use of the Purchased Assets, (iv) all exceptions, restrictions, easements, charges, rights-of-way and other Encumbrances set forth in any state, local or municipal franchise under which the Business is conducted which do not materially interfere with the present use of the Purchased Assets, and (v) such other liens, imperfections in or failure of title, charges, easements, rights-of-way, encroachments, exceptions, restrictions and encumbrances which do not materially interfere with the present use of the Purchased Assets and neither secure indebtedness or the payment of the deferred purchase price of property, nor individually or in the aggregate create a Material Adverse Effect.

**"Person"** means any individual, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization or any Governmental Entity.

**"Release"** means release, spill, leak, discharge, dispose of, pump, pour, emit, empty, inject, leach, dump or allow to escape into or through the environment.

**"Required Consents"** means, collectively, (i) the Sale Order, (ii) the filings by the Sellers and the Buyer required by the HSR Act and the expiration or earlier termination of all waiting periods under the HSR Act, (iii) the FCC Consents, (iv) the FCC Analogous Consents, (v) the Other Regulatory Approvals which may be required, as determined in accordance with Section 7.8(d), and (vi) the Third Party Consents.

**"Sale Hearing"** means the hearing of the Bankruptcy Court during which the Bankruptcy Court considers the Sale Order.

**"SEC"** means the Securities and Exchange Commission.

**"Securities Act"** means the Securities Act of 1933, as amended.

**"Seller Licensees"** means Teligent License Co. I, L.L.C., Teligent License Co. II, L.L.C., BackLink, L.L.C., JTel, L.L.C., KatLink, L.L.C., Teligent Services, Inc. and any other entity holding licenses necessary to conduct the Business.

**"Sellers' Representatives"** means the Sellers' accountants, employees, counsel, environmental consultants, financial advisors and other authorized representatives.

**"Subsidiary,"** when used in reference to any other Person, means any Person of which the outstanding securities having ordinary voting power to elect a majority of the board of directors

or other Persons performing similar functions of such Person are owned directly or indirectly by such other Person.

"Tax" and "Taxes" means (i) all taxes, charges, fees, levies, penalties or other assessments of any kind whatsoever imposed by any federal, state, local or foreign taxing authority, including, but not limited to, income, excise, property, sales, transfer, franchise, payroll, withholding, social security or other taxes, whether computed on a separate or consolidated, unitary or combined basis or in any other manner, including any interest, penalties or additions attributable thereto or (ii) liability for the payment of any amounts of the type described in clause (i) above as a result of being party to any agreement or any express or implied obligation to indemnify or otherwise succeed to the liability of any other Person.

"Tax Return" means any return, report, information return or other document (including any related or supporting information) required to be supplied to any Governmental Entity with respect to Taxes.

"Third Party Consents" means all of the consents set forth on Schedule 1.1(a)(1) attached hereto.

"Transferring Employee Records" means all personnel files related to the Transferred Employees to the extent such files pertain to (i) skill and development training and resumes, (ii) seniority histories, (iii) salary and benefit information, (iv) Occupational, Safety and Health Administration medical reports, (v) active medical restriction forms, and (vi) job performance reviews and applications.

"TSI" means Teligent Services, Inc., a Delaware corporation.

"WARN Act" means the Worker Adjustment Retraining and Notification Act of 1988, as amended.

(b) Each of the following terms has the meaning specified in the Section set forth opposite such term:

<u>Term</u>	<u>Section</u>
Agreement	Recitals
Assumed Obligations	2.3
Benefit Plans	5.10(a)
Bid Procedures	7.15(a)
Books and Records	7.18(b)
Buyer	Recitals
Buyer Material Adverse Effect	4.4(h)
Cash Consideration	3.1
Closing	4.1

Closing Date	4.1
Debtor-in-Possession Working Capital Facility	7.15(d)
Designated Buyer Subsidiaries	2.1
Environmental Permits	5.9(a)
Excluded Assets	2.2
Excluded Liabilities	2.4
DIP Order	7.15(c)
Financial Statements	5.6
FMV Proceeds	7.15(a)(i)(x)
Interim Financing	7.15(d)
Leased Real Property	5.8
Other Regulatory Approvals	7.8(d)
Permits	5.13
Pre-Petition Secured Lenders	8.2(d)
Proposal	7.15(a)(ix)
Purchased Assets	2.1
Purchase Price	3.1
Registered Intellectual Property	5.16
Sale Order	7.15(b)
Sellers	Recitals
Stock Consideration	3.1
Teligent	Recitals
Termination Date	9.1(l)
Transfer Taxes	7.10(b)
Transferred Employee	7.12(a)
Transferable Permits	2.1(f)
Transition Period	7.18(a)
Transition Services Agreement	7.18(a)
WARN Obligations	7.12(b)

Section 1.2 *Construction.*

The headings and captions of the various Articles and Sections of this Agreement have been inserted solely for purposes of convenience, are not part of this Agreement, and shall not be deemed in any manner to modify, explain, expand or restrict any of the provisions of this Agreement. Unless stated to the contrary, all references to Articles, Sections, paragraphs or clauses herein shall be to the specified Article, Section, paragraph, or clause of this Agreement, and all references to Exhibits and Schedules shall be to the specified Exhibits and Schedules attached hereto. All Exhibits and Schedules attached hereto are made a part hereof. All terms defined herein shall have the same meaning in the Exhibits and Schedules, except as otherwise provided therein. All references in this Agreement to "this Agreement" shall be deemed to include the Exhibits and Schedules attached hereto. The terms "hereby," "hereto," "hereunder" and any similar terms as used in this Agreement, refer to this Agreement in its entirety and not only to the particular portion of this Agreement where the term is used. The term "including" when used herein without the qualifier, "without limitation," shall mean "including, without limitation." Wherever in this Agreement the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The word, "or," shall not be construed to be exclusive. Provisions shall apply, when appropriate, to successive events and transactions.

## ARTICLE II PURCHASE AND SALE

Section 2.1 *The Sale.* Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, at the Closing, the Sellers shall sell, assign, convey, transfer and deliver to the Buyer, or in the case of the assignment of the FCC Licenses and the FCC Analogous Licenses, TAC License Corp., a Delaware corporation, or TAC Virginia, L.L.C., a Delaware limited liability company (collectively, the "Designated Buyer Subsidiaries"), and the Buyer shall, by payment of the Purchase Price, purchase and acquire from the Sellers, free and clear of all Encumbrances (except for Permitted Encumbrances), all of the rights, title and interest that the Sellers possess as of the Closing and have the right to transfer in, to and under the real, personal, tangible and intangible property or assets described below (collectively, the "Purchased Assets"):

- (a) all inventories of supplies, materials and critical spares used in connection with the Business;
- (b) all equipment used in connection with the Business, including (i) DSLAMs, modems, routers, ANXs, Hughes equipment, Hughes OEM equipment, and all other 18 GHz, 23 GHz and 24 GHz-enabled equipment; (ii) all equipment necessary to render fully operational 2,000 additional Teligent Access Sites beyond those operating in the Operating Business at the Closing; and (iii) all additional equipment necessary to render fully operational 100 additional Teligent Node sites beyond those operating in the Operating Business at the Closing;
- (c) all machinery, vehicles, furniture and other tangible personal property used in connection with the Business;

- (d) all of the Sellers' accounts receivable as of the Closing Date;
- (e) the Assumed Agreements, in each case, to the extent the same are assignable under Section 365 of the Bankruptcy Code or to the extent consented to by the third party or third parties to such agreements, and any and all customer deposits, customer advances and credits, security deposits and letters of credit related to any such Assumed Agreements;
- (f) the Permits (including, without limitation, the FCC Licenses and the FCC Analogous Licenses) and the Environmental Permits listed on Schedule 5.9, in each case, to the extent the same are assignable (the "Transferable Permits");
- (g) to the extent assignable under Section 365 of the Bankruptcy Code or to the extent consented to by the third party or third parties to such agreements, all confidentiality, noncompete or nondisclosure agreements executed by vendors, suppliers or employees of the Sellers or other third parties, in each case, relating to the Business;
- (h) all of the shares of the capital stock of ICG Communications, Inc., a Delaware corporation, owned by any of the Sellers;
- (i) originals or copies of all Transferring Employee Records, books, operating records, operating, safety and maintenance manuals, engineering design plans, blueprints and as-built plans, specifications, procedures and similar items of the Sellers relating specifically to the Purchased Assets, including books of account, all customer lists, billing records and other customer correspondence relating to the Business, all regulatory filings and other books and records relating to the rates and services provided by the Sellers in connection with the operation of the Business;
- (j) except as set forth on Schedule 2.1(j) and subject to Section 2.2(d), all of the rights, claims or causes of action of any of the Sellers against a third party related to the Purchased Assets, the operation of the Operating Business or the Assumed Obligations or Assumed Agreements arising out of transactions occurring prior to the Closing Date, except where such rights, claims or causes of action relate to Excluded Liabilities; to the extent such rights, claims or causes of action relate to both Assumed Obligations and Excluded Liabilities, the Buyer and each Seller shall share such rights, claims or causes of action in the same proportion as their respective liabilities bear to the total liability relating to those rights, claims or causes of action;
- (k) all Intellectual Property used by the Sellers in connection with the Business, together with all related income, royalties, damages and payments due or payable at the Closing or thereafter (including, without limitation, damages and payments for past or future infringements or misappropriations thereof), the right to sue and recover for past infringements or misappropriations thereof, any and all corresponding rights that, now or hereafter, may be secured throughout the world and all copies and tangible embodiments of any such Intellectual Property; and
- (l) to the extent assignable under Section 365 of the Bankruptcy Code or to the extent consented to by the insurance providers, the rights of the Sellers under those



insurance policies which cover risks covering the Operating Business or the Purchased Assets.

Section 2.2 *Excluded Assets*. Notwithstanding any provision herein to the contrary, the Purchased Assets shall not include the following property or assets and any other property or assets not described in Section 2.1, of the Sellers (the "*Excluded Assets*"):

(a) cash (including all cash residing in any collateral cash account securing any obligation or contingent obligation of the Sellers), cash equivalents and bank deposits, subject to the Buyer's rights under Section 2.1(e);

(b) certificates of deposit, shares of stock (subject to Section 2.1(h)), securities, bonds, debentures, evidences of indebtedness (excluding the Sellers' accounts receivable as of the Closing Date), including, without limitation, interests in any Person owned by any Seller, including, but not limited to, the equity interests owned in the Sellers and the Excluded Subsidiaries;

(c) rights to any Tax refunds of any of the Sellers, whether such refund is received as a payment or as a credit against future Taxes;

(d) the Sellers' causes of action, choses of action and rights of recovery pursuant to Sections 544 through 550 and Section 553 of the Bankruptcy Code and any other avoidance actions under any other applicable provisions of the Bankruptcy Code;

(e) subject to Sections 7.4(c) and 7.18(b), the corporate charter, qualifications to conduct business as a foreign corporation, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, stock transfer books, blank stock certificates, and other documents relating to the organization, maintenance, and existence of the Sellers as a corporation or a limited liability company, as the case may be, any books, records or the like of the Sellers;

(f) all of the assets set forth on Schedule 2.2;

(g) all of the agreements to which any of the Sellers is a party which are not Assumed Agreements and any and all customer deposits, customer advances and credits and security deposits related to any such agreements which are not Assumed Agreements;

(h) the rights of each Seller under this Agreement and any other agreements between any of the Sellers and the Buyer or any of its Affiliates;

(i) all of the real, personal, tangible or intangible property (including Intellectual Property) or assets owned by the Excluded Subsidiaries except to the extent that such property or assets relate to the Operating Business;

(j) any and all prepaid workers compensation premiums (other than the portion relating to the Transferred Employees);

(k) all intercompany receivables owed to the Sellers; and

(l) claims against current or former directors, officers or other employees of, or agents, accountants or other advisors of or to, any of the Sellers.

**Section 2.3 *Assumed Obligations.*** On the Closing Date, the Buyer shall execute and deliver to Teligent the Instrument of Assignment and Assumption pursuant to which the Buyer shall assume and agree to discharge solely the following liabilities and obligations (the "*Assumed Obligations*"), in accordance with the respective terms and subject to the respective conditions thereof:

(a) all liabilities and obligations of any of the Sellers under the Assumed Agreements (subject to the limitation on cure amounts set forth in Section 2.5(b)) and the Transferable Permits in accordance with the terms thereof;

(b) all liabilities and obligations relating to any customer deposits and customer advances and credits, in each case, to the extent that the cash relating to such deposits, advances and credits are included in the Purchased Assets, the security deposits are included in the Purchased Assets and the Sellers' rights under the letters of credit securing customer deposits, advances or credits are assigned to the Buyer as part of the Purchased Assets;

(c) all liabilities and obligations assumed by, or allocated to, the Buyer pursuant to Section 7.10; and

(d) all liabilities and obligations related to the Purchased Assets arising from any actions or omissions occurring after the Closing Date or the Operating Business arising from any actions or omissions occurring after the Closing Date.

**Section 2.4 *Excluded Liabilities.*** The Buyer shall not assume or be obligated to pay, perform or otherwise discharge any liabilities or obligations of any of the Sellers other than the Assumed Obligations (collectively, the "*Excluded Liabilities*").

**Section 2.5 *Assumption of Certain Leases and Other Contracts.*** The Sale Order shall provide for the assumption by the applicable Sellers and assignment to the Buyer, effective upon the Closing, of the Assumed Agreements on the following terms and conditions:

(a) At the Closing, the applicable Sellers shall assume and such Sellers shall assign to the Buyer the Assumed Agreements. The Assumed Agreements shall also be identified by the date of the Assumed Agreement (if available), the other party or parties to the Assumed Agreement and the address of such party or parties (if available) set forth on Exhibit A, as the case may be, all included on an exhibit attached to a motion for authority to assume and assign such Assumed Agreements. To the extent any such information is set forth on Exhibit A and is later determined by the Sellers not to be available, the Sellers shall promptly notify the Buyer of any such lack of availability. Such exhibit shall set forth the approximate amounts necessary to cure defaults, if any, under each of such Assumed Agreements as determined by the Sellers based on the Sellers' books and records, subject to amendment of the cure amounts by the Sellers from time to time. Until thirty (30) days after the date on which the Sale Order is entered by the Bankruptcy Court, the Buyer, in its discretion, by delivery of written notice to the

Sellers, may exclude any contract, agreement, real or personal property lease, commitment, understanding or instrument listed on Exhibit A and the Buyer shall not acquire any rights or assume any liabilities with respect thereto; *provided* that the Buyer shall use its commercially reasonable best efforts to finalize its exclusions from Exhibit A as soon as possible.

(b) If there exists on the Closing Date any default related to an Assumed Agreement which relates to the Operating Business or the Purchased Assets, the Buyer shall be responsible for any and all amounts to be cured pursuant to Section 365(a) of the Bankruptcy Code in an amount not exceeding \$500,000 in the aggregate as a condition to the assumption and assignment of such Assumed Agreement. At the Closing, the Buyer shall provide funds to the Sellers (by wire transfer of immediately-available U.S. funds) in an amount sufficient to pay all such cure amounts up to \$500,000 in the aggregate for such Assumed Agreements. Immediately upon receipt by the Sellers of such funds and the Purchase Price at the Closing, the Sellers shall pay all cure amounts for such Assumed Agreements.

(c) If there exists on the Closing Date any default related to an Assumed Agreement which relates to the Business but neither the Operating Business nor the Purchased Assets, the Buyer shall be responsible for any and all amounts to be cured pursuant to Section 365(a) of the Bankruptcy Code as a condition to the assumption and assignment of such Assumed Agreement. At the Closing, the Buyer shall provide funds to the Sellers (by wire transfer of immediately-available U.S. funds) in an amount sufficient to pay in full all such cure amounts for such Assumed Agreements. Immediately upon receipt by the Sellers of such funds and the Purchase Price at the Closing, the Sellers shall pay all cure amounts for such Assumed Agreements.

(d) The Buyer shall be responsible for any and all costs and expenses necessary in connection with providing adequate assurance of future performance with respect to the Assumed Agreements.

### ARTICLE III PURCHASE PRICE

Section 3.1 *Purchase Price.* The aggregate consideration for the Purchased Assets shall be \$117,500,000 (the "Purchase Price"), consisting of: (i) a number of shares of Buyer Common equal to the quotient of: (x) \$5,000,000, divided by (y) the price per share of Buyer Common paid by the investors in the Buyer under the Buyer Equity Offering (the "Stock Consideration") and (ii) \$112,500,000 in cash (the "Cash Consideration").

Section 3.2 *Allocation of Purchase Price.* Prior to the Closing, the Buyer and the Sellers shall use their reasonable best efforts to agree as to the allocation of the Purchase Price pursuant to Section 1060 of the Code and the rules and regulations thereunder. The Buyer and the Sellers agree to use such allocation in filing all required forms under Section 1060 of the Code and all other Tax Returns, and the Buyer and the Sellers further agree that they shall not take any position inconsistent with such allocation on any examination of any such Tax Return,

in any refund claim or in any Tax litigation. Upon the request of the other, the Buyer and the Sellers agree to provide the other information reasonably necessary to complete Form 8594. Not later than thirty (30) days prior to the filing of their respective Forms 8594 relating to this transaction, each party shall deliver to the other party a copy of its Form 8594. In the event of a dispute with respect to any part of the allocation of the Purchase Price, the Buyer and the Sellers shall attempt to reconcile their differences and any resolution by them as to any disputed allocation shall be final, binding and conclusive on the parties. If the Buyer and the Sellers are unable to reach a resolution on such differences within thirty (30) days after the date any such dispute arises, the Buyer and the Sellers shall submit the disputed allocations for determination and resolution to the Bankruptcy Court, which shall be instructed to determine and report to the parties, upon such disputed allocations, and such report shall be final, binding and conclusive on the parties hereto with respect to the disputed allocations.

#### ARTICLE IV THE CLOSING

Section 4.1 *Time and Place of Closing.* Upon the terms and subject to the satisfaction of the conditions contained in Article VIII of this Agreement, the closing of the sale of the Purchased Assets and the assumption of the Assumed Obligations and Assumed Agreements contemplated by this Agreement (the "Closing") shall take place at the offices of Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York, at 10:00 A.M. (local time) no later than the fifth (5th) Business Day following the date on which the conditions set forth in Article VIII have been satisfied (other than the conditions with respect to actions the respective parties hereto will take at the Closing itself) or, to the extent permitted, waived in writing, or at such other place or time as the Buyer and Teligent (on behalf of the Sellers) may mutually agree. The date and time at which the Closing actually occurs is hereinafter referred to as the "Closing Date."

Section 4.2 *Payment of Purchase Price.* Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, in consideration of the aforesaid sale, assignment, conveyance, transfer and delivery of the Purchased Assets, at the Closing the Buyer shall: (i) subject to Section 4.4(a), pay, or cause to be paid, to Teligent (on behalf of the Sellers) an amount in U.S. dollars equal to the Cash Consideration, by wire transfer of immediately-available funds to such account or accounts specified by Teligent (such account or accounts shall be specified by Teligent in a written notice to be delivered to the Buyer no later than one (1) Business Day prior to the Closing Date) and (ii) deliver to Teligent (on behalf of the Sellers) stock certificates representing the Stock Consideration registered in the name or names of Persons specified by Teligent in a written notice to be delivered to the Buyer no later than one (1) Business Day prior to the Closing Date.

Section 4.3 *Deliveries by the Sellers.* At or prior to the Closing, the Sellers shall deliver the following to the Buyer:

- (a) the Bill of Sale, duly executed by the Sellers for the personal property included in the Purchased Assets;

(b) all consents, waivers or approvals obtained by the Sellers with respect to the Purchased Assets, the transfer of the Transferable Permits and the consummation of the transactions required in connection with the sale of the Purchased Assets contemplated by this Agreement, to the extent specifically required hereunder;

(c) the certificates contemplated by Section 8.2(b) and a certificate from an authorized officer of Teligent to the effect that all cure amounts payable in accordance with Sections 2.5(b) and (c) will have been caused to be paid as of the Closing Date;

(d) the Instrument of Assignment and Assumption and all such other instruments of assignment or conveyance as shall, in the reasonable opinion of the Buyer and its counsel, be necessary to transfer to the Buyer all of the Sellers' rights, title and interest in, to and under all of the Purchased Assets, in accordance with this Agreement;

(e) certificates of title for certificated motor vehicles or other separately titled Purchased Assets, or other evidences of the right to use the Purchased Assets, duly executed by the applicable Seller and in form reasonably satisfactory to Buyer;

(f) stock certificates representing all of the shares of the capital stock of ICG Communications, Inc., a Delaware corporation, owned by the Sellers, endorsed in blank or accompanied by duly executed stock powers; and

(g) all such other agreements, documents, instruments and writings as are required to be delivered by the Sellers at or prior to the Closing Date pursuant to this Agreement, except where failure to provide such documents would not materially affect the Sellers' ability to consummate the transactions contemplated hereby.

**Section 4.4 Deliveries by the Buyer.** At or prior to the Closing, the Buyer shall deliver the following to Teligent (on behalf of the Sellers):

(a) an amount of cash equal to the Cash Consideration less the Actual DIP Financing Amount by wire transfer of immediately-available U.S. funds to such account or accounts specified by Teligent;

(b) the stock certificates representing the Stock Consideration;

(c) certified copies of the Certificate of Incorporation and the Bylaws of the Buyer and each of the Designated Buyer Subsidiaries, each as in effect as of the Closing;

(d) certified copies of the resolutions duly adopted by the Buyer's board of directors authorizing the execution, delivery and performance of this Agreement and each of the other transactions contemplated hereby, including the issuance and delivery of the Stock Consideration hereunder;

(e) the Instrument of Assignment and Assumption with respect to the Assumed Obligations and Assumed Agreements, duly executed by the Buyer;

(f) the certificate contemplated by Section 8.3(b);

(g) all such other instruments of assumption as shall, in the reasonable opinion of Teligent and its counsel, be necessary for the Buyer to assume the Assumed Obligations in accordance with this Agreement; and

(h) such other agreements, documents, instruments and writings as are required to be delivered by the Buyer at or prior to the Closing Date pursuant to this Agreement, except where the failure to deliver such agreements, documents, instruments and writings would not materially affect the Buyer's ability to consummate the transactions contemplated hereby (a "Buyer Material Adverse Effect").

## ARTICLE V REPRESENTATIONS AND WARRANTIES OF THE SELLERS

As an inducement to the Buyer to enter into this Agreement and to consummate the transactions contemplated hereby, each Seller with respect to itself, severally represents and warrants to the Buyer as follows:

Section 5.1 *Organization; Qualification.* Such Seller is either a corporation or limited liability company duly incorporated or formed, validly existing and in good standing under the laws of its state of incorporation or formation and has all requisite corporate or limited liability company power and authority to own, lease, and operate the Purchased Assets and to carry on the Business (as it relates to such Seller) as is now being conducted. As related to the operation of the Business, such Seller is duly qualified or licensed to do business as a foreign corporation or limited liability company and is in good standing in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary, except in each case in those jurisdictions where the failure to be so duly qualified or licensed and in good standing would not have a Material Adverse Effect.

Section 5.2 *Authority Relative to this Agreement.* Such Seller has all corporate or limited liability company power and, upon entry of the Sale Order, authority necessary to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by the board of directors or other similar governing body of such Seller and no other corporate or limited liability company proceedings on the part of such Seller are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. Upon entry of the Sale Order, this Agreement has been duly and validly executed and delivered by such Seller, and assuming that this Agreement constitutes a valid and binding agreement of the Buyer, and subject to the receipt of the Required Consents constitutes a valid and binding agreement of such Seller, enforceable against such Seller in accordance with its terms, except that such enforceability may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally or general principles of equity.

Section 5.3 *Consents and Approvals; No Violation.* Subject to the receipt of the Required Consents, neither the execution and delivery of this Agreement by such Seller nor the sale by such Seller of the Purchased Assets pursuant to this Agreement will (a) conflict with or

result in any breach of any provision of the Certificate or Articles of Incorporation, Bylaws, Certificate of Formation, or Limited Liability Agreement (or other similar governing documents) of such Seller; (b) require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Entity which has not otherwise been obtained or made, except (i) where the failure to obtain such consent, approval, authorization or permit, or to make such filing or notification, would not, individually or in the aggregate, have a Material Adverse Effect or prevent or materially delay the consummation of the transactions contemplated by this Agreement or (ii) for those requirements which become applicable to such Seller as a result of the specific regulatory status of the Buyer (or any of its Affiliates) or as a result of any other facts that specifically relate to the business or activities in which the Buyer (or any of its Affiliates) is or proposes to be engaged; (c) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which such Seller is a party or by which such Seller or any of the Purchased Assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained or which would not, individually or in the aggregate, have a Material Adverse Effect or prevent or materially delay the consummation of the transactions contemplated by this Agreement; or (d) violate any order, writ, injunction, decree, statute, rule or regulation applicable to such Seller, or any of its assets, which violation, individually or in the aggregate, would have a Material Adverse Effect.

**Section 5.4 *FCC Licenses and FCC Analogous Licenses.*** Such Seller is conducting its business in accordance with the FCC Licenses and the FCC Analogous Licenses and is not in violation of, or in default under, (i) the Communications Act of 1934, as amended, including the Telecommunications Act of 1996, or any of the conditions, rules or regulations applicable to such FCC Licenses or (ii) any applicable state statute governing telecommunications or the applicable rules, regulations and orders of any state regulatory commission with jurisdiction over the FCC Analogous Licenses or the Business, except where such violation or default would not, individually or in the aggregate, have a Material Adverse Effect on the ongoing effectiveness of such FCC Licenses or FCC Analogous Licenses. The FCC Licenses and the FCC Analogous Licenses (A) are not subject to pending renewal or modification applications other than in the ordinary course, (B) are in full force and effect, and (C) to the Knowledge of such Seller, have been validly issued. "Validly issued" as used in this Section 5.4 means that the FCC Licenses and the FCC Analogous Licenses have been issued through the means of regular agency procedures applied in conformity with applicable laws and there is no legal basis to conclude that such Seller cannot hold the FCC Licenses or the FCC Analogous Licenses as a matter of law. "Full force and effect" as used in this Section 5.4 means (x) the orders issuing or renewing the FCC Licenses and the FCC Analogous Licenses have become effective under applicable laws, (y) the FCC Licenses and the FCC Analogous Licenses have not expired or been suspended, revoked, canceled or modified in any adverse way and such Seller has taken steps necessary to maintain and preserve the effectiveness of the FCC Licenses and the FCC Analogous Licenses, and (z) the FCC Licenses and the FCC Analogous Licenses contain no conditions that would have a Material Adverse Effect except for conditions imposed generally by the FCC or state regulatory commissions on the holders of such licenses. There are (1) no complaints, claims or actions outstanding before any Governmental Entity that could result in the revocation or cancellation of the FCC Licenses and the FCC Analogous Licenses and (2) no fees or other

payments due and owing in connection with the FCC Licenses and the FCC Analogous Licenses on the date of the Original Agreement.

**Section 5.5 *Equipment Compliance with FCC Rules.*** The radio frequency equipment transferred by the Sellers to the Buyer pursuant to Section 2.1 comply with, or have been grandfathered under, FCC Rules applicable to radio frequency equipment to be used in the radio services authorized by the FCC Licenses.

**Section 5.6 *Financial Statements and Reports.*** Such Seller has made available to the Buyer the audited consolidated financial statements of Teligent and its Subsidiaries for the fiscal year ended December 31, 2000 included in Teligent's Form 10-K filed with the SEC (collectively, including any amendments to the financial statements, the "Financial Statements"). The Financial Statements (including the notes thereto) have been prepared in accordance with generally accepted accounting principles, applied on a consistent basis throughout the period covered thereby and present fairly the financial condition of Teligent and its Subsidiaries for such period in accordance with generally accepted accounting principles. Such Seller has made available to the Buyer all of its monthly operating reports filed with the Bankruptcy Court.

**Section 5.7 *Title to Assets.*** Except for Permitted Encumbrances, such Seller has title and will transfer to the Buyer as of the Closing, indefeasible title to, or a valid leasehold interest in, all of the Purchased Assets used in and material to the operation of the Business, free and clear of all Encumbrances.

**Section 5.8 *Leased Real Property.*** Schedule 5.8 lists, as of the date of the Original Agreement, all real property leases under which such Seller is a lessee or a lessor and which relate to the Operating Business or the Purchased Assets and are material to the financial condition of the Business or the Purchased Assets, each taken as a whole (collectively, the "Leased Real Property").

**Section 5.9 *Environmental Matters.*** Except as disclosed on Schedule 5.9:

(a) to the Knowledge of such Seller, such Seller holds, and is, and has been, in compliance with, all material permits, licenses and governmental authorizations required for such Seller to conduct the Business under applicable Environmental Laws ("Environmental Permits"), and such Seller is otherwise in compliance with applicable Environmental Laws with respect to the Business and the Purchased Assets, except for such failures to hold or comply with required Environmental Permits, or such failures to be in compliance with applicable Environmental Laws, which, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect;

(b) to the Knowledge of such Seller, such Seller has not received any written notice that it is a potentially responsible party under CERCLA or any similar state law with respect to the Business or the Purchased Assets, except for such liability under such laws as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;

(c) such Seller has not entered into or agreed to any consent decree or order, or other binding agreement with a Governmental Entity and is not subject to any



outstanding judgment, decree, or judicial or administrative order relating to compliance with or liability under any Environmental Law or to investigation or cleanup of Hazardous Substances under any Environmental Law relating to the Business or the Purchased Assets where any of the foregoing would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and

(d) to the Knowledge of such Seller, there are no claims, actions or proceedings under or relating to Environmental Laws pending or, to such Seller's Knowledge, threatened against or relating to such Seller, the Purchased Assets, or the Business which would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

The representations and warranties made in this Section 5.9 are the Sellers' exclusive representations and warranties relating to any environmental matters, including, without limitation, any arising under any Environmental Laws.

**Section 5.10 *ERISA; Benefit Plans.***

(a) Schedule 5.10 lists each employee benefit plan (as such term is defined in Section 3(3) of ERISA) and each other material employee benefit plan, program or arrangement maintained, contributed to, or required to be contributed to, by such Seller as of the date of the Original Agreement on account of current or former employees of the Business (each, a "Benefit Plan").

(b) Each Benefit Plan that is intended to be qualified under Section 401(a) of the Code has received a determination from the Internal Revenue Service that such Benefit Plan is so qualified, and, to the Knowledge of such Seller, nothing has occurred since the date of such determination that would materially adversely affect the qualified status of such Benefit Plan.

(c) Except as set forth on Schedule 5.10, to the Knowledge of such Seller, each Benefit Plan has been maintained, funded, and administered in material compliance with its terms, the terms of any applicable collective bargaining agreements, and all applicable laws including, but not limited to, ERISA and the Code. Such Seller has no obligation to contribute to or any other liability under or with respect to any multiemployer plan (as such term is defined in Section 3(37) of ERISA) with respect to any employee of the Business. Neither such Seller nor any ERISA Affiliate has any liability or potential liability under Title IV of ERISA or to the Pension Benefit Guaranty Corporation that could become a liability of the Buyer.

(d) Except as set forth on Schedule 5.10, to the Knowledge of such Seller, such Seller has no obligation to provide medical or life insurance benefits to any current or future, retired or former employee of the Business other than pursuant to Part 6 of Subtitle B of Title I of ERISA.

(e) Neither such Seller nor any ERISA Affiliate maintains a plan which would be reasonably likely to result in the payment to any employee or former employee of such

Seller by the Buyer of any money or other property or rights or accelerate or provide any other rights or benefits to any employee or former employee of the Company which would become an obligation of the Buyer as a result of the transactions contemplated by this Agreement, whether or not such payment would constitute a parachute payment within the meaning of Section 280G of the Code.

Section 5.11 *Certain Contracts and Arrangements.* Except for contracts, agreements, personal property leases, service agreements, customer agreements, commitments, understandings or instruments which (a) are listed on Schedule 5.8 or Schedule 5.11 or (b) have been entered into in the ordinary course of business and do not involve obligations in excess of \$25,000 individually, such Seller is not, as of the date of the Original Agreement, a party to any written contract, agreement, personal property lease, commitment, understanding or instrument which is material to the Operating Business or the Purchased Assets.

Section 5.12 *Legal Proceedings and Judgments.* Except as set forth on Schedule 5.12, to the Knowledge of such Seller, (a) there are no claims, actions, proceedings or investigations pending or threatened against or relating to such Seller before any court or other Governmental Entity acting in an adjudicative capacity, which individually or in the aggregate, would have a Material Adverse Effect; and (b) there are no claims, actions, proceedings or investigations pending against or relating to such Seller before any court or other Governmental Entity acting in an adjudicative capacity, which have been commenced after the filing of the Chapter 11 Case. Except as set forth on Schedule 5.12, to the Knowledge of such Seller, such Seller is not subject to any outstanding judgment, rule, order, writ, injunction or decree of any court or other Governmental Entity which, individually or in the aggregate, would have a Material Adverse Effect.

Section 5.13 *Permits.* Such Seller has all permits, licenses (including, without limitation, the FCC Licenses and the FCC Analogous Licenses), franchises and other governmental authorizations, consents and approvals, other than with respect to Environmental Laws which are addressed in Section 5.9 (collectively, "*Permits*"), necessary for the operation of the Business as presently conducted, except where the failure to have such Permits would not, individually or in the aggregate, have a Material Adverse Effect. Schedule 5.13 sets forth a list of all material Permits and Environmental Permits held by such Seller as of the date of the Original Agreement and necessary for the operation of the Business as presently conducted.

Section 5.14 *Compliance with Laws.* To the Knowledge of such Seller, such Seller is in material compliance with all Permits, laws, statutes, orders, rules, regulations, ordinances, or judgments of any Governmental Entity applicable to it, except for violations which, individually or in the aggregate, do not have a Material Adverse Effect.

Section 5.15 *Taxes.* All material Tax Returns relating to the Business or the Purchased Assets required to be filed by or on behalf of such Seller have been filed in a timely manner, and all material Taxes shown to be due on such Tax Returns have been paid in full. All material Taxes which such Seller is obligated to withhold from amounts owing to any employee, creditor or third party have been properly withheld and paid to the appropriate taxing authority.

Section 5.16 *Intellectual Property*. Schedule 5.16 attached hereto sets forth all of the following that are owned by the Sellers related to the Business: (a) patents and patent applications; (b) registered trademarks and service marks and applications therefor and Internet domain names; and (c) registered copyrights and applications therefor (the "Registered Intellectual Property"). Except as set forth on Schedule 5.16, such Seller owns all of the Registered Intellectual Property, and such Seller possesses all material licenses from third parties necessary for the operation of the Business as presently conducted, free and clear of all Encumbrances (other than the Permitted Encumbrances).

Section 5.17 *Labor and Employment Matters*. Except as disclosed on Schedule 5.17: (a) such Seller is not party to or bound by any collective bargaining agreement or relationship with any labor organization; (b) no labor organization or group of employees has filed any representation petition or made any written or oral demand for recognition; (c) to the Knowledge of such Seller, no union organizing efforts are underway or threatened; (d) no labor strike, work stoppage, slowdown, or other material labor dispute is underway or, to the Knowledge of such Seller, threatened; and, (e) there is no labor or employment-related claim, charge, complaint or investigation pending or, to the Knowledge of such Seller, threatened in any forum that, if adversely decided, is likely to have a Material Adverse Effect.

Section 5.18 *Disclaimer of other Representations and Warranties*. Except as expressly set forth in this Article V, the Sellers make no representation or warranty, express or implied, at law or in equity, in respect of any of their assets (including, without limitation, the Purchased Assets), liabilities or operations, including, without limitation, with respect to merchantability or fitness for any particular purpose, and any such other representations or warranties are hereby expressly disclaimed. The Buyer hereby acknowledges and agrees that, except to the extent specifically set forth in this Article V, the Buyer is purchasing the Assets on an "as-is, where-is" basis. Without limiting the generality of the foregoing, the Sellers make no representation or warranty regarding any assets other than the Purchased Assets, and none shall be implied at law or in equity.

## ARTICLE VI REPRESENTATIONS AND WARRANTIES OF THE BUYER

As an inducement to the Sellers to enter this Agreement and to consummate the transactions contemplated hereby, the Buyer represents and warrants to the Sellers as follows:

Section 6.1 *Organization*. The Buyer is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as is now being conducted. Within three (3) Business Days after the date of the Original Agreement, each of the Designated Buyer Subsidiaries will be a corporation duly incorporated, or a limited liability company duly organized, validly existing and in good standing under the laws of its state of incorporation or formation and will have all requisite corporate or limited liability company power and authority to own, lease and operate its properties and to carry on its business as is now proposed to be conducted. Attached hereto as Exhibit D are true and correct copies of the Buyer's Certificate of Incorporation and Bylaws as of the date of the

Original Agreement. Attached hereto as Exhibit E are the forms of Certificate or Articles of Incorporation and Bylaws of the Designated Buyer Subsidiaries which will become effective no later than three (3) Business Days after the date of the Original Agreement.

Section 6.2 *Authority Relative to this Agreement.* The Buyer has full corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by the board of directors of the Buyer and no other corporate proceedings on the part of the Buyer are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by the Buyer, and assuming that this Agreement constitutes a valid and binding agreement of the Sellers, constitutes a valid and binding agreement of the Buyer, enforceable against the Buyer in accordance with its terms, except that such enforceability may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally or general principles of equity.

Section 6.3 *Consents and Approvals; No Violation.* Subject to the receipt of the Required Consents (other than the Third Party Consents) neither the execution and delivery of this Agreement by the Buyer nor the purchase by the Buyer of the Purchased Assets and the assumption by the Buyer of the Assumed Obligations and Assumed Agreements pursuant to this Agreement will (a) conflict with or result in any breach of any provision of the Certificate of Incorporation or Bylaws (or other similar governing documents) of the Buyer; (b) require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Entity which has not been otherwise obtained or made; or (c) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any material note, bond, mortgage, indenture, agreement, lease or other instrument or obligation to which the Buyer is a party or by which any of its assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained, and except for such breaches or defaults that would not have a Buyer Material Adverse Effect.

Section 6.4 *Subsidiaries and Investments.* Other than the Designated Buyer Subsidiaries, which are wholly-owned Subsidiaries of the Buyer, the Buyer does not own, directly or indirectly, any capital stock, partnership interest, limited liability interests, joint venture interest or other security interests in any other Person. As of three (3) Business Days after the date of the Original Agreement and the Closing, (a) all of the issued and outstanding shares of the capital stock or limited liability company interests of the Designated Buyer Subsidiaries will have been duly authorized, validly issued, fully paid, and nonassessable, and held of record and beneficially by the Buyer and will not be subject to, nor issued in violation of, any preemptive rights or rights of first refusal, and will be owned of record and beneficially by the Buyer free and clear of all Encumbrances; (b) there will be no outstanding or authorized options, warrants, rights, contracts, calls, puts, rights to subscribe, conversion rights or other agreements or commitments to which any Designated Buyer Subsidiary is a party or which are binding upon any such entity providing for the issuance, disposition or acquisition of any of its capital stock; (c) there will be no voting trusts, proxies or any other agreements or understandings with respect to the voting of the capital stock or limited liability company

interests of any of the Designated Buyer Subsidiaries; and (d) no Designated Buyer Subsidiary is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of its capital stock or limited liability company interests.

**Section 6.5 Capitalization.** As of the Closing, the authorized, issued and outstanding capital stock of the Buyer shall be as set forth on Schedule 6.5. As of the Closing, all of the issued and outstanding shares of the Buyer's capital stock shall have been duly authorized, validly issued, fully paid, and nonassessable and will not be subject to, or be issued in violation of, any preemptive rights or rights of first refusal and are free and clear of all Encumbrances. As of the Closing, there will be no outstanding or authorized options, warrants, rights, contracts, calls, puts, rights to subscribe, conversion rights or other agreements or commitments to which the Buyer is a party or which are binding upon the Buyer providing for the issuance, disposition or acquisition of any of its capital stock (other than this Agreement and the other transactions contemplated hereby) except as set forth on Schedule 6.5. Except as set forth on Schedule 6.5, as of the Closing, there will be no outstanding or authorized stock appreciation, phantom stock or similar rights with respect to the Buyer or any of its Subsidiaries. Except as set forth on Schedule 6.5, there will be no voting trusts, proxies or any other agreements or understandings with respect to the voting of the capital stock of the Buyer or any of its Subsidiaries as of the Closing. As of the Closing, except as set forth on Schedule 6.5, neither the Buyer nor any of its Subsidiaries will be subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of its capital stock.

**Section 6.6 Interim Operations of the Buyer.** Each of the Buyer and the Designated Buyer Subsidiaries was formed solely for the purpose of engaging in the transactions contemplated hereby, has engaged in no other business activities, has incurred no liabilities (except as contemplated by or in connection with this Agreement), and has conducted its operations only in furtherance of the transactions contemplated by this Agreement.

**Section 6.7 Qualifications to Hold Permits.** The Buyer is aware of no bases why it or any of the Designated Buyer Subsidiaries would not be qualified to hold the FCC Licenses, the FCC Analogous Licenses or any of the other Permits.

**Section 6.8 Legal Proceedings and Judgments.** There are no claims, actions, proceedings or investigations pending or, to the knowledge of the Buyer, threatened against or relating to the Buyer before any court or other Governmental Entity acting in an adjudicative capacity, which individually or in the aggregate would have a Buyer Material Adverse Effect.

## ARTICLE VII COVENANTS OF THE PARTIES

### Section 7.1 *Conduct of Business.*

(a) Except as described on Schedule 7.1(a) and except as required by the Bankruptcy Court, during the period commencing on the date of the Original Agreement and ending on the Closing Date, the Sellers shall (i) operate the Operating Business in the usual, regular and ordinary course, (ii) other than as permitted in writing by the Buyer, preserve in all material respects the Operating Business, and (iii) endeavor to preserve, in

all material respects, the goodwill and relationships with customers, suppliers and others having business dealings with the Operating Business, in each case, taking into account each of the Seller's current status as a filer under Chapter 11 of the Bankruptcy Code, the Cash Collateral Order, the discontinuance of service referenced in Section 7.1(c) herein and the Sellers' plan to decommission the facilities reflected in the letter dated August 21, 2001, from Teligent to the Buyer.

(b) Prior to the Closing Date, without the prior written consent of the Buyer, which shall not be unreasonably withheld, no Seller shall (i) terminate, extend or otherwise amend any of the FCC Licenses or FCC Analogous Licenses or (ii) other than Permitted Encumbrances, create, incur, assume or suffer to exist any Encumbrance upon the Purchased Assets (taking into account the Cash Collateral Order), in each case, other than in the ordinary course of business. Prior to the Closing Date, without the prior written consent of the Buyer, no Seller shall sell, lease (as lessor), transfer or otherwise dispose of, any of the Purchased Assets.

(c) Prior to the Closing Date, the Sellers shall (i) continue all activities necessary to preserve and maintain in full force and effect the FCC Licenses and the FCC Analogous Licenses and (ii) undertake to discontinue the provision of local and data services in the markets listed in Schedule 7.1(c). The Sellers shall submit applications seeking approval of, or make other necessary filings at, state regulatory commissions in relevant states for such discontinuance. In discontinuing service, the Sellers shall provide reasonable customer notice and otherwise comply with all federal and state regulatory requirements.

(d) Prior to the Closing Date, the Buyer shall take no action or actions which would constitute the exercise of control over the FCC Licenses or FCC Analogous Licenses.

**Section 7.2 *Buyer Equity Offering.*** The Buyer shall use its best efforts to either (a) consummate the Buyer Equity Offering or (b) show evidence reasonably satisfactory to the Sellers of the Committed Financing by no later than two (2) days prior to the date of the auction conducted pursuant to the Bid Procedures or provide other assurance reasonably acceptable to the Sellers that the Buyer will be able to fund the Cash Consideration at the Closing.

**Section 7.3 *Rights Related to the Stock Consideration.*** The Buyer shall provide to the Sellers and any subsequent holders of the Stock Consideration all rights to registration thereof under the securities laws, rights to financial reports and all other rights which are provided contractually by the Buyer to the investors under the Buyer Equity Offering in connection with their acquisition of Buyer Common as if the Stock Consideration had been issued to the Sellers pursuant to the Buyer Equity Offering; *provided*, that the Sellers and any subsequent holders of the Stock Consideration shall agree to be subject to all limitations and obligations of the investors under the Buyer Equity Offering relating to such registration rights.

**Section 7.4 Access to Information.**

(a) Between the date of the Original Agreement and the Closing Date, each Seller shall, during ordinary business hours, upon reasonable notice (i) give the Buyer and the Buyer Representatives reasonable access to all books, records, plants, offices and other facilities and properties constituting the Purchased Assets to which the Buyer is not denied access by law, (ii) permit the Buyer to make such reasonable inspections thereof as the Buyer may reasonably request, (iii) furnish the Buyer with such financial and operating data and other information with respect to the Business as the Buyer may from time to time reasonably request, (iv) furnish the Buyer a copy of each material report, schedule or other document filed or received by such Seller with respect to the Business with the SEC; *provided, however*, that (A) any such access shall be conducted in such a manner so as not to interfere unreasonably with the operation of the Business, (B) such Seller shall not be required to take any action which would constitute a waiver of the attorney-client privilege and (C) such Seller need not supply the Buyer with any information which such Seller is under a legal obligation not to supply. Notwithstanding anything in this Section 7.4(a) to the contrary, the Buyer shall not have access to any of the Seller's customer lists, Transferring Employee Records and personnel and medical records, which in such Seller's good faith judgment is sensitive or the disclosure of which could subject such Seller to any risk of liability.

(b) The Buyer and the Sellers acknowledge that they are subject to the Confidentiality Agreement. All information furnished to or obtained by the Buyer or any of the Buyer Representatives or the Sellers or any of the Sellers' Representatives pursuant to this Agreement shall be subject to the provisions of the Confidentiality Agreement and shall be treated as Confidential Information for all purposes of the Confidentiality Agreement.

(c) For a period of three (3) years (subject to Section 7.10(a)) after the Closing Date, each party and its representatives shall have reasonable access to all of the books and records relating to the Business or the Purchased Assets, including, without limitation, all information pertaining to the Assumed Agreements, all Transferring Employee Records or other personnel and medical records required by law, legal process or subpoena, in the possession of the other party to the extent that such access may reasonably be required by such party in connection with the Assumed Obligations or the Excluded Liabilities, or other matters relating to or affected by the operation of the Business and the Purchased Assets. Such access shall be afforded by the party in possession of such books and records upon receipt of reasonable advance notice and during normal business hours; *provided, however*, that (i) any such access shall be conducted in such a manner as not to interfere unreasonably with the operation of the business of any party or its Affiliates, (ii) no party shall be required to take any action which would constitute a waiver of the attorney-client privilege, and (iii) no party need supply the other party with any information which such party is under a legal obligation not to supply. The party exercising this right of access shall be solely responsible for any costs or expenses incurred by it pursuant to this Section 7.4(c). If the party in possession

of such books and records shall desire to dispose of any such books and records upon or prior to the expiration of such period, such party shall, prior to such disposition, give the other party a reasonable opportunity at such other party's expense, to segregate and remove such books and records as such other party may select.

**Section 7.5 Expenses.** Except to the extent specifically provided herein, whether or not the transactions contemplated hereby are consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by the party incurring such costs and expenses.

**Section 7.6 Further Assurances.**

(a) Subject to the terms and conditions of this Agreement, each of the parties hereto shall use reasonable best efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things reasonably necessary, proper or advisable under applicable laws and regulations to consummate and make effective the sale of the Purchased Assets in accordance with this Agreement, including without limitation using reasonable best efforts to ensure satisfaction of the conditions precedent to each party's obligations hereunder and obtaining all FCC Consents or FCC Analogous Consents that have not become Final Orders prior to the Closing Date. Neither any of the Sellers, on the one hand, nor the Buyer, on the other hand, shall, without the prior written consent of the other party (it being understood that the written consent of Teligent shall have the same effect as the consent of all of the Sellers), take any action which would reasonably be expected to prevent or materially impede, interfere with or delay the transactions contemplated by this Agreement. From time to time on or after the Closing Date, each Seller shall, at its own expense, execute and deliver such documents to the Buyer as the Buyer may reasonably request in order to more effectively vest in the Buyer such Seller's title to the Purchased Assets subject to Permitted Encumbrances. From time to time after the date of the Original Agreement, the Buyer shall, at its own expense, execute and deliver such documents to each Seller as such Seller may reasonably request in order to more effectively consummate the sale of the Purchased Assets and the assumption and assignment of the Assumed Obligations and the Assumed Agreements in accordance with this Agreement.

(b) In the event that any Purchased Asset shall not have been conveyed to the Buyer at the Closing, the applicable Seller shall, subject to Section 7.6(c), use reasonable best efforts to convey such asset to the Buyer as promptly as is practicable after the Closing.

(c) To the extent that any of the Sellers' rights under any Assumed Agreement may not be assigned without the consent of another Person which consent has not been obtained, this Agreement shall not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof or be unlawful and such Seller shall use reasonable best efforts (without being required to make any payment to any third party or to incur any economic burden and taking into account such Seller's status as a filer under Chapter 11 of the Bankruptcy Code, the Cash Collateral Order, the discontinuance of services referenced in Section 7.1(c) herein and the Sellers' plan to



decommission the facilities reflected in the letter dated August 21, 2001, from Teligent to the Buyer) to obtain any such required consent(s) as promptly as reasonably possible unless failure to obtain such consent would not, individually or in the aggregate, have a Material Adverse Effect, and the Buyer agrees to cooperate with such Seller in its efforts to obtain any such consent (including the submission of such financial or other information concerning the Buyer and the execution of any assumption agreements or similar documents reasonably requested by a third party) without being required to make any payment to any third party or to incur any economic burden.

**Section 7.7 *Public Statements.*** Teligent and the Buyer shall consult with each other prior to issuing any public announcement, statement or other disclosure with respect to this Agreement or the transactions contemplated hereby, except that the parties may make disclosures with respect to this Agreement and the transactions contemplated hereby to the extent and under the circumstances in which the parties are expressly permitted by the Confidentiality Agreement to make disclosures of Confidential Information.

**Section 7.8 *Governmental Entity Consents and Approvals.***

(a) ***FCC Consents.*** Subject to Section 7.8(e), within five (5) Business Days after the date of the Original Agreement, the Buyer shall prepare and file, or cause to be prepared and filed, the necessary application or applications with the FCC seeking the FCC Consents and thereafter, shall timely make all other filings and notifications and timely seek all such consents, licenses, approvals, permits, waivers, orders or authorizations as may be required to obtain the FCC Consents. The Sellers shall cooperate with the Buyer to the fullest extent reasonably possible to provide all necessary information for the preparation of such applications, including those portions of such applications which are required to be completed by the Sellers. The Buyer shall bear the fees payable to the FCC in connection with the preparation and filing of the applications for the FCC Consents; *provided*, that no filing fees incurred in connection with the application or applications seeking the FCC Consents shall be paid by the Buyer unless and until the Bid Procedures are approved by the Bankruptcy Court.

(b) ***HSR Act.*** Subject to Section 7.8(e), within ten (10) Business Days after the entry of the Sale Order by the Bankruptcy Court or at such other time as the Sellers and the Buyer mutually agree is appropriate, the Sellers and the Buyer shall each prepare and file, or cause to be prepared and filed, with the Federal Trade Commission and/or the United States Department of Justice, as the case may be, all requisite applications and amendments thereto together with related information, data and exhibits necessary to satisfy any applicable requirements of the HSR Act. Each party shall promptly respond to any requests for additional information in connection with such filings and shall take all other reasonable actions to cause the waiting periods under the HSR Act to terminate or expire at the earliest possible date after the date of filing. The Buyer shall be responsible for payment of the application filing fee under the HSR Act, but not the Sellers' costs and expenses (including attorneys' fees and other legal fees and expenses) associated with the preparation of the Sellers' portion of such filing.

(c) FCC Analogous Consents. Subject to Section 7.8(e), within ten (10) Business Days after the date of the Original Agreement, the Sellers and/or the Buyer, as applicable, shall each file or cause to be filed with any state or local regulatory authorities analogous to the FCC applications for the approval of the assignment of the FCC Analogous Licenses. The Sellers and the Buyer shall prosecute such applications with all reasonable diligence and otherwise use their reasonable best efforts to obtain grants of approval as expeditiously as practicable. The Buyer shall bear the fees payable to the state and local regulatory entities in connection with the preparation and filing of the applications for the FCC Analogous Consents.

(d) Other Governmental Entity Approvals. The Sellers and the Buyer shall each use their reasonable best efforts to cooperate with each other in determining any filings, notifications and requests for approval (other than the FCC Consents, the FCC Analogous Consents and the filings by the Sellers and the Buyer required by the HSR Act and the expiration or earlier termination of all waiting periods under the HSR Act) required to be made and received prior to the Closing under applicable law or regulation (collectively, the "Other Regulatory Approvals"). In connection with any Other Regulatory Approvals, neither the Buyer nor any of the Sellers will, and each of them will use its reasonable best efforts not to, cause or permit any of its officers, directors, partners or other Affiliates to, take any action which could reasonably be expected to materially and adversely affect the submission of any required filings or notifications or the grant of any such approvals.

(e) Cooperation. The Sellers and the Buyer (i) shall promptly inform each other of any communication from any Governmental Entity concerning this Agreement, the transactions contemplated hereby, and any filing, notification or request for approval and (ii) shall permit the other party to review in advance any proposed written communication or information submitted to any such Governmental Entity in response thereto. In addition, each of the Sellers and the Buyer shall not agree to participate in any meeting with any Governmental Entity in respect of any filings, investigation or other inquiry with respect to this Agreement, the transactions contemplated hereby or any such filing, notification or request for approval unless it consults with the other party in advance and, to the extent permitted by any such Governmental Entity, gives the other party the opportunity to attend and participate thereat, in each case to the maximum extent practicable. Subject to any restrictions under applicable laws, rules or regulations, each of the Sellers and the Buyer shall furnish the other party with copies of all correspondence, filings and communications (and memoranda setting forth the substance thereof) between it and its Affiliates and their respective representatives on the one hand, and the Governmental Entity or members of its staff on the other hand, with respect to this Agreement, the transactions contemplated hereby (excluding documents and communications which are subject to preexisting confidentiality agreements and to the attorney-client privilege or work product doctrine) or any such filing, notification or request for approval. The Sellers and the Buyer shall also furnish the other party with such necessary information and assistance as such other party and its Affiliates may reasonably request in connection with their preparation of necessary filings, registration, or submissions of information to the Governmental Entity in connection with this Agreement, the transactions contemplated hereby and any such filing, notification or

request for approval. The Sellers and the Buyer shall prosecute all required requests for approval with all necessary diligence and otherwise use their respective reasonable best efforts to obtain the grant thereof by a Final Order as soon as possible.

**Section 7.9 Fees and Commissions.** Subject to the Buyer's rights to reimbursement of expenses under Section 7.15 with respect to the expenses which may be incurred in connection with the defense or indemnity as set forth below, the Sellers, on the one hand, and the Buyer, on the other hand, shall pay to the other or otherwise discharge, and shall defend, indemnify and hold the other harmless from and against, any and all claims or liabilities for all brokerage fees, commissions and finder's fees incurred by reason of any action taken by such party.

**Section 7.10 Tax Matters.**

(a) **Cooperation on Tax Matters.** The Buyer and the Sellers agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Business and the Purchased Assets (including, without limitation, access to books and records) as is reasonably necessary for the preparation and filing of all Tax returns in connection with matters relating to or affected by the operations of the Sellers prior to the Closing, including the making of any election relating to Taxes, the preparation for any audit by any taxing authority, and the prosecution or defense of any claim, suit or proceeding relating to any Tax. Notwithstanding anything to the contrary herein, the Buyer and the Sellers shall retain all books and records with respect to Taxes pertaining to the Purchased Assets for a period of at least six (6) years following the Closing Date. At the end of such period, each party shall provide the other with at least thirty (30) days prior written notice before destroying any such books and records, during which period the party receiving such notice can elect to take possession, at its own expense, of such books and records. The Sellers and the Buyer shall cooperate with each other in the conduct of any audit or other proceeding relating to Taxes involving the Purchased Assets or the Business.

(b) **Transfer Taxes.** All excise, sales, use, transfer, value added, registration, stamp, recording, documentary, conveyancing, franchise, property, transfer, gains and similar Taxes, levies, charges and recording, filing and other fees (collectively, "*Transfer Taxes*") incurred in connection with the transactions contemplated by this Agreement shall be paid by the Buyer. The Buyer shall, at its own expense, file all necessary Tax returns and other documentation with respect to all such Transfer Taxes and, if required by applicable law, the appropriate Seller shall join in the execution of any Tax returns and other documentation at the Buyer's request. Notwithstanding the foregoing, the Sellers shall seek in the Sale Order a decretal paragraph which provides that, in accordance with Section 1146(c) of the Bankruptcy Code, the transactions contemplated hereby are steps in the formulation, or anticipation of the formulation, of a Chapter 11 plan for the Sellers and, as such, the making or delivery of any instrument of transfer to effectuate the transactions contemplated hereby shall not be taxed under any law imposing a stamp tax or similar tax.

**Section 7.11 Supplements to Schedules.** Prior to the Closing Date, the Sellers may supplement or amend the Schedules furnished by them pursuant to this Agreement with

respect to any matter relating to the Purchased Assets or the Business. In the event such supplements and amendments are reasonably anticipated by the parties to give rise to adverse economic consequences to the Operating Business or the Purchased Assets, the Buyer may either terminate this Agreement without liability or close the transaction (in which event any breach of any representation or warranty made by the Sellers which would otherwise exist absent such supplements and amendments shall be deemed cured for all purposes of this Agreement); *provided, however*, that the Buyer may not terminate this Agreement if such adverse economic consequences would not, individually or in the aggregate, have a Material Adverse Effect.

Section 7.12 *Employees.*

(a) No later than thirty (30) days after the entry of the Sale Order, in which case the Sellers shall have adequate time to comply with the WARN Act, the Buyer shall provide the Sellers with the identity of the Sellers' employees to whom the Buyer intends to make offers of employment and the general terms of such offers; *provided that* the Buyer shall notify the Sellers no later than one (1) Business Day after any change to the identity of the Sellers' employees to whom the Buyer will make offers of employment or any change to the general terms of such offers. The Sellers shall timely provide and shall be solely responsible for any required WARN notice with respect to any remaining employees of the Sellers to whom the Buyer intends not to make offers and to any other employees to whom such notice may be required in the Sellers' judgment. Each person who accepts the Buyer's offer of employment pursuant to this Section 7.12 (a) shall be referred to herein as a "*Transferred Employee*"; *provided, however*, that it is understood that the Buyer shall not be obligated to retain any such employees (other than the Key Executives) in the employment of the Buyer for any specified period of time from and after the Closing Date.

(b) The Sellers shall be responsible for all obligations and liabilities under the WARN Act to the extent applicable and under applicable state and local laws (the "*WARN Obligations*") arising solely as a result of their actions prior to and including the Closing Date. The Buyer shall be responsible for all WARN Obligations arising solely as a result of its actions taken after the Closing Date.

Section 7.13 *Litigation Support.* In the event and for so long as any party is actively contesting or defending against any action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand in connection with (a) any transaction contemplated under this Agreement or (b) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction on or prior to the Closing Date involving the Sellers, the other party will cooperate with the contesting or defending party and its counsel in the contest or defense, make available its personnel, and provide such testimony and access to its books and records as shall be reasonably necessary in connection with the contest or defense, all at the sole cost and expense of the contesting or defending party. In the event that the Sale Order is the subject of an appeal, the Buyer and the Sellers agree to use reasonable best efforts to seek an expedited review and decision of such appeal and to seek the dissolution of any stay which might be entered in connection with such an appeal; *provided*, that each party shall

bear the cost of complying with this provision, subject to the Buyer's rights under Section 7.15(a) to reimbursement of expenses.

**Section 7.14 Notification.** The Sellers shall notify the Buyer and keep it advised of the occurrence, to the Knowledge of the Sellers, of (a) any litigation or administrative proceeding pending or threatened against any Seller which could, if adversely determined, have a Material Adverse Effect and (b) any material damage or destruction of any of the Purchased Assets. The Buyer shall notify the Sellers and keep them advised of the occurrences of any Buyer Material Adverse Effect.

**Section 7.15 Submission for Bankruptcy Court Approval.**

(a) Within five (5) Business Days after the date of the Original Agreement, the Sellers (or Teligent on their behalf) shall file with the Bankruptcy Court a motion, supporting papers, notices, and a proposed procedures order, substantially in the form of the order attached hereto as Exhibit F, seeking, among other things, the Bankruptcy Court's approval of the following proposed bidding procedures (the "Bid Procedures"):

(i) without duplication, prior to such time as the Buyer shows evidence reasonably satisfactory to the Sellers that the Buyer has obtained the Committed Financing, if (A) the Buyer has not materially breached any of the provisions of this Agreement, (B) the Sellers terminate this Agreement in accordance with Article 9 hereof and (C) either (I) an order is entered by the Bankruptcy Court approving the sale of all or substantially all of the Purchased Assets to a third party who is not a Pre-Petition Secured Lender pursuant to Section 363 of the Bankruptcy Code (a "Section 363 Sale") within sixty (60) days after the date of such termination by the Sellers and such Section 363 Sale is later consummated or (II) a plan of reorganization involving the sale of all or substantially all of the Purchased Assets or all or substantially all of the capital stock of Teligent to a third party who is not a Pre-Petition Secured Lender is confirmed by the Bankruptcy Court ("Plan of Reorganization") within four (4) months after the date of such termination by the Sellers, and such Plan of Reorganization is later substantially consummated, then the Sellers shall pay to the Buyer up to \$2,000,000 in the aggregate for the Buyer's actually incurred reasonable out-of-pocket, reasonably documented expenses, including any fees required by Governmental Entities incurred in connection with the transactions contemplated hereby, in addition to the following:

(x) in the event that the fair market value (as determined by the Bankruptcy Court to the extent necessary) of the proceeds (the "FMV Proceeds") received by the Sellers in such Section 363 Sale or Plan of Reorganization, as applicable, is equal to at least \$124,500,000, a breakup fee in the amount of \$3,000,000; or

(y) in the event that the FMV Proceeds received by the Sellers in such Section 363 Sale or Plan of Reorganization, as applicable, are less than \$124,500,000, a payment of \$1,500,000, characterized as a breakup fee, to the

Buyer for all business plans prepared by Friedman, Billings, Ramsey & Co. for the Buyer, which business plans shall be delivered to the Sellers upon receipt of such payment; or

(ii) without duplication, prior to such time as the Buyer shows evidence reasonably satisfactory to the Sellers that the Buyer has obtained the Committed Financing, if (A) the Buyer has not materially breached any of the provisions of this Agreement, (B) the Sellers terminate this Agreement in accordance with Article 9 hereof and (C) the conditions set forth in Section 7.15(a)(i)(C) above have not been satisfied, then the Sellers shall pay to the Buyer up to \$2,000,000 in the aggregate for the Buyer's actually incurred reasonable out-of-pocket, reasonably documented expenses, including any fees required by Governmental Entities incurred in connection with the transactions contemplated hereby; or

(iii) without duplication, prior to such time as the Buyer shows evidence reasonably satisfactory to the Sellers that the Buyer has obtained the Committed Financing, if (A) the Buyer has not materially breached any of the provisions of this Agreement and (B) the Buyer terminates this Agreement in accordance with Article 9 hereof, then the Sellers shall pay to the Buyer up to \$2,000,000 in the aggregate for the Buyer's actually incurred reasonable out-of-pocket, reasonably documented expenses, including any fees required by Governmental Entities incurred in connection with the transactions contemplated hereby; or

(iv) without duplication, on or following such time as the Buyer shows evidence reasonably satisfactory to the Sellers that the Buyer has obtained the Committed Financing, if (A) the Buyer has not materially breached any of the provisions of this Agreement, (B) the Sellers terminate this Agreement in accordance with Article 9 hereof and (C) either (I) an order is entered by the Bankruptcy Court approving a sale of all or substantially all of the Purchased Assets pursuant to a Section 363 Sale to a third party who is not a Pre-Petition Secured Lender within sixty (60) days after the date of such termination by the Seller, the FMV Proceeds from which actually equal or exceed \$126,500,000, and such Section 363 Sale is later consummated or (II) a Plan of Reorganization involving the sale of all or substantially all of the Purchased Assets or all or substantially all of the capital stock of Teligent to a third party who is not a Pre-Petition Secured Lender is confirmed by the Bankruptcy Court within four (4) months after the date of such termination by the Seller, the FMV Proceeds from which actually equal or exceed \$126,500,000, and such Plan of Reorganization is later substantially consummated, then the Sellers shall pay to the Buyer up to \$2,000,000 in the aggregate for the Buyer's actually incurred reasonable out-of-pocket, reasonably documented expenses, including any fees required by Governmental Entities incurred in connection with the transactions contemplated hereby, in addition to a breakup fee in the amount of \$5,000,000; or

(v) without duplication, on or following such time as the Buyer shows evidence reasonably satisfactory to the Sellers that the Buyer has obtained the Committed Financing, if (A) the Buyer has not materially breached any of the

provisions of this Agreement, (B) the Sellers terminate this Agreement in accordance with Article 9 hereof and (C) the conditions set forth in Section 7.15(a)(iv)(C) above have not been satisfied, then the Sellers shall pay to the Buyer up to \$2,000,000 in the aggregate for the Buyer's actually incurred reasonable out-of-pocket, reasonably documented expenses, including any fees required by Governmental Entities incurred in connection with the transactions contemplated hereby; or

(vi) without duplication, on or following such time as the Buyer shows evidence reasonably satisfactory to the Sellers that the Buyer has obtained the Committed Financing, if (A) the Buyer has not materially breached any of the provisions of this Agreement and (B) the Buyer terminates this Agreement in accordance with Article 9 hereof, then the Sellers shall pay to the Buyer up to \$2,000,000 in the aggregate for the Buyer's actually incurred reasonable out-of-pocket, reasonably documented expenses, including any fees required by Governmental Entities incurred in connection with the transactions contemplated hereby; and

(vii) to the extent that the Sellers conduct an auction and the Buyer shows evidence reasonably satisfactory to the Sellers that the Buyer has obtained the Committed Financing, any competing bid from a third party who is not a Pre-Petition Secured Lender in such auction must be for all or substantially all of the Purchased Assets and the initial amount of any such third party bid must exceed the Purchase Price by at least \$9,000,000; and

(viii) any break up fee payable to the Buyer under the foregoing clauses (i)-(vii), inclusive, approved by the Bankruptcy Court shall be paid by the Sellers to the Buyer within two (2) Business Days after the last event which shall have caused such break-up fee to become payable under this Section 7.15; and

(ix) any expense reimbursement payable to the Buyer under the foregoing clauses (i)-(vii), inclusive, approved by the Bankruptcy Court shall be paid by the Sellers to the Buyer upon the earlier to occur of (A) 90 days after the event giving rise to such reimbursement and (B) if the Buyer is entitled to a break-up fee in accordance with this Section 7.15, such time as such break-up fee is payable; and

(x) the Sellers shall promptly notify the Buyer of any written expression of interest or bids (each, a "Proposal") received by any Seller from any Person relating to any bids or offers (binding or non-binding) for the purchase or acquisition of all or substantially all of the Operating Business or the Purchased Assets or the purchase or acquisition of all or substantially all of the capital stock of Teligent or any of the other Sellers; and the Sellers shall, within two (2) Business Days after receipt of any such Proposal provide a copy of such Proposal to the Buyer in the manner set forth in Section 10.5.

Notwithstanding anything herein to the contrary, for purposes of this Section 7.15(a), "Pre-Petition Secured Lenders" shall not include any third party who acquires from and

after the date of the Original Agreement, for purposes of consummating a purchase or acquisition of all or substantially all of the Purchased Assets, any of the claims of the Sellers' lenders under that certain Credit Agreement, dated as of July 2, 1998.

(b) The parties hereto shall use their respective reasonable best efforts to obtain the entry of an order approving the Bid Procedures on an expedited basis within fourteen (14) days after the motion with respect thereto is filed with the Bankruptcy Court. As soon as is practicable after the date of the Original Agreement, the Sellers (or Teligent on their behalf) shall file with the Bankruptcy Court a motion, supporting papers, notices, and a form of sale order, substantially in the form of the order attached hereto as Exhibit G, seeking the Bankruptcy Court's approval of this Agreement, the Sellers' performance under this Agreement, the assumption and assignment of the Assumed Agreements and Assumed Obligations, and the Sellers' retention of the Excluded Assets (the "Sale Order"). The Sale Order shall be in form and substance reasonably satisfactory to the Buyer and shall provide, without limitation, that:

(i) as of the Closing, the transactions contemplated by this Agreement will effect a legal, valid, enforceable and effective sale and transfer of each of the Purchased Assets to the Buyer and shall vest the Buyer with good title to the Purchased Assets free and clear of all Encumbrances (other than Permitted Encumbrances);

(ii) the transactions contemplated by this Agreement constitute reasonably equivalent value and fair consideration for the Purchased Assets being purchased; and

(iii) the Buyer is a good faith purchaser of the Purchased Assets, as that term is used in Section 363(m) of the Bankruptcy Code.

(c) As soon as practicable after the approval by the Bankruptcy Court of the Bid Procedures, the Sellers (or Teligent on their behalf) shall file with the Bankruptcy Court a motion, supporting papers, notices, and a form of financing order mutually agreeable to the Sellers and the Buyer seeking the Bankruptcy Court's approval for the Sellers to borrow up to \$25,000,000 from the Buyer pursuant to Section 364 of the Bankruptcy Code (the "DIP Order"). The DIP Order shall provide that in connection with the proposed financing, the Buyer is acting in "good faith" and is entitled to the protections of Section 364(e) of the Bankruptcy Code. In addition, the DIP Order shall provide that such financing shall be secured on a super-priority basis by liens that, pursuant to Section 364(c) or Section 364(d) of the Bankruptcy Code, shall be senior in priority to all Encumbrances, including those of the Pre-Petition Secured Lenders on the Purchased Assets.

(d) Commencing on the later to occur of: (i) the entry of the DIP Order by the Bankruptcy Court and (ii) the entry of the Sale Order by the Bankruptcy Court, until the Closing, at the election of the Sellers, the Buyer shall lend to the Sellers an amount up to \$25,000,000 to be used in the operations of the Sellers related solely and exclusively to the Operating Business (the "Interim Financing"). The Interim Financing shall be made on the terms and subject to the conditions of a credit facility in the form attached hereto



as Exhibit H (the "Debtor-in-Possession Working Capital Facility"). Notwithstanding anything herein to the contrary, none of the following actions shall constitute a breach or default of the Sellers under this Agreement: (A) the withdrawal by the Sellers of the request for approval of the Interim Financing prior to the entry of the DIP Order by the Bankruptcy Court, (B) the Sellers' election to not borrow under the Interim Financing or (C) the repayment and/or termination of the Interim Financing in accordance with the terms of the Debtor-in-Possession Working Capital Facility.

Section 7.16 *Investor Qualification.* The Sellers shall not transfer any portion of the Stock Consideration to any Person who is not a "qualified institutional buyer" as that term is defined under Rule 144A of the Securities Act.

Section 7.17 *Management Agreements.*

(a) In the event any FCC Analogous Consent for any state listed in Section 8.2(h) has not become a Final Order by the Closing Date, but a majority of the FCC Analogous Consents listed in Section 8.2(h), including those for California, Texas and New York, have become Final Orders, then the Buyer and TSI shall enter into a management agreement for each of the other states set forth in Section 8.2(h) for which a Final Order has not yet been obtained. Pursuant to such management agreement, the Buyer shall act as manager of the operations in such state or jurisdiction on behalf of TSI and at the direction of TSI and consistent with all applicable laws and regulations until such FCC Analogous Consent has become a Final Order; *provided that*, if the Buyer and Teligent (on behalf of the Sellers) each reasonably believes that entering into such management agreement pending such FCC Analogous Consent becoming a Final Order in such state would materially adversely affect the timing or outcome of obtaining a Final Order granting such FCC Analogous Consent, then the Buyer and TSI shall not enter into such management agreement.

(b) In the event any FCC Analogous Consent for any state other than the states listed in Section 8.2(h) has not become a Final Order by the Closing Date, then, at the Buyer's option, the Buyer and TSI shall enter into a management agreement whereby the Buyer shall act as manager of the operations in such state on behalf of TSI and at the direction of TSI and consistent with all applicable laws and regulations until such FCC Analogous Consent has become a Final Order.

Section 7.18 *Transition Services.*

(a) At or prior to the Closing, the Buyer and Teligent, on behalf of itself and the other Sellers, agree to negotiate and enter into a mutually acceptable transition services agreement (the "Transition Services Agreement") whereby the Buyer shall provide, or shall cause its Subsidiaries to provide, to the Sellers various services, including without limitation, financial services (e.g., controller functions, payroll functions, financial reporting functions, systems management functions, accounts payable functions), infrastructure support services (e.g., information technology and application support), operations support services (e.g., storage space, office space, etc.), and human

resources services (e.g., staffing), pursuant to mutually acceptable and reasonable terms and conditions.

(b) For a period of three (3) years after the Closing Date (the "Transition Period"), the Sellers, the Buyer and their representatives shall have reasonable access to, and each shall have the right to photocopy at their own expense, all of the books and records, including any computerized databases and files and programs and associated software, (the "Books and Records") relating to the pre-Closing operations of the Sellers and/or the Purchased Assets as they existed as of the Closing Date, including but not limited to (i) the investigation, evaluation and prosecution of any and all causes of action retained by any Seller, (ii) the evaluation and defense of any and all claims brought against the estate of any Seller and (iii) all Transferred Employees' records or other personnel and medical records required by law, legal process or subpoena, in the possession of the other party to the extent that such access may reasonably be required by such party in connection with the Assumed Obligations and Excluded Liabilities, or other matters relating to or affected by the operation of the Business or use of the Purchased Assets. During the Transition Period, the Buyer agrees to provide Teligent and any of its representatives, during ordinary business hours, upon reasonable request and notice and at Teligent's expense, with reasonable access to employees of the Buyer for purposes of winding down the estates of the Sellers. Access pursuant to this Section 7.18(b) shall be afforded by the party in possession of such Books and Records, upon receipt of reasonable advance notice, during normal business hours and at the expense of the requesting party; provided, however, that (A) any such investigation shall be conducted in such a manner as not to interfere unreasonably with the operation of the business of any party, (B) no party shall be required to take any action which would constitute a waiver of the attorney-client privilege or which would require the disclosure of confidential information and (C) no party need to supply the other party with any information which such party is under a legal obligation not to supply. The party exercising this right of access shall be solely responsible for any costs or expenses incurred by it pursuant to this Section 7.18(b). If the party in possession of such Books and Records shall desire to dispose of any such Books and Records upon or prior to the expiration of such period, such party shall, prior to such disposition, give the other party a reasonable opportunity at such other party's expense, to segregate and remove such Books and Records as such other party may select.

## ARTICLE VIII CONDITIONS TO CLOSING

Section 8.1 *Conditions to Each Party's Obligations to Effect the Closing.* The respective obligations of each party to effect the sale and purchase of the Purchased Assets shall be subject to the fulfillment at or prior to the Closing Date of the following conditions:

(a) the waiting period under the HSR Act applicable to the consummation of the sale of the Purchased Assets contemplated hereby shall have expired or been terminated;

(b) no preliminary or permanent injunction or other order or decree by any federal or state court which prevents the consummation of the sale of a material part of the Purchased Assets contemplated hereby shall have been issued and remain in effect (each party agreeing to use its reasonable best efforts to have any such injunction, order or decree lifted) and no statute, rule or regulation shall have been enacted by any Governmental Entity which prohibits the consummation of the sale of the Purchased Assets;

(c) other than as set forth in Section 8.2 or 8.3 for the FCC Consents and the FCC Analogous Consents, all consents of Governmental Entities required for the consummation of the transactions contemplated by this Agreement shall have become Final Orders of the respective Governmental Entities; *provided* that it shall not be a condition to the Closing that a Final Order by any such Governmental Entity not include any adverse terms or conditions unless such terms and/or conditions would, in the aggregate, create a Material Adverse Effect; and

(d) on or before October 31, 2001, the Bankruptcy Court shall have entered the Sale Order and all conditions contemplated by the Sale Order to consummate the transactions contemplated hereby shall have been satisfied.

**Section 8.2 *Conditions to Obligations of the Buyer.*** The obligation of the Buyer to effect the purchase of the Purchased Assets contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing Date of the following additional conditions:

(a) the Sellers shall have performed and complied in all material respects with the covenants contained in this Agreement which are required to be performed and complied with by such Sellers on or prior to the Closing Date and the representations and warranties of such Sellers which are set forth in this Agreement shall be true and correct in all material respects as of the date of the Original Agreement and as of the Closing Date (except to the extent that any such representation or warranty speaks as of a particular date) as though made at and as of the Closing Date;

(b) the Buyer shall have received a certificate from an authorized officer of each of the Sellers, dated as of the Closing Date, to the effect that, to the best of such officer's knowledge, the conditions set forth in Section 8.2(a) have been satisfied;

(c) the Purchased Assets shall have been released from all Encumbrances and there shall be no Encumbrances on the Purchased Assets (other than the Permitted Encumbrances);

(d) the Sellers' lenders under that certain Credit Agreement, dated as of July 2, 1998 (the "Pre-Petition Secured Lenders"), shall have agreed in writing that any and all of their post-petition liens on the Purchased Assets shall attach only to the proceeds of the transactions contemplated hereby and not to the Purchased Assets;

(e) each of the Key Executives shall have agreed to become employed by the Buyer as of the Closing Date on terms not materially different from the terms set forth on

Exhibit I for such Key Executive, and each Key Executive shall not have died or suffered a Disability;

(f) the Buyer shall have received the other items to be delivered pursuant to Section 4.3;

(g) all FCC Consents shall have become Final Orders; and

(h) (i) the FCC Analogous Consents for the following states or jurisdictions shall have become Final Orders: Arizona, California, Connecticut, District of Columbia, Illinois, Maryland, Massachusetts, Ohio, Pennsylvania, Texas, New York, New Jersey and Virginia or (ii) the Buyer and TSI shall have entered into a management agreement pursuant to Section 7.17(a) in the event that any FCC Analogous Consent for the foregoing states in clause (i) has not become a Final Order.

Any condition specified in this Section 8.2 may be waived by the Buyer; provided that no such waiver shall be effective against the Buyer unless it is set forth in a writing executed by the Buyer.

**Section 8.3 *Conditions to Obligations of the Sellers.*** The obligation of each Seller to effect the sale of the Purchased Assets contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing Date of the following additional conditions:

(a) the Buyer shall have performed and complied with in all material respects the covenants contained in this Agreement which are required to be performed and complied with by the Buyer on or prior to the Closing Date and the representations and warranties of the Buyer which are set forth in this Agreement shall be true and correct in all material respects as of the date of the Original Agreement and as of the Closing Date (except to the extent that any such representation or warranty speaks as of a particular date) as though made at and as of the Closing Date;

(b) Teligent shall have received (on behalf of the Sellers) a certificate from an authorized officer of the Buyer, dated as of the Closing Date, to the effect that, to the best of such officer's knowledge, the conditions set forth in Section 8.3(a) have been satisfied;

(c) each Seller shall have received the other items to be delivered to it pursuant to Section 4.4;

(d) all FCC Consents shall have been obtained or if any FCC Consent has not been obtained by the Closing Date, the Buyer has either waived the requirements for such FCC Consent or the Buyer and the Seller Licensees have entered, at the Buyer's option, into a management agreement whereby the Buyer will act as manager of the operations of the Seller Licensees on behalf of the Seller Licensees and at the direction of the Seller Licensees and consistent with all applicable laws and regulations until such FCC Consent has been obtained; and

(e) the Certificate or Articles of Incorporation and Bylaws of the Designated Buyer Subsidiaries shall be substantially in the form of Exhibit E attached hereto.

Any condition specified in this Section 8.3 may be waived by the Sellers; *provided* that no such waiver shall be effective against any Seller unless it is set forth in writing executed by such Seller.

## ARTICLE IX TERMINATION AND ABANDONMENT

Section 9.1 *Termination.* This Agreement may be terminated at any time prior to the Closing Date by:

(a) mutual written consent of Teligent (on behalf of the Sellers) and the Buyer;

(b) the Buyer, if there has been a material violation or breach by the Sellers of any covenant, representation or warranty made by them contained in this Agreement which has prevented the satisfaction of any condition to the obligations of the Buyer to effect the Closing and such violation or breach has not been cured by the Sellers within ten (10) Business Days of receipt of written notice thereof or waived by the Buyer;

(c) the Sellers, if there has been a material violation or breach by the Buyer of any covenant, representation or warranty made by it contained in this Agreement which has prevented the satisfaction of any condition to the obligations of the Sellers to effect the Closing and such violation or breach has not been cured by the Buyer within ten (10) Business Days of receipt of written notice thereof or waived by the Sellers;

(d) the Sellers, if on or prior to two (2) days prior to the date of the auction conducted pursuant to the Bid Procedures, the Buyer cannot show evidence reasonably satisfactory to the Sellers of the Committed Financing;

(e) the Buyer or the Sellers, if any event occurs which renders satisfaction of one or more conditions set forth in Section 8.1 impossible; *provided* that the Buyer or the Sellers, as the case may be, shall not be entitled to terminate this Agreement pursuant to this Section 9.1(e) if the impossibility results primarily from such party itself breaching any representation, warranty or covenant contained in this Agreement;

(f) the Buyer, if the Bid Procedures are not approved by the Bankruptcy Court within fifteen (15) Business Days after the date of the Original Agreement or if the Bid Procedures are stayed, reversed or modified in a manner which materially detracts from the protections of the Buyer thereunder; *provided* that the Buyer shall not be entitled to terminate this Agreement pursuant to this Section 9.1(f) if the failure to obtain such approval within such time period results primarily from the Buyer breaching any representation, warranty or covenant contained in this Agreement;

(g) the Buyer or the Sellers, if the Sale Order has not been entered by the Bankruptcy Court on or prior to October 31, 2001; *provided* that the Buyer or the Sellers, as the case may be, shall not be entitled to terminate this Agreement pursuant to this Section 9.1(g) if the failure to obtain such approval within such time period results primarily from such party itself breaching any representation, warranty or covenant contained in this Agreement;

(h) the Sellers, if the DIP Order has not been entered by the Bankruptcy Court on or prior to October 31, 2001; *provided* that the Sellers shall not be entitled to terminate this Agreement pursuant to this Section 9.1(h) if the failure to obtain such approval within such time period results from the Sellers' withdrawal of the request for the DIP Order or results primarily from such party itself breaching any representation, warranty or covenant contained in this Agreement;

(i) the Buyer, in accordance with Section 7.11;

(j) the Buyer, if, prior to or upon the approval of the Bid Procedures by the Bankruptcy Court, the Buyer has not received written consent or consent on the record at the hearing on the Bid Procedures from the Pre-Petition Secured Lenders to a carve-out from their liens and their administrative claims for any break-up fee or expense reimbursement which may be due to the Buyer pursuant to Section 7.15;

(k) the Buyer, if the bankruptcy auction to be conducted pursuant to the Bid Procedures is scheduled for a date earlier than 28 days after the approval of the Bid Procedures; or

(l) the Buyer or the Sellers, if the Closing shall not have occurred on or prior to February 15, 2002 (the "Termination Date"); *provided* that the Buyer or the Sellers, as the case may be, shall not be entitled to terminate this Agreement pursuant to this Section 9.1(l) if the failure of the Closing to occur on or prior to such date results primarily from such party itself breaching any representation, warranty or covenant contained in this Agreement.

**Section 9.2 Procedure and Effect of Termination.** In the event of termination of this Agreement and abandonment of the transactions contemplated hereby by either or both of the parties pursuant to Section 9.1, written notice thereof shall forthwith be given by the terminating party to the other party (it being understood that notice to Teligent shall have the same effect as notice to all of the Sellers) and this Agreement shall terminate and the transactions contemplated hereby shall be abandoned, without further action by any of the parties hereto. If this Agreement is terminated as provided herein:

(a) said termination shall be the sole remedy of the parties hereto with respect to breaches of any covenant, representation or warranty contained in this Agreement and none of the parties hereto nor any of their respective trustees, directors, officers or Affiliates, as the case may be, shall have any liability or further obligation to the other party or any of their respective trustees, directors, officers or Affiliates, as the case may be, pursuant to this Agreement, except in each case as stated in this Section 9.2, Section

10.14 and in Sections 7.4(b), 7.5, 7.8(a), 7.9 and 7.15, and upon a willful breach by a party, in which case the non-breaching party shall have all rights and remedies existing at law or in equity; *provided, however*, the Sellers shall not be responsible for liability for any misrepresentation or breach of any warranty or covenant by the Sellers contained in this Agreement prior to the time of such termination;

(b) all filings, applications and other submissions made pursuant to this Agreement, to the extent practicable, shall be withdrawn from the agency or other Person to which they were made; and

(c) all Confidential Information from any and all of the Sellers shall be returned to Teligent, and all Confidential Information from the Buyer shall be returned to the Buyer.

## ARTICLE X MISCELLANEOUS PROVISIONS

Section 10.1 *Amendment and Modification.* This Agreement may be amended, modified or supplemented only by written agreement of Teligent (on behalf of the Sellers) and the Buyer.

Section 10.2 *Waiver of Compliance; Consents.* Except as otherwise provided in this Agreement, any failure of any of the parties to comply with any obligation, covenant or condition herein may be waived by the party entitled to the benefits thereof only by a written instrument signed by the party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, or condition shall not operate as a waiver of, or estoppel with respect to any subsequent or other failure.

Section 10.3 *Survival.* Subject to the succeeding sentence, each and every representation, warranty and covenant contained in this Agreement shall expire with, and be terminated and extinguished by the consummation of the sale of the Purchased Assets and the transfer of the Assumed Obligations pursuant to this Agreement, and such representations, warranties and covenants shall not survive the Closing Date, and neither any of the Sellers, the Buyer nor any officer, director, trustee or Affiliate of any of them shall have any liability whatsoever with respect to any such representation, warranty or covenant. Notwithstanding the foregoing, (a) the obligations of the Buyer with respect to the Assumed Obligations and of the Sellers with respect to the Excluded Liabilities and the covenants contained in Sections 2.5(b), (c) and (d), 7.3, 7.4(b) and (c), 7.5, 7.9, 7.16 and 7.18 and this Article X shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, (b) the covenants contained in Sections 7.6 and 7.7 shall survive until the first anniversary of the Closing Date, and (c) the representations and warranties contained in Sections 6.5 and 6.6 and the covenants contained in Sections 7.12 and 7.13 shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby until thirty (30) days after the expiration of the applicable statutes of limitation (including all periods of extension, whether automatic or permissive).

Section 10.4 *No Impediment to Liquidation.* Subject to Sections 2.2(e), 7.4(c) and 7.10, nothing herein shall be deemed or construed as to limit, restrict or impose any impediment to the Sellers' right to liquidate, dissolve and wind-up its affairs and to cease all business activities and operations at such time as it may determine following the Closing. Subject to Sections 2.2(e), 7.4(c) and 7.10, the Sellers shall not be obligated to retain assets or employees or to continue operations following the Closing (or to retain outsource assistance) in order to satisfy its obligations hereunder.

Section 10.5 *Notices.* All notices and other communications hereunder shall be in writing and shall be deemed given (i) when personally sent/delivered, by facsimile transmission (with hard copy to follow) or sent by reputable express courier (charges prepaid) or (ii) five (5) days following mailing by registered or certified mail postage prepaid and return receipt requested. Unless another address is specified in writing, notices, demands and communications to any Seller and the Buyer shall be sent to the addresses indicated below:

(a) If to any of the Sellers, to:

c/o Teligent, Inc.  
8065 Leesburg Pike  
Suite 400  
Vienna, Virginia 22182  
Facsimile: (703) 762-5200  
Attention: General Counsel

with a copy to:

Kirkland & Ellis  
200 E. Randolph Drive  
Chicago, Illinois 60601  
Facsimile: (312) 861-2200  
Attention: James H. M. Sprayregen, Esquire  
Carter W. Emerson, P.C.

(b) if to the Buyer, to:

Teligent Acquisition Corp.  
Suite 700  
1001 Nineteenth Street, North  
Arlington, Virginia 22209  
Facsimile: (703) 312-9655  
Attention: Joseph E. Statter

with copies to:

Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, New York 10166  
Facsimile: (212) 351-4035



Attention: James P. Ricciardi, P.C.

and

Gibson, Dunn & Crutcher LLP  
1050 Connecticut Ave., NW  
Washington, D.C. 20036-5306  
Facsimile: (202) 467-0539  
Attention: Howard B. Adler, Esq.

and

Friedman, Billings, Ramsey & Co.  
Suite 700  
1001 Nineteenth Street, North  
Arlington, Virginia 22209  
Facsimile: (703) 312-9655  
Attention: William Ginivan, Esq.

**Section 10.6 *Assignment.*** This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns and with respect to any of the Sellers, any entity that may succeed to substantially all the assets of such Seller, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any party hereto, including by operation of law, without the prior written consent of the other party, nor is this Agreement intended to confer upon any other Person except the parties hereto any rights or remedies hereunder. Any assignment of this Agreement or any of the rights, interests or obligations hereunder in contravention of this Section 10.6 shall be null and void and shall not bind or be recognized by any of the Sellers or the Buyer. Notwithstanding the foregoing, no provision of this Agreement shall create any third party beneficiary rights in any employee or former employee of any of the Sellers (including any beneficiary or dependent thereof) in respect of continued employment or resumed employment, and no provision of this Agreement shall create any rights in any such Persons in respect of any benefits that may be provided, directly or indirectly, under any employee benefit plan or arrangement except as expressly provided for thereunder.

**Section 10.7 *Governing Law.*** This Agreement shall be governed by and construed in accordance with the laws of the State of New York (regardless of the laws that might otherwise govern under applicable New York principles of conflicts of law) as to all matters, including but not limited to matters of validity, construction, effect, performance and remedies.

**Section 10.8 *Counterparts.*** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**Section 10.9 *Schedules and Exhibits.*** All Exhibits and Schedules referred to herein are intended to be and hereby are specifically made a part of this Agreement.

Section 10.10 *Entire Agreement*. This Agreement, the Confidentiality Agreement and the Exhibits, Schedules, documents, certificates and instruments referred to herein or therein, embody the entire agreement and understanding of the parties hereto in respect of the transactions contemplated by this Agreement. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or referred to herein or therein. It is expressly acknowledged and agreed that there are no restrictions, promises, representations, warranties, covenants or undertakings contained in any material made available to the Buyer pursuant to the terms of the Confidentiality Agreement. This Agreement supersedes all oral or written prior agreements and understandings between the parties with respect to such transactions other than the Confidentiality Agreement.

Section 10.11 *Bulk Sales or Transfer Laws*. The Buyer hereby waives compliance by the Sellers with the provisions of the bulk sales or transfer laws of all applicable jurisdictions.

Section 10.12 *Submission to Jurisdiction*. The parties hereto irrevocably submit to the exclusive jurisdiction of the Bankruptcy Court (or any court exercising appellate jurisdiction over the Bankruptcy Court) over any dispute arising out of or relating to this Agreement or any other agreement or instrument contemplated hereby or entered into in connection herewith or any of the transactions contemplated hereby or thereby and any such dispute shall be deemed to have arisen in the State of New York. Each party hereby irrevocably agrees that all claims in respect of such dispute or proceedings may be heard and determined in such dispute or proceedings may be heard and determined in such courts. The parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum in connection therewith.

Section 10.13 *No Strict Construction*. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

Section 10.14 *Remedies*. Subject to Section 10.3, the Sellers and the Buyer hereby acknowledge and agree that money damages may not be an adequate remedy for any breach or threatened breach of any of the provisions of this Agreement and that, in such event, the Sellers or their successors or assigns, or the Buyer or its successors or assigns, as the case may be, may, in addition to any other rights and remedies existing in their favor, apply to the Bankruptcy Court or any other court of competent jurisdiction for specific performance, injunctive and/or other relief in order to enforce or prevent any violations of this Agreement.

\* \* \* \* \*

IN WITNESS WHEREOF, the Sellers and the Buyer have caused this agreement to be signed by their respective duly authorized officers as of the date first above written.

**TELIGENT ACQUISITION CORP.**

By: /s/ Joseph E. Statter

Name: Joseph E. Statter

Title: President

**TELIGENT, INC.**

By: /s/ Terri B. Natoli

Name: Terri B. Natoli

Title: Vice President and Assistant Secretary

**TELIGENT LICENSE CO. I, L.L.C.**

By: /s/ Terri B. Natoli

Name: Terri B. Natoli

Title: Vice President and Assistant Secretary

**TELIGENT LICENSE CO. II, L.L.C.**

By: /s/ Terri B. Natoli

Name: Terri B. Natoli

Title: Vice President and Assistant Secretary

**TELIGENT SERVICES, INC.**

By: /s/ Terri B. Natoli

Name: Terri B. Natoli

Title: Vice President and Assistant Secretary

**TELIGENT OF VIRGINIA, INC.**

By: /s/ Terri B. Natoli

Name: Terri B. Natoli

Title: Vice President and Assistant Secretary

**QUADRANGLE INVESTMENTS, INC.**

By: /s/ Terri B. Natoli

Name: Terri B. Natoli

Title: Vice President and Assistant Secretary

**BACKLINK, L.L.C.**

By: /s/ Terri B. Natoli

Name: Terri B. Natoli

Title: Vice President and Assistant Secretary

**JTEL, L.L.C.**

By: /s/ Terri B. Natoli

Name: Terri B. Natoli

Title: Vice President and Assistant Secretary

**KATLINK, L.L.C.**

By: /s/ Terri B. Natoli

Name: Terri B. Natoli

Title: Vice President and Assistant Secretary

**TELIGENT TELECOMMUNICATIONS,  
L.L.C.**

By: /s/ Terri B. Natoli

Name: Terri B. Natoli

Title: Vice President and Assistant Secretary

**TELIGENT COMMUNICATIONS, L.L.C.**

By: /s/ Terri B. Natoli

Name: Terri B. Natoli

Title: Vice President and Assistant Secretary

All Exhibits may be obtained by visiting [www.bmccorp.net](http://www.bmccorp.net) or by calling Bankruptcy Management Corporation at (888) 909-0100

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re : Chapter 11  
TELIGENT, INC., et al.,<sup>1</sup> : Case No. 01-12974 (SMB)  
: Jointly Administered  
Debtors. :  
-----X

**ORDER PURSUANT TO SECTIONS 105(a), 363, 365 AND 1146(c) OF THE  
BANKRUPTCY CODE (A) AUTHORIZING THE SALE OF SUBSTANTIALLY  
ALL OF THE ASSETS OF TELIGENT, INC., AND CERTAIN DOMESTIC  
SUBSIDIARIES TO TELIGENT ACQUISITION CORP. FREE AND CLEAR OF  
ALL LIENS, CLAIMS AND ENCUMBRANCES; (B) APPROVING THE ASSET  
PURCHASE AGREEMENT WITH TELIGENT ACQUISITION CORP.; AND  
(C) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF  
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Upon the motion dated August \_\_\_\_, 2001 (the "Motion")<sup>2</sup> of the above-captioned debtors and debtors in possession for entry of an order under 11 U.S.C. §§ 105, 363, 365 and 1146(c), and Fed. R. Bankr. P. 2002, 6004 and 6006, (A) authorizing the sale of substantially all of the assets of Teligent, Inc. and certain domestic subsidiaries (the "Teligent Assets") to Teligent Acquisition Corp. ("Buyer"), free and clear of all liens, claims and encumbrances, (B) approving that

<sup>1</sup> The Debtors are the following entities: Teligent, Inc.; Teligent Services, Inc.; American Long Lines, Inc.; Association Communications, Inc.; Auctel, Inc.; BackLink, L.L.C.; Easton Telecom Services, Inc.; Executive Conference, Inc.; FirstMark Communications, Inc.; InfiNet Telecommunications, Inc.; JTel, L.L.C.; KatLink, L.L.C.; OMC Communications, Inc.; Quadrangle Investments, Inc.; Telecommunications Concepts, Inc.; Teligent Communications, L.L.C.; Teligent License Co. I, L.L.C.; Teligent License Co. II, L.L.C.; Teligent of Virginia, Inc.; Teligent Professional Services, Inc.; and Teligent Telecommunications, L.L.C.

<sup>2</sup> Except as otherwise defined herein, all capitalized terms used herein shall have the same meanings ascribed to them in the Motion.



certain Asset Purchase Agreement between Teligent, Inc., Teligent Services, Inc., BackLink, L.L.C., JTel, L.L.C., Teligent Licenses Co. I, L.L.C., Teligent License Co. II, L.L.C., Teligent of Virginia, Inc., KatLink, L.L.C., Teligent Telecommunications, L.L.C., Teligent Communications, L.L.C. and Quadrangle Investments, Inc. (collectively, the "Sellers") and Buyer, dated as of August \_\_, 2001 and related documents (collectively, the "Purchase Agreement"), and (C) authorizing the assumption and assignment of certain executory contracts and unexpired leases (the "Sale Motion"); and the Court having determined that the relief requested in the Sale Motion is in the best interests of the Sellers, their estates, their creditors and other parties in interest; and upon the record of the hearing (the "Sale Hearing") to approve the Sale Motion; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

**FOUND, CONCLUDED AND DECLARED THAT:<sup>3</sup>**

A. This Court has jurisdiction over this matter and over the property of the Sellers and their respective bankruptcy estates pursuant to 28 U.S.C. §§ 157(a) and 1334(b).

B. This proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M), (N) and (O).

C. As evidenced by the affidavits of service and publication filed with the Court, and based on the representations of counsel at the Sale Hearing, good and sufficient notice of the the Bid Procedures Order, the Sale Motion, the Purchase Agreement and the Notice of Auction has been given, was in accordance with the Bid Procedures Order and is in compliance with Rules 2002, 6004,

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<sup>3</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate, pursuant to Fed. R. Bankr. P. 7052.

6006 and 9014 of the Federal Rules of Bankruptcy Procedure. No additional or further notice is required.

D. As demonstrated by (i) the testimony and other evidence proffered or adduced at the Sale Hearing and (ii) the representations of counsel made on the record at the Sale Hearing, the marketing efforts and a competitive sale process, including (a) the marketing of the Teligent Assets by the Sellers and their advisors and (b) the seeking of higher and better offers for the Teligent Assets through notice of the Sale Motion and pursuant to a public auction conducted on [\_\_\_\_\_], the Sellers have afforded interested prospective purchasers a full, fair and reasonable opportunity to make higher and better offers for the Teligent Assets.

E. At the Sale Hearing, the Sellers reported that the Buyer made the highest and best offer for the Teligent Assets.

F. The offer by the Buyer to purchase the Teligent Assets contained in the Purchase Agreement, and confirmed at the auction, represents the highest and best offer for the Teligent Assets.

G. The Sellers have exercised sound and considered business judgment in deciding to enter into the Purchase Agreement and to sell the Teligent Assets to Buyer in accordance with the Purchase Agreement.

H. The Sellers have demonstrated both (i) good, considered and sound business purpose and justification, and (ii) sufficient and compelling circumstances for the sale pursuant to 11 U.S.C. § 363(b) prior to, and outside of, a plan of reorganization in that, among other things:

1. The timing of the sale is of such importance that the Buyer has conditioned its obligation to consummate the transaction upon an order approving the sale being entered prior to October 31, 2001.

2. The Sellers and their advisors diligently and in good faith marketed the Teligent Assets in order to be assured that the highest and best offer had been secured therefor. In addition, on August \_\_\_\_, 2001, the Sellers sent notice of the Bid Procedures Order, the Sale Motion, the Purchase Agreement and Notice of Auction to, among others, each of the entities known to the Sellers to have previously expressed an interest in the Teligent Assets. On August \_\_\_\_, 2001, the Sellers caused the publication of a notice in substantially the form of the Publication Notice in the national editions of the Wall Street Journal and the New York Times.

3. A sale of the Teligent Assets at this time pursuant to 11 U.S.C. § 363(b) is wholly consistent with the Sellers' chapter 11 business strategy, and will maximize the value of the Sellers' estates for the benefit of all parties involved. Delaying approval of the sale to Buyer may result in the termination of the Purchase Agreement by the Buyer, thereby forcing the Sellers to seek alternative transactions which, to date, have promised far less value for creditors.

I. A reasonable opportunity to object or be heard with respect to the Sale Motion and the relief requested therein has been afforded to all interested parties, including, but not limited to: (i) the Creditor's Committee; (ii) the Administrative Agent for the prepetition lenders; (iii) the Office of the United States Trustee; (iv) all entities (or counsel therefor) known to have asserted any lien, claim or encumbrance of any kind on the Teligent Assets; (v) all federal, state and local regulatory or taxing authorities which the Sellers reasonably know to have an interest in the Teligent

Assets; (vi) all parties who have expressed a bona fide interest in acquiring the Teligent Assets; and (vii) those parties who have requested notice pursuant to Fed. R. Bankr. P. 2002.

J. The Buyer is not an "insider" of any of the Sellers, as that term is defined in 11 U.S.C. § 101.

K. The Sellers and Buyer negotiated the Purchase Agreement at arms-length and in good faith, without collusion. The Buyer is a good faith purchaser and is entitled to the protections of 11 U.S.C. § 363(m). Buyer will be acting in good faith within the meaning of 11 U.S.C. § 363(m) at all times after the entry of this Order in closing the transactions contemplated by the Purchase Agreement.

L. Neither the Sellers nor the Buyer has engaged in any conduct which would cause or permit the Purchase Agreement or the transactions contemplated thereunder to be avoided or challenged pursuant to 11 U.S.C. § 363(n).

M. The Purchase Price is fair and reasonable and constitutes fair and adequate consideration for the Teligent Assets.

N. The highest and best price for the Teligent Assets is represented by the Purchase Price under the Purchase Agreement and it is therefore in the best interest of the Sellers, their respective creditors, and their respective estates that the Court enter this order (the "Sale Order") authorizing, under sections 105, 363, 365 and 1146 of the Bankruptcy Code, (1) the Sellers who are party to the Purchase Agreement to enter into and comply with the terms and conditions of the Purchase Agreement; (2) the sale of the Teligent Assets to the Buyer, free and clear of (a) all mortgages, security interests, conditional sale or other title retention agreements, pledges, liens, judgments, demands, encumbrances, easements, restrictions or charges of any kind or nature, if

any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership including all "interests" in the Teligent Assets within the meaning of section 363(f) of the Bankruptcy Code (the foregoing collectively referred to herein as "Liens") and (b) all debts arising in any way in connection with any acts or omissions of any of the Sellers, claims (as that term is defined in section 101(5) of the Bankruptcy Code) against the Sellers arising on or prior to the date of the closing of the sale under the Purchase Agreement (the "Closing") and obligations, demands, guaranties, options, rights, contractual commitments, restrictions, interests and matters of or against the Sellers of any kind and nature, whether arising prior to or subsequent to the commencement of these cases, whether matured or unmatured, liquidated or unliquidated, whether known or unknown and whether imposed by agreement, understanding, law, equity or otherwise, including, but not limited to, those of the kind specified in sections 502(g), 502(h) and 502(i) of the Bankruptcy Code (the foregoing collectively referred to herein as "Claims"), except as expressly provided in section 2.3 of the Purchase Agreement; and (3) Sellers, subject to the cure payment by Buyer in the amount set forth in section 2.5 of the Purchase Agreement and the remaining cure amounts paid by Sellers, to assume and assign to the Buyer, or its designees, the Assumed Agreements pursuant to the terms in the Purchase Agreement.

O. Sufficient cause has been shown to allow the sale of the Teligent Assets free and clear of all liens, claims and encumbrances, pursuant to 11 U.S.C. § 363(f).

P. The Sellers have, to the extent necessary, satisfied the requirements of 11 U.S.C. § 365(b)(1) in connection with the assumption of the Assumed Agreements. Each Assumed Agreement is an executory contract or an unexpired lease of the Sellers under 11 U.S.C.

§ 365. All conditions under 11 U.S.C. § 365 for the assumption by Sellers of each Assumed Agreement have been satisfied.

R. The decision to assume and assign the Assumed Agreements is based on the reasonable exercise of the Sellers' business judgment and is in the best interest of the Sellers' estates.

S. Buyer has demonstrated adequate assurance of future performance with respect to the Assumed Agreements.

T. Upon the issuance of this Sale Order (1) each of the Sellers has full corporate power and authority to execute and deliver the Purchase Agreement and all other documents contemplated thereby, including, without limitation, all documents necessary to assign the Assumed Agreements, and the sale of the Teligent Assets to the Buyer by the Sellers shall be deemed to have been duly and validly authorized by all necessary corporate action of the Sellers; (2) each of the Sellers has all the corporate power and authority necessary to consummate the transactions contemplated by the Purchase Agreement; and (3) other than those consents expressly provided for in the Purchase Agreement, no consents, approvals or orders are required for the Sellers to consummate the transactions contemplated by the Purchase Agreement.

U. As a condition to the purchase of the Teligent Assets by the Buyer, the Buyer requires that the Teligent Assets be sold free and clear of all Liens and Claims (except those specifically assumed by Buyer under section 2.3 of the Purchase Agreement), and that the Buyer has no liability for any liabilities of the Sellers (except those specifically assumed by the Buyer under section 2.3 of the Purchase Agreement). The Buyer would not enter into and consummate the sale, thus adversely affecting the Sellers' estates and their respective creditors and interfering with the Sellers' reorganization efforts, if the sale of the Teligent Assets to the Buyer were not free and clear

of all Liens and Claims against and in the Sellers and the Teligent Assets, other than as specifically provided in the Purchase Agreement, or if the Buyer were or would be liable for liabilities of the Sellers other than as specifically assumed by the Buyer or otherwise permitted under the Purchase Agreement.

V. The sale and transfer of the Teligent Assets and the assignment of the Assumed Agreements contemplated by the Purchase Agreement (1) are or will be legal, valid and effective transfers of property of the Sellers' estates to the Buyer, and (2) vest or will vest the Buyer with all right, title and interest of the Sellers in and to the Teligent Assets and Assumed Agreements free and clear of all Liens and Claims, other than as specifically provided in section 2.3 of the Purchase Agreement.

W. The Buyer will sustain irreparable damage and harm unless the injunctions specified in the ordering paragraphs below are entered. All the elements necessary for the imposition of these injunctions have been established.

The relief requested in the Motion is in the best interests of the Sellers, their estates and their creditors.

T. All findings of fact and conclusions of law made by the Court at the Sale Hearing are incorporated herein; and it is therefore

ORDERED that the Sale Motion is granted in all respects; and it is further

ORDERED that pursuant to 11 U.S.C. § 363(b), the Purchase Agreement, in substantially the form attached to the Sale Motion, is approved in all respects; and it is further

ORDERED that all objections to the Sale Motion that have not been overruled, withdrawn, waived or settled, and all reservation of rights included therein, are hereby denied on the merits; and it is further

ORDERED that pursuant to 11 U.S.C. § 363(b), the Sellers are hereby authorized (i) to sell the Teligent Assets to Buyer in accordance with and subject to the terms and conditions of the Purchase Agreement, (ii) to transfer and assign all right, title and interest to all property, licenses and rights to be conveyed in accordance with and subject to the terms and conditions of the Purchase Agreement to Buyer, (iii) to execute and deliver the Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement, and (iv) to take all further actions as may be reasonably requested by Buyer for the purposes of assigning, transferring, granting, conveying and conferring to Buyer the Teligent Assets, or as may be necessary or appropriate to the performance of the Sellers' obligations as contemplated by the Purchase Agreement; and it is further

ORDERED that pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Teligent Assets shall be transferred to the Buyer upon and effective as of the Closing (and receipt by the Sellers of the Purchase Price) and, except as expressly specified in section 2.3 of the Purchase Agreement, shall be free and clear of all Liens and Claims. All such Liens and Claims shall be released, terminated and discharged as to the Teligent Assets and shall attach to the Purchase Price paid by the Buyer in the order of their priority, with the same validity, force and effect they now have as against the Teligent Assets; and it is further

ORDERED that subject to the payment by Buyer to Sellers pursuant to 11 U.S.C. § 363 of the consideration provided for in the Purchase Agreement, the sale of the Teligent Assets



by Sellers to Buyer shall constitute a legal, valid and effective transfer of the Teligent Assets and shall vest Buyer with all right, title and interests of Sellers in and to the Teligent Assets; and it is further

ORDERED that except as expressly provided in the Purchase Agreement, neither the Buyer nor any of its affiliates are in any way assuming or becoming responsible for any liabilities of the Sellers, including any and all liabilities arising in connection with the Teligent Assets; and it is further

ORDERED that Buyer is a good-faith purchaser entitled to the protections of 11 U.S.C. § 363(m) and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the sale of the Teligent Assets will not affect the validity of the sale to Buyer, unless such authorization as granted herein is duly stayed pending such appeal prior to the Closing; and it is further

ORDERED that the Purchase Price for the Teligent Assets is fair and reasonable, constitutes reasonably equivalent value and fair consideration for the assets purchased and the transactions contemplated by the Purchase Agreement are not subject to challenge under 11 U.S.C. § 363(n); and it is further

ORDERED that the Sellers, including but not limited to their directors and officers, are hereby authorized and directed to take any and all actions necessary to effectuate and comply with the terms of the Purchase Agreement; and it is further

ORDERED that pursuant to 11 U.S.C. §§ 363(b), 363(f), 365(a), 365(b) and 365(f), the Sellers are authorized to assume and assign to Buyer the Assumed Agreements, together with any amendments and modifications to such Assumed Agreements without further order of this Court; and it is further

ORDERED that the Sellers shall pay all cure amounts payable to the counter parties to the Assumed Agreements in accordance with 11 U.S.C. § 365 and the Purchase Agreement as provided on Exhibit \_\_\_ hereto, which amounts shall be deemed to be the total cure obligations under each of the Assumed Agreements; provided that Buyer shall pay Sellers on account of such cure payments the amounts set forth in section 2.5 of the Purchase Agreement; and it is further

ORDERED that Buyer shall assume all obligations of the Sellers occurring after the Closing under the Assumed Agreements. Upon assumption and assignment of any Assumed Agreement, the Sellers and their estates shall be relieved of any liability for any breach of such Assumed Agreements occurring after such assumption and assignment in accordance with 11 U.S.C. § 365(k); and it is further

ORDERED that with the exception of any liabilities specifically assumed under the Purchase Agreement, all persons and entities holding Liens or Claims of any kind and nature against any of the Sellers or with respect to the Teligent Assets arising under or out of or in connection with or in any way relating to the Sellers, the operation of the Sellers' businesses prior to the Closing or the Teligent Assets, are hereby barred, estopped and permanently enjoined from asserting such Liens and Claims against the Teligent Assets or the Buyer, its successors, designees or assigns, or their respective affiliates, shareholders, members, officers, directors or trustees; and it is further

ORDERED that Buyer has provided adequate assurance of its future performance under the Assumed Agreements; and it is further

ORDERED that the Assumed Agreements, upon assignment to Buyer, shall and shall be deemed valid and binding, in full force and effect and enforceable by the Buyer in accordance with their respective terms, notwithstanding any provision of any Assumed Agreement (including those

of the type described in sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts or conditions such transfer and, pursuant to section 365(k) of the Bankruptcy Code, the Sellers shall be relieved from any further liability with respect to the Assumed Agreements after such assignment, and each non-Seller party to such Assumed Agreement shall be, and hereby is, barred, estopped and permanently enjoined from asserting any prior default thereon against the Sellers; and it is further

ORDERED that this Sale Order (a) is and shall be effective as a determination that, on the Closing Date and except as specially provided in the Purchase Agreement, all Liens and Claims existing on the Teligent Assets before the Closing have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected, and (b) is and shall be binding upon and govern the acts of all entities including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Teligent Assets; and it is further

ORDERED that if any person or entity that has filed financing statements, mortgages, mechanics liens, *lis pendens* or other documents or agreements evidencing Liens on or Claims against the Teligent Assets shall not have delivered to the Sellers prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, or releases of all Liens or other interests which the person or entity has with respect to the Teligent Assets or otherwise, each Seller is hereby authorized to execute and file

such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Teligent Assets, and Buyer is hereby authorized to file, register or otherwise record a certified copy of this Sale Order, which, once filed, registered or otherwise recorded, shall constitute evidence of the release of all Liens or Claims against or in the Teligent Assets of any kind or nature whatsoever; and it is further

ORDERED that all entities who are presently, or on the Closing Date may be, in possession of some or all of the Teligent Assets are hereby directed to surrender possession of said Teligent Assets to the Buyer on the Closing Date; and it is further

ORDERED that except as otherwise expressly provided in the Purchase Agreement or related instruments or as otherwise provided in this Sale Order, the Buyer shall have no liability or responsibility for any liability or other obligation of the Sellers arising under or related to the Teligent Assets. Without limiting the effect of the foregoing, the transfer of the Teligent Assets and the assignment of the Assumed Agreements do not and will not subject the Buyer to any liability for claims against any Seller or the Teligent Assets, including, but not limited to, claims for successor or vicarious liability, by reason of such transfer under the laws of the United States, any state, territory or possession thereof or the District of Columbia applicable to such transactions. The Buyer shall not be deemed, as a result of any action taken in connection with the Purchase Agreement, to: (a) be the successor of any of the Sellers; (b) have, *de facto* or otherwise, merged with or into any of the Sellers; (c) be a mere continuation or substantial continuation of any of the Sellers or the enterprise of any of the Sellers; or (d) be responsible for any liability of any of the Sellers or for payment of any benefit accruing to any of the Sellers, except as specifically provided for in the Purchase Agreement; and it is further

ORDERED that this Court retains jurisdiction (a) to enforce and implement the terms and provisions of the Purchase Agreement, all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith, (b) to compel delivery of the Teligent Assets to the Buyer, (c) to enforce the assumption and assignment of the Assumed Agreements, (d) to resolve any disputes arising under or related to the Purchase Agreement, and (e) to interpret, implement and enforce the provisions of this Sale Order; and it is further

ORDERED that nothing contained in any plan of reorganization (or liquidation) confirmed in these cases or the order of confirmation confirming any plan of reorganization (or liquidation), nor any order dismissing any case or converting it to a chapter 7 liquidation shall conflict with or derogate from the provisions of the Purchase Agreement, any document or instrument executed in connection therewith, or the terms of this Sale Order; and it is further

ORDERED that the Buyer is a purchaser of the Teligent Assets in good faith as determined in accordance with applicable law and is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code; and it is further

ORDERED that in the absence of a stay of this Sale Order, if the Buyer elects to close under the Purchase Agreement at any time after entry of this Sale Order, then, with respect to the Purchase Agreement, including the assumption and assignment of the Assumed Agreements approved and authorized herein, the Buyer shall be entitled to the protections of section 363(m) of the Bankruptcy Code if this Sale Order or an authorization contained herein is reversed or modified on appeal; and it is further

ORDERED that the failure specifically to include any particular provisions of the Purchase Agreement or any of the documents, agreements or instruments executed in connection therewith in this Sale Order shall not diminish or impair the efficacy of such provision, document, agreement or instrument, it being the intent of the Court that the Purchase Agreement and each such document, agreement or instrument be authorized and approved in its entirety; and it is further

ORDERED that the Purchase Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto in accordance with the terms thereof without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Sellers' estates; and it is further

ORDERED that Pursuant to Bankruptcy Rules 6004(g) and 7062, this Sale Order shall not be stayed for 10 days after entry and shall be effective and enforceable immediately upon entry; and it is further

ORDERED that this Order shall inure to the benefit of Buyer, Sellers and their respective successors and assigns, including but not limited to any chapter 11 or chapter 7 trustee that may be appointed in any of the Sellers' cases and shall be binding upon any trustee, party, entity or other fiduciary that may be appointed in connection with these cases, whether under chapter 7 or chapter 11 of the Bankruptcy Code; and it is further

ORDERED that pursuant to 11 U.S.C. § 1146(c), the transactions contemplated by the Agreement are under or in contemplation of a plan to be confirmed under 11 U.S.C. § 1129, and therefore, are exempt from any transfer, stamp or similar tax or any so-called "bulk-sale" law in all

necessary jurisdictions arising as a result of or in connection with Sellers' sale and transfer of the Teligent Assets to Buyer; and it is further

ORDERED that each and every federal, state and local governmental agency, department or entity is hereby directed to accept the filing of any and all documents and instruments necessary and appropriate to implement, effectuate or consummate the transactions contemplated by the Purchase Agreement and this Order; and it is further

ORDERED that notwithstanding any provision of the Bankruptcy Code or Bankruptcy Rules to the contrary, this Order shall be effective and enforceable immediately upon entry; and it is further

ORDERED that the provisions of this Order are nonseverable and mutually dependent; and it is further

ORDERED that nothing in this Order shall be construed as altering the Purchase Agreement or the obligations of the Sellers and Buyer pursuant thereto; and it is further

ORDERED that this Court shall retain exclusive jurisdiction to interpret, construe and enforce the terms of this Order and the Purchase Agreement in all respects.

Dated: New York, New York  
\_\_\_\_\_, 2001

\_\_\_\_\_  
Honorable Stuart M. Bernstein  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re : Chapter 11  
TELIGENT, INC., et al.,<sup>1</sup> : Case No. 01-12974 (SMB)  
: Jointly Administered  
Debtors. :  
-----X

**ORDER PURSUANT TO SECTIONS 105 AND 363 OF THE BANKRUPTCY CODE  
(A) AUTHORIZING THE DEBTORS TO CONDUCT AN AUCTION  
FOR THE SALE OF SUBSTANTIALLY ALL OF THE ASSETS OF TELIGENT, INC.,  
AND CERTAIN DOMESTIC SUBSIDIARIES FREE AND CLEAR OF LIENS,  
CLAIMS AND ENCUMBRANCES, (B) ESTABLISHING AND APPROVING  
BIDDING PROCEDURES INCLUDING, WITHOUT LIMITATION, CERTAIN  
BIDDER PROTECTIONS, (C) SCHEDULING DATES FOR THE AUCTION  
AND THE SALE HEARING, (D) ESTABLISHING PROCEDURES TO DETERMINE  
CURE OBLIGATIONS UNDER CERTAIN EXECUTORY CONTRACTS  
AND UNEXPIRED LEASES AND (E) APPROVING THE  
FORM AND MANNER OF NOTICE PURSUANT TO FED. R. BANKR. PROC. 2002**

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<sup>1</sup> The Debtors are the following entities: Teligent, Inc.; Teligent Services, Inc.; American Long Lines, Inc.; Association Communications, Inc.; Auctel, Inc.; BackLink, L.L.C.; Easton Telecom Services, Inc.; Executive Conference, Inc.; FirstMark Communications, Inc.; InfiNet Telecommunications, Inc.; JTel, L.L.C.; KatLink, L.L.C.; OMC Communications, Inc.; Quadrangle Investments, Inc.; Telecommunications Concepts, Inc.; Teligent Communications, L.L.C.; Teligent License Co. I, L.L.C.; Teligent License Co. II, L.L.C.; Teligent of Virginia, Inc.; Teligent Professional Services, Inc.; and Teligent Telecommunications, L.L.C.



Upon the motion, dated August 24, 2001 (the "Motion")<sup>2</sup> of the above-captioned debtors and debtors in possession, for entry of an order under 11 U.S.C. §§ 105 and 363, and Fed. R. Bankr. P. 2002 and 6004 (A) Authorizing the Debtors to Conduct an Auction for the Sale of Substantially all of the Assets of Teligent, Inc. and Certain Domestic Subsidiaries Free and Clear of all Liens, Claims and Encumbrances, (B) Establishing and Approving Bidding Procedures Including, Without Limitation, Certain Bidder Protections, (C) Scheduling Dates for the Auction and the Sale Hearing, (D) Establishing Procedures to Determine Cure Obligations under Certain Executory Contracts and Unexpired Leases and (E) Approving the Form and Manner of Notice Pursuant to Fed. R. Bankr. Proc. 2002; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest; and upon the record of the hearing held on August 30, 2001 (the "Bid Procedures Hearing"); and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

**FOUND, CONCLUDED AND DECLARED THAT:**

- A. This Court has jurisdiction over this matter and over the property of the Debtors and their respective bankruptcy estates pursuant to 28 U.S.C. §§ 157(a) and 1334(b).
- B. This proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M), (N) and (O).
- C. Good and sufficient notice of the relief sought in the Motion has been given and no further notice is required.

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<sup>2</sup> Except as otherwise defined herein, all capitalized terms used herein shall have the same meanings ascribed to them in the Motion.

D. As set forth on the record of the Bid Procedures Hearing, good and sufficient reasons have been given for (i) authorizing the Debtors to conduct the Auction according to the Bidding Procedures outlined in the Motion and substantially in the form of Exhibit A as attached to the Motion, (ii) approving the Break-Up Fee, Expense Reimbursement and the Overbid Requirement in favor of the Buyer, (iii) scheduling the Auction and Sale Hearing, (iv) establishing procedures to determine cure obligations under certain executory contracts and unexpired leases and (v) approving the form of notice for the Auction and the Sale Hearing to be distributed to creditors and other parties in interest, including prospective bidders, substantially in the form of Exhibit B as attached to the Motion (the "Notice of Auction") and the publication notice (the "Publication Notice") substantially in the form of the Notice of Auction.

E. The proposed Notice of Auction and Publication Notice are appropriate and reasonably calculated to provide all interested parties with timely notice of the Bidding Procedures, the Auction, and the Sale Hearing.

F. The proposed Bidding Procedures were specifically engineered to attract and maintain the interest of the Buyer, while at the same time preserving the opportunity to attract higher and better offers.

G. The Debtors have demonstrated a sound business justification for authorizing payment to the Buyer of the Break-Up Fee and the Expense Reimbursement in accordance with Section 7.15 of the Purchase Agreement, as modified by the record at the Bid Procedures Hearing.

H. Based on and subject to the record presented to the Court at the Bid Procedures Hearing, the Break-Up Fee and Expense Reimbursement are fair and reasonable, and were negotiated at arms-length, in good faith, and without collusion.

I. Payment by the Debtors of the Break-Up Fee, Expense Reimbursement and Overbid Requirement is necessary to ensure the continued interest of the Buyer in the Teligent Assets.

J. The Break-Up Fee, Expense Reimbursement and Overbid Requirement were material inducements for, and conditions of, Buyer's execution of the Purchase Agreement. If the Break-Up Fee, Expense Reimbursement and Overbid Requirement are not approved, the Debtors run a significant risk of losing the highest and best offer they have had to date for the Teligent Assets.

K. The Break-Up Fee and Expense Reimbursement represent significant new obligations of the Debtors, but are necessary and appropriate in light of the circumstances of these cases. These fees induced the Buyer to investigate the Teligent Assets, make a fair and informed bid for such assets, and provide a meaningful value threshold which all future bidding must exceed. In light of the foregoing, and in consideration of and subject to the record presented to the Court at the Bid Procedures Hearing, the Bidding Procedures, including the Break-Up Fee and Expense Reimbursement provisions, are fair and reasonable, reflecting the exercise of the Debtors' considered business judgment, and are reasonably required in order to maximize the value received for the sale of the Teligent Assets.

L. Entry of this Order is therefore in the best interests of the Debtors, their estates, and their creditors.

M. Based on the foregoing findings and conclusions, and in consideration of the record of the Sale Procedures Hearing, and good and sufficient cause appearing therefor; it is hereby

ORDERED that the relief requested in the Motion is granted as set forth and modified in all respects by the record of the Bid Procedures Hearing; and it is further

ORDERED that notice of the Bid Procedures Hearing was adequate and in accordance with the Bankruptcy Rules and the prior order of this Court; and it is further

ORDERED that all objections to the Motion which were not settled or withdrawn are hereby overruled; and it is further

ORDERED that the Bidding Procedures, including the Overbid Requirement, are hereby approved in all respects and incorporated herein; and it is further

ORDERED that the Debtors are authorized to conduct an Auction of the Teligent Assets on October 2, 2001 at 10:00 a.m. (Eastern Time) at the offices of Kirkland & Ellis, Citigroup Center, 153 East 53rd Street, New York, New York 10022-4675; and it is further

ORDERED that the Auction shall be conducted in accordance with the terms and provisions set forth in the Bidding Procedures; and it is further

ORDERED that the Debtors, at or before the Auction, may impose such other and additional terms and conditions as they determine to be in the best interests of the Debtors, their estates and creditors so long as such terms are not inconsistent with the terms of this Order or the Purchase Agreement; and it is further

ORDERED that all persons or entities who submit a Competing Offer for any Teligent Asset shall be deemed to have read and understood the terms and conditions of the Bidding Procedures and shall comply with and be bound by such Bidding Procedures; and it is further

ORDERED that the Bankruptcy Court shall retain exclusive jurisdiction over any dispute relating to the Auction or the sale of any of the Teligent Assets; and it is further

ORDERED that pursuant to the terms and conditions of Section 7.15 of the Purchase Agreement and as set forth on the record at the Bid Procedures Hearing, the Break-Up Fee and the Expense Reimbursement are hereby approved in all respects; and it is further

ORDERED that as set forth on the record at the Bid Procedures Hearing, any Break-up Fee and/or Expense Reimbursement payable pursuant to this Order and Section 7.15 of the Purchase Agreement approved by the Court shall be paid by the Sellers to the Buyer in accordance with Sections 7.15(a)(viii) and (ix) of the Purchase Agreement; and it is further

ORDERED that as set forth on the record at the Bid Procedures Hearing, any Break-up Fee and/or Expense Reimbursement payable pursuant to this Order and Section 7.15 of the Purchase Agreement approved by the Court shall constitute administrative expenses under sections 503(b)(1) and 507(a) of the Bankruptcy Code, with priority in payment over any and all other administrative expenses of the kinds specified or ordered pursuant to any provisions of the Bankruptcy Code; and it is further

ORDERED that the Sale Hearing shall be held on October 3, 2001, at 2:00 p.m. (Eastern Time) in the United States Bankruptcy Court, Southern District of New York, One Bowling Green, New York, New York 10004-1408, at which time the Court will consider, *inter alia*, the results of the Auction; and it is further

ORDERED that the Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing; and it is further

ORDERED that the Cure Notice and Cure Procedures are hereby approved in all respects; and it is further

ORDERED that as set forth on the record of the Bid Procedures Motion the Notice of Auction and Publication Notice are hereby approved. Notice of the Sale Motion and the Sale Hearing shall be good and sufficient, and any requirements for other or further notice are waived and dispensed with pursuant to Bankruptcy Rules 2002, 6004, 6006, and 9014, if such notice is given as follows:

On or before September 5, 2001 (the "Mailing Date") the Debtors will have served the Sale Motion, the Purchase Agreement (without exhibits or schedules), the proposed Sale Order, the Notice of Auction, the Cure Notice and the Bidding Procedures Order by first-class mail upon (i) counsel to the Creditors' Committee; (ii) counsel to the Administrative Agent for the Prepetition Lenders; (iii) the United States Trustee; (iv) all entities (or counsel therefor) known to have asserted any lien, claim, charge or encumbrance on the Teligent Assets; (v) all federal, state and local regulatory or taxing authorities which are reasonably ascertainable by the Debtors to have a known interest in the Teligent Assets; (vi) the counter parties to the Assumed Agreement; (vii) all parties who have expressed an interest in acquiring the Teligent Assets; and (viii) those parties who have requested notice pursuant to Fed. R. Bankr. P. 2002. Within 5 days after the Mailing Date, the Debtors propose to cause notice in substantially the form of the Publication Notice to be published once in the national editions of the Wall Street Journal and the New York Times; and it is further

ORDERED that as set forth and modified on the record of the Bid Procedures Hearing, objections to the entry of the Sale Order, if any, must (a) be in writing, (b) conform to the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules of the United States Bankruptcy Court for the Southern District of New York, (c) set forth the name of objector, the nature of the objector's claims against or interests in the Debtors' estates or property, and the legal and factual basis for the objection, and (d) be filed with the Court and served so as to be received on or before 5 p.m. September 21, 2001 by (i) counsel to the Debtors, Kirkland & Ellis, 200 E. Randolph Dr., Chicago, Illinois 60601, Attention: James H.M. Sprayregen and Matthew N. Kleiman; (ii) counsel to the Buyer, Gibson, Dunn &

Crutcher LLP, 200 Park Avenue, New York, New York 10166-0193, Attention: James P. Ricciardi; (iii) counsel for the Creditors' Committee, Milbank, Tweed, Hadley & McCloy LLP, Attention: Susheel Kirpalani, One Chase Manhattan Plaza, New York, New York 10005-1413; (iv) counsel to the Administrative Agent for the Prepetition Lenders, Simpson, Thacher & Bartlett, 425 Lexington Avenue, New York, New York 10017-3954, Attention: Steven M. Fuhrman; and (v) the Office of the United States Trustee, 33 Whitehall Street, 12st Floor, New York, New York 10004, Attention: Paul Schwartzberg; and it is further

ORDERED that the Debtors are hereby authorized and empowered to take such steps, expend such sums of money, and do such other things as may be necessary to implement and effect the terms and requirements consistent with this Order; and it is further

ORDERED that this Court shall retain jurisdiction to interpret, construe and enforce the terms and provisions of this Order in all respects, including without limitation, to decide any disputes arising between the Debtors, the Buyer and any potential bidders, with respect thereto.

Dated: New York, New York  
August 30, 2001

/s/ Stuart M. Bernstein  
Honorable Stuart M. Bernstein  
United States Bankruptcy Judge

James H.M. Sprayregen (JS-7757)  
Lena Mandel (LM-3769)  
KIRKLAND & ELLIS  
Citigroup Center  
153 East 53<sup>rd</sup> Street  
New York, New York 10022-4675  
(212) 446-4800

and

Matthew N. Kleiman (MK-3828)  
Anup Sathy (AS-4915)  
KIRKLAND & ELLIS  
200 E. Randolph St.  
Chicago, Illinois 60601  
(312) 861-2000

Counsel for Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re	:	Chapter 11
TELIGENT, INC., et al., <sup>1</sup>	:	Case No. 01-12974 (SMB)
	:	Jointly Administered
Debtors.		

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### DEBTORS' BIDDING PROCEDURES

These Bidding Procedures set forth the process by which the Debtors are authorized to conduct a sale by auction (the "Auction") of certain of their assets. These Bidding Procedures were approved by order dated August 30, 2001 (the "Bid Procedures Order") of the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") (in which the Debtors' jointly administered chapter 11 bankruptcy cases, No. 01-12974 (SMB), are pending) pursuant to the motion of the Debtors for Entry of an Order (A) Authorizing the Debtors to Conduct an Auction for the Sale of Substantially all of the Assets of Teligent, Inc. and Certain Domestic Subsidiaries Free and Clear of all Liens, Claims and Encumbrances, (B) Establishing and Approving Bidding Procedures Including, Without Limitation, Certain Bidder Protections, (C) Scheduling Dates for the Auction and the Sale Hearing, (D) Establishing Procedures to Determine Cure Obligations Under Certain Executory Contracts and Unexpired Leases and (E) Approving the Form and Manner of Notice Pursuant to Fed. R. Bankr. Proc. 2002.

On August 23, 2001, the Sellers entered into an asset purchase agreement, as amended and restated on September 5, 2001 (the "Purchase Agreement") with Teligent Acquisition Corp., ("TAC") for the sale of substantially all of the Teligent Assets (defined below), subject to higher and better offers.

#### 1. Assets to be Sold.

The Debtors propose these Bidding Procedures whereby prospective bidders, if any, may qualify for and participate in the Auction, thereby competing to make the highest and best offer for substantially all of the assets (collectively, the "Teligent Assets") of the following entities: Teligent, Inc., Teligent License Co I, L.L.C., Teligent License Co. II, L.L.C., Teligent Services, Inc., Teligent of Virginia, Inc., Quadrangle Investments, Inc., BackLink, L.L.C.,

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<sup>1</sup>The Debtors are the following entities: Teligent, Inc.; Teligent Services, Inc.; American Long Lines, Inc.; Association Communications, Inc.; Auctel, Inc.; BackLink, L.L.C.; Easton Telecom Services, Inc.; Executive Conference, Inc.; FirstMark Communications, Inc.; InfiNet Telecommunications, Inc.; JTel, L.L.C.; KatLink, L.L.C.; OMC Communications, Inc.; Quadrangle Investments, Inc.; Telecommunications Concepts, Inc.; Teligent Communications, L.L.C.; Teligent License Co. I, L.L.C.; Teligent License Co. II, L.L.C.; Teligent of Virginia, Inc.; Teligent Professional Services, Inc.; and Teligent Telecommunications, L.L.C.



JTel, L.L.C., KatLink, L.L.C., Teligent Telecommunications, L.L.C., and Teligent Communications, L.L.C. (collectively, the "Sellers").

2. Notice of Auction.

On September 5, 2001, the Debtors will transmit a notice of the proposed sale of the Teligent Assets by Auction (the "Notice of Auction") by postage prepaid, first-class U.S. mail, hand-delivery, telecopy, or overnight courier, to: (i) counsel to the Creditors' Committee; (ii) counsel to the Administrative Agent for Prepetition Lenders; (iii) the United States Trustee; (iv) all entities (or counsel therefor) known to have asserted any lien, charge, claim or encumbrance on the Teligent Assets; (v) all federal, state and local regulatory or taxing authorities which are reasonably ascertainable by the Debtors to have a known interest in the Teligent Assets; (vi) all parties who have expressed an interest in acquiring the Teligent Assets; and (vii) those parties who have requested notice pursuant to Fed. R. Bankr. P. 2002. The Debtors will include with the Notice of Auction a copy of the Purchase Agreement (without exhibits or schedules) and the Bid Procedures Order. In addition, on or before September 10, 2001, the Debtors propose to cause notice in substantially the form of the Notice of Auction to be published in the national editions of the Wall Street Journal and the New York Times.

3. Confidentiality Agreement and Selection of Bidders.

Potential bidders (the "Bidders") for the Teligent Assets may be required to complete and execute a confidentiality agreement and provide the Debtors with information about their financial qualifications and any other information the Debtors may reasonably request. When making a bid for the Teligent Assets (a "Competing Offer"), all such bidders must abide by the various Bidding Procedures outlined herein. Only those bids which are in material compliance (in the Debtors' discretion) with the Bidding Procedures (a "Qualified Competing Offer") will be eligible for consideration at the Auction. As appropriate, the Debtors shall require Bidders to present satisfactory financial qualifications before such Bidder may be deemed to have submitted a Qualified Competing Offer.

4. Asset Purchase Agreement and Due Diligence.

All competing offers, to be eligible for the Auction, must, *inter alia*, be submitted in substantially the same form as the above mentioned Purchase Agreement, with all alterations thereto clearly marked. Upon execution of a confidentiality agreement, the Sellers will provide reasonable access to Sellers' books, records and executives to Bidders for the purpose of conducting due diligence prior to the Auction. By participating in the Auction, all Bidders are deemed to acknowledge that they have had sufficient and reasonable access to the Sellers' books, records and executives for the purposes of conducting due diligence and opportunity to conduct such due diligence.

5. Submission of Bids.

By virtue of having executed the Purchase Agreement, TAC will participate in the Auction with respect to the Teligent Assets. In order to become a Qualified Competing Offer, a Bidder submitting a Competing Offer must, among other things, comply with all of the following provisions of this Section 5:

(a) Any Bidder desiring to qualify for participation in the Auction must deliver its Competing Offer in writing to: (i) Debtors' undersigned counsel at its respective specified addresses; (ii) counsel to the Administrative Agent for the Prepetition Lenders, Simpson, Thacher & Bartlett, 425 Lexington Avenue, New York, New York 10017-3954, Attention: Steven M. Fuhrman; and (iii) counsel to the Creditors' Committee, Milbank, Tweed, Hadley & McCloy, Attention: Susheel Kirpalani, such that the Competing Offer is actually received by each of the foregoing persons not later than 4:00 p.m., New York Time, on September 28, 2001. Competing Offers received after this deadline may be rejected in the discretion of the Debtors.

(b) Unless the Debtors otherwise determine, a Competing Offer must consist of (i) an executed version of the Purchase Agreement with marked alterations, if desired; (ii) a money deposit (the "Deposit") equal to 5% of the total proposed purchase price (based upon the total of cash and non-cash consideration) in the form of a certified or cashier's

check made payable to Teligent, Inc. (the certified or cashier's check must be delivered to the Debtors' undersigned counsel); and (iii) the information specified in the following paragraphs.

(c) To be considered, Competing Offers must (unless otherwise determined by the Debtors): (i) clearly state the portion of consideration to be paid in cash and the portion to be paid in any other form of value; (ii) provide such information as to permit the Debtors to accurately assess the value of such consideration, if any consideration is to be provided in a form other than cash; (iii) give sufficient indicia that the Bidder or its representative is legally empowered, by power of attorney or otherwise, and financially capable, to both bid on behalf of the Bidder and also to complete and sign, on behalf of the Bidder, a binding and enforceable asset purchase agreement; (iv) not contain any contingencies materially greater than what is in the Purchase Agreement; and (v) identify each and every executory contract or unexpired lease the assumption and assignment of which is a condition to closing.

(d) If a Competing Offer is conditioned on the assumption and assignment of any executory contract or unexpired lease, the Competing Offer must include sufficient information to permit the Debtors to determine the proposed assignee's ability to comply with section 365 of the Bankruptcy Code (as applicable), including providing adequate assurance of such assignee's ability to perform in the future.

(e) Provided that TAC has shown Sellers satisfactory evidence that TAC has obtained the committed financing required under the Purchase Agreement, all Competing Offers must be in an amount in excess of \$126,500,000.

(f) Bidders and all other entities shall keep Competing Offers confidential, with access restricted to the Debtors, their lenders and the Creditors' Committee. Bids may be revealed to any other entity at the option of the Debtors. The Debtors may request additional information from a Bidder to evaluate the Bidder's ability to consummate a transaction and to fulfill its obligations in connection therewith, and such Bidder shall be obligated to provide such information.

#### 6. Auction and Selection of Winning Bid or Bids.

The Auction will be held at the offices of Kirkland & Ellis, Citigroup Center, 153 East 53rd Street, New York, New York 10022-4675, on October 2, 2001 at 10:00 a.m., New York Time, or such later date as the Debtors may determine (the "Auction"). For its Qualified Competing Offer to be considered, a Bidder(s) must appear in person at the Auction or through a duly authorized representative, unless alternative arrangements are made in advance with the Debtors. **If multiple Qualified Competing Offers are received, each such Bidder shall have the right to continue to improve its Qualified Competing Offers at the Auction.** Bidding will commence with the announcement of the highest Qualified Competing Offer, and will proceed in monetary increments to be determined by the Debtors. At the conclusion of the Auction, and subject to Bankruptcy Court approval following the Auction, the winning bid(s) will be selected by the Debtors from the Qualified Competing Offers (singular or plural, as appropriate, the "Winning Bid"); provided, however, the Debtors shall have the right, in their discretion, to reject any and all Qualified Competing Offers made at the Auction. Prior to the adjournment of the Auction, unless and to the extent otherwise agreed by the Debtors, each entity that makes a Winning Bid shall complete and sign all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which its respective Winning Bid was made.

#### 7. Sale Motion.

Any Qualified Competing Offer that is accepted by the Debtors at the Auction will be subject to approval by the Bankruptcy Court. Please be advised that the hearing to approve the Purchase Agreement or such other Winning Bid accepted by the Debtors at the Auction will be held on October 3, 2001, at 2:00 p.m., New York Time, before the Honorable Stuart M. Bernstein, United States Bankruptcy Judge, One Bowling Green, New York, New York 10004-1408 (the "Sale Hearing").

8. Closing.

The closing of the sale of the Teligent Assets to such entity that submitted a Winning Bid will occur in accordance with the terms of the executed Purchase Agreement or other asset purchase agreement.

9. Failure to Consummate Purchase.

If for any reason the party making the Winning Bid fails to consummate a sale of the Teligent Assets, or any part thereof, the offeror of the second highest and best Qualified Competing Offer for any of the same Teligent Assets will automatically be deemed to have submitted the highest and best Qualified Competing Offer. If such failure to consummate the purchase is the result of a breach by the Winning Bidder, such breaching party's Deposit shall be forfeited to the Debtors, and the Debtors specifically reserve the right to seek all available damages from the defaulting bidder.

10. Return of Deposits.

After the Sale Hearing, if the Winning Bid has been approved by the Bankruptcy Court, the Deposits of the other bidders who did not submit the Winning Bid shall be returned.

11. Reservation of Rights: Deadline Extensions.

The Debtors reserve their rights to: (i) impose, at or prior to the Auction, additional terms and conditions on a sale of the Teligent Assets consistent with the Bid Procedures Order; (ii) extend the deadlines set forth in the Auction Procedures, adjourn the Auction at the Auction, and/or adjourn the Sale Hearing in open court without further notice; (iii) withdraw from the Auction any or all of the Teligent Assets at any time prior to or during the Auction or cancel the Auction; and (iv) to reject all Qualified Competing Offers, if in the Debtors' reasonable judgment no bid is for a fair and adequate price.

Dated: New York, New York  
September 5, 2001

Respectfully submitted,

KIRKLAND & ELLIS  
James H.M. Sprayregen (JS-7757)  
Lena Mandel (LM-3769)  
Citigroup Center  
153 East 53<sup>rd</sup> Street  
New York, New York 10022  
(212) 446-4800

and

KIRKLAND & ELLIS  
Matthew N. Kleiman (MK-3828)  
Anup Sathy (AS-4915)  
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Counsel for the Debtors and Debtors in Possession

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Counsel for Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re : Chapter 11  
TELIGENT, INC., et al.,<sup>1</sup> : Case No. 01-12974 (SMB)  
: Jointly Administered  
Debtors. :  
-----X

**NOTICE OF POTENTIAL ASSUMPTION AND ASSIGNMENT OF  
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

PLEASE TAKE NOTICE that the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), by and through their undersigned counsel, have filed a motion (the "Sale Motion") for entry of an Order (the "Sale Order"): (a) authorizing the sale of substantially all of the assets (the "Teligent Assets") of (i) Teligent, Inc. and (ii) certain subsidiaries of Teligent, Inc.<sup>2</sup> (collectively, with Teligent, Inc., the "Sellers"), to Teligent Acquisition Corp., (the "Buyer"), free and clear of all liens, claims and encumbrances, and subject to higher and better offers; (b) approving that certain asset purchase agreement with Buyer (the "Purchase Agreement"); and (c) authorizing the assumption and assignment of certain executory contracts and unexpired leases identified in the Purchase Agreement (collectively, as amended the "Assumed Agreements"). A final hearing on the relief requested in the Sale Motion is set for 2:00 p.m., New York Time, on October 3, 2001, United States Bankruptcy Court, One Bowling Green, New York, New York 10004-1408, before the Honorable Stuart M. Bernstein, United States Bankruptcy Judge (the "Sale Hearing"). The Sale Hearing may be adjourned in open court from time to time, without further notice.

PLEASE TAKE FURTHER NOTICE that in connection with the proposed sale and pursuant to the Sale Motion, the Sellers may seek to assume and assign to the Buyer, or a higher and better purchaser, the Assumed

<sup>1</sup> The Debtors are the following entities: Teligent, Inc.; Teligent Services, Inc.; American Long Lines, Inc.; Association Communications, Inc.; Auctel, Inc.; BackLink, L.L.C.; Easton Telecom Services, Inc.; Executive Conference, Inc.; FirstMark Communications, Inc.; InfiNet Telecommunications, Inc.; JTel, L.L.C.; KatLink, L.L.C.; OMC Communications, Inc.; Quadrangle Investments, Inc.; Telecommunications Concepts, Inc.; Teligent Communications, L.L.C.; Teligent License Co. I, L.L.C.; Teligent License Co. II, L.L.C.; Teligent of Virginia, Inc.; Teligent Professional Services, Inc.; and Teligent Telecommunications, L.L.C.

<sup>2</sup> The domestic subsidiaries whose assets comprise the Teligent Assets are: Teligent, Inc.; Teligent Services, Inc.; BackLink, L.L.C.; JTel, L.L.C.; KatLink, L.L.C.; Teligent Telecommunications, L.L.C.; Teligent Communications, L.L.C.; Teligent License Co. I, L.L.C.; Teligent License Co. II, L.L.C.; Teligent of Virginia, Inc.; and Quadrangle Investments, Inc. The assets of the other Debtors are not being sold under the Purchase Agreement.

Agreement(s) set forth on the attached schedule ("Schedule"). The Sellers reserve the right to remove Assumed Agreements from the Schedule pursuant to the Purchase Agreement. The Sellers propose that solely the Buyer's promise to perform under such contract or lease will constitute adequate assurance of future performance under such contract or lease pursuant to 11 U.S.C. § 365(b).

PLEASE TAKE FURTHER NOTICE that the proposed cure amounts, within the meaning of 11 U.S.C. § 365, for the Assumed Agreement(s), which are based on the Sellers' books and records, are set forth in the attached Schedule.

PLEASE TAKE FURTHER NOTICE that any objection to the cure amount set forth on the Schedule or otherwise must: (a) be in writing; (b) conform to the requirements of the Bankruptcy Code, the Bankruptcy Rules and Local Rules of the United States Bankruptcy Court for the Southern District of New York; (c) set forth the name of objector, the nature of the objector's claims against or interests in the Sellers' estates or property, and the documents supporting the objection, and (d) be filed with the Court and served so as to be received on or before 5:00 p.m., New York Time, on September 21, 2001 upon (i) counsel to the Debtors, Kirkland & Ellis, 200 E. Randolph Dr., Chicago, Illinois 60601, Attention: James H.M. Sprayregen and Matthew N. Kleiman; (ii) counsel to the Buyer, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166-0193, Attention: James P. Ricciardi; (iii) counsel for the Creditors' Committee, Milbank, Tweed, Hadley & McCloy LLP, Attention: Susheel Kirpalani, One Chase Manhattan Plaza, New York, New York 10005-1413; (iv) counsel to the Administrative Agent for the Prepetition Lenders, Simpson, Thacher & Bartlett, 425 Lexington Avenue, New York, New York 10017-3954, Attention: Steven M. Fuhrman; and (v) the Office of the United States Trustee, 33 Whitehall Street, 12th Floor, New York, New York 10004, Attention: Paul Schwartzberg.

PLEASE TAKE FURTHER NOTICE that any objection must be served in such a manner that it is actually received prior to the deadline. Any objection not conforming to the foregoing will not be considered by the Court.

**PLEASE TAKE FURTHER NOTICE that if a counter party to the Assumed Agreement set forth on the Schedule does not object, then Sellers will request the Court to enter an order deeming the amount set forth on the Schedule to be the actual cure amount payable for such Assumed Agreement listed on the Schedule.**

New York, New York  
Dated: September 5, 2001

Respectfully submitted,

KIRKLAND & ELLIS  
James H.M. Sprayregen (JS-7757)  
Lena Mandel (LM-3769)  
Citigroup Center  
153 East 53<sup>rd</sup> Street  
New York, New York 10022  
(212) 446-4800

and

KIRKLAND & ELLIS  
Matthew N. Kleiman (MK-3828)  
Anup Sathy (AS-4915)  
200 East Randolph Drive  
Chicago, Illinois 60601  
(312) 861-2000

**ATTACHMENT TO NOTICE OF POTENTIAL  
ASSUMPTION AND ASSIGNMENT OF CERTAIN  
EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Notice ID # DE495

**FLORIDA PUBLIC SERVICE COMMISS  
2540 Shunnard Oak Blvd.  
Gerald Gunter Building  
Tallahassee, FL 32399-0850**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

**In Re Teligent, Inc., et al.  
Case No. 01- 12974 (SMB)  
(Jointly Administered)**

**NO CONTRACT IDENTIFIED, FOR NOTICE PURPOSES ONLY**