

TW TELECOM INC.
Filed by
LEVEL 3 COMMUNICATIONS INC

FORM 425

(Filing of certain prospectuses and communications in connection with business combination transactions)

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): **June 15, 2014**

Level 3 Communications, Inc.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other
jurisdiction of incorporation)

0-15658
(Commission File
Number)

47-0210602
(IRS employer
Identification No.)

1025 Eldorado Blvd., Broomfield, Colorado
(Address of principal executive offices)

80021
(Zip code)

720-888-1000
(Registrant's telephone number including area code)

Not applicable
(Former name and former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- ☒ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01. Entry Into a Material Definitive Agreement

Agreement and Plan of Merger

On June 15, 2014, Level 3 Communications, Inc., a Delaware corporation (the “Company” or “Level 3”), entered into an Agreement and Plan of Merger (the “Merger Agreement”) with Saturn Merger Sub 1, LLC, a Delaware limited liability company and a direct wholly owned subsidiary of the Company (“Merger Sub 1”), Saturn Merger Sub 2, LLC, a Delaware limited liability company and a direct wholly owned subsidiary of the Company (“Merger Sub 2”), and tw telecom inc., a Delaware corporation (“tw telecom”). Pursuant to the Merger Agreement, and subject to the satisfaction or waiver of the conditions set forth therein, Merger Sub 1 will be merged with and into tw telecom (the “Merger”) with tw telecom continuing as the surviving corporation and immediately following the Merger, the surviving corporation will merge with and into Merger Sub 2, with Merger Sub 2 continuing as the surviving company (the “Subsequent Merger” and together with the Merger, the “Combination”).

As a result of the Combination, (i) each issued and outstanding share of common stock of tw telecom, par value \$0.01 per share (“tw telecom Common Stock”), other than dissenting shares, will be converted into 0.7 shares (the “Stock Consideration”) of the Company’s common stock, par value \$0.01 per share (“Company Common Stock”) and the right to receive \$10.00 in cash (the “Cash Consideration” and, together with the Stock Consideration, the “Merger Consideration”). The Merger Agreement also provides that the (i) issued and outstanding options to purchase tw telecom Common Stock will be exchanged for Merger Consideration, as adjusted to reflect the exercise price of each such outstanding option and (ii) issued and outstanding restricted stock and restricted stock units covering tw telecom Common Stock will vest and be exchanged for Merger Consideration.

The Combination is intended to qualify as a tax-free reorganization for U.S. federal income tax purposes.

The Merger Agreement contains customary representations and warranties, including, among others, (i) representations and warranties by tw telecom regarding tw telecom’s corporate organization and capitalization, the accuracy of tw telecom’s reports and financial statements filed under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and the absence of certain changes or events relative to tw telecom and its subsidiaries since December 31, 2013 and (ii) representations and warranties by the Company, Merger Sub 1 and Merger Sub 2 regarding their corporate or limited liability company organization, as applicable, the Company’s capitalization, the accuracy of the Company’s reports and financial statements filed under the Exchange Act, the absence of certain changes or events relative to the Company and its subsidiaries since December 31, 2013 and financing for the Combination.

The Merger Agreement contains customary covenants, including, among others, agreements by each of tw telecom and the Company to (i) continue conducting its respective businesses in the ordinary course, consistent with past practice and in compliance with applicable law during the interim period between the execution of the Merger Agreement and consummation of the Combination, (ii) not engage in certain specified kinds of transactions during that period and (iii) hold a meeting of its stockholders to vote upon, in the case of tw telecom’s stockholders, the approval and adoption of the Merger Agreement and the Combination, and, in the case of the Company’s stockholders, the approval of both the issuance of the Stock Consideration and the adoption of an amendment to Level 3’s Amended and Restated Certificate of Incorporation increasing the number of authorized shares of Company Common Stock (the “Level 3 Charter Amendment”). In addition, each of tw telecom and the Company has agreed that, subject to certain exceptions, its board of directors will recommend the approval and adoption of the Combination (in the case of tw telecom), and the approval of the issuance of the Stock Consideration and the adoption of the Level 3 Charter Amendment (in the case of the Company), by its stockholders. tw telecom and the Company have also made certain additional customary covenants, including, among others, not to (i) solicit or knowingly encourage inquiries or proposals relating to alternative business combination transactions or (ii) subject to certain exceptions, engage in discussions or negotiations regarding, or provide any non-public information in connection with, alternative business combination transactions.

The closing of the Combination is subject to certain conditions, including (i) the approval and adoption of the Merger Agreement and the Combination by tw telecom’s stockholders, (ii) the approval of the issuance of the Stock Consideration and the adoption of the Level 3 Charter Amendment by the Company’s stockholders, (iii) the expiration or termination of applicable waiting periods under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, (iv) receipt of certain regulatory and governmental approvals (including receipt of approval from the Federal Communications Commission), (v) there being no material adverse effect on the Company or tw telecom prior to the closing of the Combination and (vi) other customary conditions.

Either tw telecom or the Company may terminate the Merger Agreement if, among certain other circumstances, (i) the Combination has not become effective on or before March 16, 2015 (which may be extended to no later than June 15, 2015 if the required regulatory approvals have not been received by March 16, 2015) or (ii) tw telecom’s stockholders fail to approve the Combination or the Company’s stockholders fail to approve the issuance of the Stock Consideration and/or the adoption of the Level 3 Charter Amendment. In addition, tw telecom may terminate the Merger Agreement under certain other circumstances, including: (a) to allow tw telecom enter into a definitive agreement for an alternative business combination transaction that constitutes a “superior

proposal,” (b) if the Company’s board of directors withdraws or adversely changes its approval or recommendation of the issuance of the Stock Consideration or the adoption of the Level 3 Charter Amendment, or (c) if the Company fails to obtain the proceeds sufficient to pay the Cash Consideration and refinance tw telecom’s debt. The Company may terminate the Merger Agreement under certain other circumstances, including: (a) to allow the Company to enter into a definitive agreement for an alternative business combination transaction that constitutes a “superior proposal,” or (b) if tw telecom’s board of directors withdraws or adversely changes its approval or recommendation of the Combination.

The Merger Agreement also provides that (i) upon termination under specified circumstances, including, among others, a change in the recommendation of tw telecom’s board of directors or termination of the Merger Agreement by tw telecom to allow tw telecom to enter into a definitive agreement for an alternative business combination transaction that constitutes a “superior proposal,” tw telecom would be required to pay to the Company a termination fee of \$200 million and certain expenses incurred by the Company in pursuing the Combination and (ii) upon termination under specified circumstances, including, among others, a change in the recommendation of the Company’s board of directors or termination of the Merger Agreement by the Company to allow the Company to enter into a definitive agreement for an alternative business combination transaction that constitutes a “superior proposal,” the Company would be required to pay tw telecom a termination fee of \$350 million and certain expenses incurred by tw telecom in pursuing the Combination.

The Company would be obligated to pay to tw telecom a termination fee of \$450 million (the “Financing Fee”), if the Merger Agreement is terminated by tw telecom, all the conditions to tw telecom’s obligation to closing have been met and the Combination is not consummated because of the Company’s failure to obtain proceeds from the Lenders (as defined below) sufficient to pay the Cash Consideration and refinance tw telecom’s debt at the closing of the transaction.

Voting Agreement

In connection with the Merger Agreement, on June 15, 2014, STT Crossing Ltd. (“STT”), a stockholder of the Company, entered into a Voting Agreement with tw telecom and, solely with respect to certain covenants contained therein, the Company (the “Voting Agreement”), pursuant to which STT agreed, among other things, (i) subject to certain exceptions as set forth in the Voting Agreement, to vote the Company Common Stock held by it in favor of the adoption of the Level 3 Charter Amendment and the issuance of the Stock Consideration and (ii) to restrict its ability to transfer, sell or otherwise dispose of, grant proxy to or permit the pledge of or any other encumbrance on such Company Common Stock. In the event that the Merger Agreement is terminated, the Voting Agreement will also terminate.

Commitment Letter

Concurrently with the signing of the Merger Agreement, Level 3 Financing, Inc. and the Company entered into a financing commitment letter (the “Commitment Letter”) with Bank of America, N.A. (“Bank of America”), Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”), and Citigroup Global Markets Inc. (“CGMI” and, together with Bank of America and Merrill Lynch, the “Lenders”). The Company expects the financing under the Commitment Letter, together with cash balances, to be sufficient to provide the financing necessary to consummate the Combination and to refinance certain existing indebtedness of tw telecom. The Commitment Letter provides for a senior secured term loan facility in an aggregate amount of \$2.4 billion. The Commitment Letter also provides for a \$600 million senior unsecured bridge facility, if up to \$600 million of senior notes or certain other securities are not issued by Level 3 Financing, Inc. or the Company to finance the Combination on or prior to the closing of the Combination. Under certain circumstances, the committed amounts can be allocated from the senior facility to the bridge facility at the option of the Company. The financing commitments of Bank of America and CGMI are subject to certain conditions set forth in the Commitment Letter.

* * *

The foregoing discussion of the Merger Agreement, the Voting Agreement, and the Commitment Letter (the “Filed Documents”) does not purport to be complete and is qualified in its entirety by reference to the full text of (i) the Merger Agreement, a copy of which is attached to this Form 8-K as Exhibit 2.1; (ii) the Voting Agreement, a copy of which is attached to this Form 8-K as Exhibit 10.1; and (iii) the Commitment Letter, a copy of which is attached to this Form 8-K as Exhibit 10.2; which Merger Agreement, Voting Agreement, and Commitment Letter are incorporated in this Item 1.01 by reference.

Each of the Filed Documents has been included solely to provide investors and security holders with information regarding its terms. None are intended to be a source of financial, business or operational information about the Company, tw telecom or their respective subsidiaries or affiliates. The representations, warranties and covenants contained in the Filed Documents, respectively, are made only for purposes of such agreement and are made as of specific dates; are solely for the benefit of the parties; may be subject to

qualifications and limitations agreed upon by the parties in connection with negotiating the terms of the Filed Documents, respectively, including being qualified by confidential disclosures made for the purpose of allocating contractual risk between the parties instead of establishing matters as facts; and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors or security holders. Investors and security holders should not rely on the representations, warranties and covenants or any description thereof as characterizations of the actual state of facts or condition of the Company, tw telecom or their respective subsidiaries or affiliates. Moreover, information concerning the subject matter of the representations, warranties and covenants may change after the date of the Filed Documents, which subsequent information may or may not be fully reflected in public disclosures.

Important Information For Investors And Stockholders

This communication shall not constitute an offer to sell or the solicitation of an offer to buy any securities or a solicitation of any vote or approval. The proposed business combination of the Company and tw telecom will be submitted to the stockholders of the Company and the stockholders of tw telecom for their consideration. The Company will file a registration statement on Form S-4, and the Company and tw telecom will file a joint proxy statement/prospectus and other relevant documents concerning the proposed transaction with the SEC. The Company and tw telecom will each provide the final joint proxy statement/prospectus to its respective stockholders. Investors and security holders are urged to read the registration statement and the joint proxy statement/prospectus and any other relevant documents filed with the SEC when they become available, as well as any amendments or supplements to those documents, because they will contain important information about the Company, tw telecom and the proposed transaction. Investors and security holders will be able to obtain a copy of the registration statement and joint proxy statement/prospectus, as well as other filings containing information about the Company and tw telecom free of charge at the SEC's Web Site at <http://www.sec.gov>. In addition, the joint proxy statement/prospectus, the SEC filings that will be incorporated by reference in the joint proxy statement/prospectus and the other documents filed with the SEC by the Company may be obtained free of charge by directing such request to: Investor Relations, Level 3 Communications, Inc., 1025 Eldorado Boulevard, Broomfield, Colorado 80021 or from Level 3's Investor Relations page on its corporate website at <http://www.level3.com> and the joint proxy statement/prospectus, the SEC filings that will be incorporated by reference in the joint proxy statement/prospectus and the other documents filed with the SEC by tw telecom may be obtained free of charge by directing such request to: tw telecom by telephone at (303) 566-1000 or by submitting a written request to Legal Department, tw telecom inc., 10475 Park Meadows Drive, Littleton, Colorado 80124 or from tw telecom's Investor Relations page on its corporate website at <http://www.twtelecom.com>.

The Company, tw telecom and their respective directors, executive officers, and certain other members of management and employees may be deemed to be participants in the solicitation of proxies in favor of the proposed transactions from the stockholders of the Company and from the stockholders of tw telecom, respectively. Information about the directors and executive officers of the Company is set forth in the proxy statement on Schedule 14A for Level 3's 2014 Annual Meeting of Stockholders, which was filed with the SEC on April 11, 2014 and information about the directors and executive officers of tw telecom is set forth in the proxy statement for tw telecom's 2014 Annual Meeting of Stockholders, which was filed with the SEC on April 28, 2014. Additional information regarding participants in the proxy solicitation may be obtained by reading the joint proxy statement/prospectus regarding the proposed transaction when it becomes available.

Cautionary Statement Regarding Forward-Looking Statements

This document, including the documents incorporated herein by reference, contains "forward-looking statements" within the meaning of the safe harbor provisions of the U.S. Private Securities Litigation Reform Act of 1995, as amended. These forward-looking statements include, but are not limited to, (i) statements about the benefits of the acquisition of tw telecom by Level 3, including financial and operating results and synergy benefits that may be realized from the acquisition and the timeframe for realizing those benefits; (ii) Level 3's and tw telecom's plans, objectives, expectations and intentions; (iii) other statements contained in this communication that are not historical facts; and (iv) other statements identified by words such as "expects," "anticipates," "intends," "plans," "believes," "seeks," "estimates," "goal," "strategy," "future," "likely," "may," "should," "could," "will," and words of similar meaning or similar references to future periods.

Forward-looking statements are neither historical facts nor assurances of future performance. Instead, forward-looking statements are based only on current beliefs, assumptions, and expectations regarding the future of our business, including the effects of the proposed acquisition of tw telecom by Level 3, future plans and strategies, projections, anticipated events and trends, the economy and other future conditions. Because forward-looking statements relate to the future, they are inherently subject to significant business, economic and competitive uncertainties, risks, and contingencies, which may include third-party approvals, many of which are beyond our control and are difficult to predict. Therefore, readers of this communication are cautioned not to place undue reliance on these forward-looking statements that speak only as of the date hereof.

The following factors, among others, could cause our actual results and financial condition to differ materially from those expressed or implied in the forward-looking statements: (1) the occurrence of any event, change or other circumstances that could give rise to the termination of the Agreement and Plan of Merger among the Company, tw telecom, Saturn Merger Sub 1 and Saturn Merger Sub 2 (the "Merger Agreement"); (2) the inability to complete the transactions contemplated by the Merger Agreement due to the

failure to obtain the required stockholder approvals; (3) the inability to satisfy the other conditions specified in the Merger Agreement, including without limitation the receipt of necessary governmental or regulatory approvals required to complete the transactions contemplated by the Merger Agreement; (4) the inability to successfully integrate our business with tw telecom's business or to integrate the businesses within the anticipated timeframe; (5) the risk that the proposed transactions disrupt current plans and operations, increase operating costs and the potential difficulties in customer loss and employee retention as a result of the announcement and consummation of such transactions; (6) the ability to recognize the anticipated benefits of the combination of the Company and tw telecom, including the realization of revenue and cost synergy benefits and to recognize such benefits within the anticipated timeframe; (7) the outcome of any legal proceedings that may be instituted against Level 3, tw telecom or others following announcement of the Merger Agreement and transactions contemplated therein; and (8) the possibility that Level 3 or tw telecom may be adversely affected by other economic, business, and/or competitive factors.

Other important factors that may affect our business or the combined business' results of operations and financial condition include, but are not limited to: a discontinuation of the development and expansion of the Internet as a communications medium and marketplace for the distribution and consumption of data and video; continued uncertainty in the global financial markets and the global economy; disruptions in the financial markets that could affect our ability to obtain additional financing; and our ability to: increase revenue from the services we offer; successfully use new technology and information systems to support new and existing services; prevent process and system failures that significantly disrupt the availability and quality of the services that we provide; prevent our security measures from being breached, or our services from being degraded as a result of security breaches; develop new services that meet customer demands and generate acceptable margins; effectively manage expansions to our operations; provide services that do not infringe the intellectual property and proprietary rights of others; attract and retain qualified management and other personnel; and meet all of the terms and conditions of debt obligations.

Discussions of additional factors, risks, and uncertainties can be found within the Company's and tw telecom's respective filings with the Securities and Exchange Commission. Statements in this communication should be evaluated in light of these important factors, risks, and uncertainties. Any forward-looking statement made in this communication is based only on information currently available and speaks only as of the date on which it is made. Except for the ongoing obligation to disclose material information under the federal securities laws, neither the Company nor tw telecom undertake any obligation to, and each expressly disclaim any such obligation to, update, alter or otherwise revise any forward-looking statement, whether written or oral, that may be made from time to time to reflect new information, circumstances, events or otherwise that occur after the date such forward-looking statement is made unless required by law.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits. The following exhibits are filed herewith:

Exhibit #	Description
2.1	Agreement and Plan of Merger, dated as of June 15, 2014, by and among the Company, Merger Sub 1, Merger Sub 2 and tw telecom.
10.1	Voting Agreement, dated as of June 15, 2014, by and between tw telecom, STT and, solely for purposes of Sections 5, 9 and 10 thereof, the Company.
10.2	Commitment Letter, dated as of June 15, 2014, by and among Bank of America, N.A., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Citigroup Global Markets Inc., the Company and Level 3 Financing, Inc.

SIGNATURES

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

Level 3 Communications, Inc.

By: /s/ John M. Ryan
John M. Ryan
Executive Vice President, Chief Legal Officer and Secretary

Date: June 17, 2014

AGREEMENT AND PLAN OF MERGER

among

LEVEL 3 COMMUNICATIONS, INC,

SATURN MERGER SUB 1, LLC

SATURN MERGER SUB 2, LLC

and

TW TELECOM INC.

Dated as of June 15, 2014

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AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER, dated as of June 15, 2014 (this “Agreement”), among LEVEL 3 COMMUNICATIONS, INC., a Delaware corporation (“Parent”), SATURN MERGER SUB 1, LLC, a Delaware limited liability company and a direct Wholly Owned Subsidiary of Parent (“Merger Sub 1”), SATURN MERGER SUB 2, LLC, a Delaware limited liability company and a direct Wholly Owned Subsidiary of Parent (“Merger Sub 2”), and TW TELECOM INC., a Delaware corporation (the “Company”).

WITNESSETH:

WHEREAS, the respective Boards of Directors of Parent and the Company and the respective Boards of Managers of Merger Sub 1 and Merger Sub 2 have each approved and declared advisable the merger of Merger Sub 1 with and into the Company (the “Merger”), upon the terms and subject to the conditions set forth in this Agreement and in accordance with the applicable provisions of the General Corporation Law of the State of Delaware (the “DGCL”) and the Delaware Limited Liability Company Act (the “DLLCA”), pursuant to which each outstanding share of common stock, par value \$0.01 per share, of the Company (“Company Common Stock”), issued and outstanding immediately prior to the Effective Time, other than Dissenting Shares, will be converted into the right to receive a combination of cash and shares of common stock, par value \$0.01 per share, of Parent (“Parent Common Stock”); and

WHEREAS, immediately following the Merger, the Surviving Corporation will then merge with and into Merger Sub 2 (the “Subsequent Merger”) and together with the Merger, the “Combination”) in accordance with the applicable provisions of the DGCL and the DLLCA and upon the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, the respective Boards of Directors of Parent and the Company, and the respective Boards of Managers of Merger Sub 1 and Merger Sub 2 deem it fair to, advisable to and in the best interests of their respective company to enter into this Agreement and to consummate the Combination and the other transactions contemplated hereby;

WHEREAS, as a condition to the Company entering into this Agreement, and incurring the obligations set forth herein, concurrently with the execution and delivery of this Agreement, the Company is entering into a voting agreement with a certain stockholder (the “Stockholder”) of Parent pursuant to which, among other things, the Stockholder has agreed, subject to the terms thereof, to vote all shares of Parent Common Stock it owns in accordance with the terms of such voting agreement;

WHEREAS, for U.S. federal income Tax purposes, Parent, Merger Sub 1, Merger Sub 2 and the Company intend that the Combination shall qualify as a “reorganization” within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the “Code”), and the regulations promulgated thereunder (“Treasury Regulations”), and, by approving resolutions authorizing this Agreement, to adopt this Agreement as a “plan of reorganization” within the meaning of Section 368(a) of the Code and the Treasury Regulations; and

WHEREAS, Parent, Merger Sub 1, Merger Sub 2 and the Company desire to make certain representations, warranties, covenants and agreements in connection with the transactions

contemplated hereby and also to prescribe various conditions to the transactions contemplated hereby.

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

ARTICLE I.

THE COMBINATION

Section 1.1. The Merger and the Subsequent Merger. Upon the terms and subject to the conditions set forth in this Agreement and in accordance with the DGCL and the DLLCA, at the Effective Time, Merger Sub 1 will merge with and into the Company, and the separate existence of Merger Sub 1 shall cease. The Company shall continue as the surviving corporation and as a Wholly Owned Subsidiary of Parent and shall continue to be governed by the laws of the State of Delaware (as such, the “Surviving Corporation”). Immediately after the Effective Time, upon the terms and subject to the conditions set forth in this Agreement and in accordance with the DGCL and the DLLCA, the Surviving Corporation will merge with and into Merger Sub 2, and the separate existence of the Surviving Corporation shall cease. Merger Sub 2 shall continue as the surviving limited liability company and as a Wholly Owned Subsidiary of Parent and shall continue to be governed by the laws of the State of Delaware (as such, the “Surviving Company”).

Section 1.2. Closing. Unless this Agreement shall have been terminated pursuant to the provisions of Section 9.1, the closing of the Combination (the “Closing”) will take place on the date that is the later of (i) the third Business Day after the satisfaction or waiver (subject to applicable law) of the conditions (excluding conditions that, by their terms, cannot be satisfied until the Closing, but subject to the satisfaction or, where permitted, waiver of those conditions as of the Closing) set forth in Article VIII and (ii) the final day of the Marketing Period or such earlier date as may be specified by Parent on no less than three Business Days’ prior written notice to the Company, unless another time or date is agreed to in writing by the parties hereto; provided, however, that in no event shall the Closing take place prior to October 4, 2014 (the date of the Closing, the “Closing Date”). The Closing shall be held at the offices of Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019, unless another place is agreed to in writing by the parties hereto.

Section 1.3. Effective Time. Subject to the provisions of this Agreement, on the Closing Date, Parent and the Company shall file a certificate of merger relating to the Merger as contemplated by the DGCL and the DLLCA (the “Certificate of Merger”) with the Secretary of State of the State of Delaware (the “Secretary of State”), in such form as required by, and executed in accordance with, the DGCL and the DLLCA. The Merger shall become effective at such time as the Certificate of Merger is duly filed with the Secretary of State on the Closing Date, or at such other time as Parent and the Company shall agree and specify in the Certificate of Merger. As used herein, the “Effective Time” shall mean the time at which the Merger shall become effective. Immediately following the Effective Time, Parent and the Surviving Corporation shall file a certificate of merger relating to the Subsequent Merger as contemplated by the DGCL and the

DLLCA (the “Subsequent Certificate of Merger”) with the Secretary of State, in such form as required by, and executed in accordance with, the DGCL and the DLLCA. The Subsequent Merger shall become effective at such time as the Subsequent Certificate of Merger is duly filed with the Secretary of State on the Closing Date or at such other time as Parent and the Company shall agree and specify in the Subsequent Certificate of Merger. As used herein, the “Subsequent Effective Time” shall mean the time at which the Subsequent Merger shall become effective.

Section 1.4. Effects of the Combination. At the Effective Time, the effects of the Merger and, at the Subsequent Effective Time, the effects of the Combination, shall be as provided in this Agreement, the Certificate of Merger, the Subsequent Certificate of Merger, and the applicable provisions of the DGCL and the DLLCA. Without limiting the generality of the foregoing, and subject thereto, (i) at the Effective Time, all of the property, rights, privileges, powers and franchises of the Company and Merger Sub 1 shall vest in the Surviving Corporation, and all debts, liabilities and duties of the Company and Merger Sub 1 shall become the debts, liabilities and duties of the Surviving Corporation, and (ii) at the Subsequent Effective Time, all of the property, rights, privileges, powers and franchises of the Surviving Corporation and Merger Sub 2 shall vest in the Surviving Company, and all debts, liabilities and duties of the Surviving Corporation and Merger Sub 2 shall become the debts, liabilities and duties of the Surviving Company.

Section 1.5. Surviving Company Constituent Documents.

(a) The certificate of incorporation and bylaws of the Company, as in effect immediately prior to the Effective Time, shall be the certificate of incorporation and bylaws of the Surviving Corporation until thereafter changed or amended as provided therein or by applicable law, except as otherwise contemplated by this Agreement.

(b) The certificate of formation and limited liability company agreement of Merger Sub 2, as in effect immediately prior to the Subsequent Effective Time, shall be the certificate of formation and limited liability company agreement, respectively, of the Surviving Company, until thereafter changed or amended as provided therein or by applicable law, except as otherwise contemplated by this Agreement and except that Article I of the certificate of formation of the Surviving Company shall be amended to provide that “The name of the limited liability company is tw telecom, llc”.

Section 1.6. Surviving Company Managers and Officers.

From and after the Subsequent Effective Time, the managers of Merger Sub 2 in office immediately prior to the Subsequent Effective Time shall be the initial managers of the Surviving Company and the officers of the Company immediately prior to the Subsequent Effective Time shall be the initial officers of the Surviving Company and, in each case, shall hold office from the Subsequent Effective Time until his or her respective successor is duly elected or appointed and qualified or until his or her earlier death, resignation or removal in accordance with the certificate of formation and limited liability company agreement of the Surviving Company or otherwise as provided by applicable law.

Section 1.7. Capital Stock.

- (a) At the Effective Time by virtue of the Merger and without any action on the part of the holder thereof:
- (i) Each share of Company Common Stock (excluding any share underlying any unvested portion of any Company Restricted Stock Award) issued and outstanding immediately prior to the Effective Time (other than any Dissenting Shares), shall be converted into (A) 0.70 (the “Exchange Ratio”) fully paid and nonassessable shares of Parent Common Stock, subject to Section 2.5 with respect to fractional shares, (the “Stock Consideration”) and (B) the right to receive \$10.00 in cash (the “Cash Consideration” and, together with the Stock Consideration, the “Merger Consideration”).
- (ii) All shares of Company Common Stock (other than shares referred to in Section 1.7(c)) shall cease to be issued and outstanding and shall be canceled and retired and shall cease to exist, and each holder of a valid certificate or certificates which immediately prior to the Effective Time represented any such shares of Common Stock (a “Certificate”) or evidenced by way of book-entry in the register of stockholders of the Company immediately prior to the Effective Time (“Uncertificated Company Stock”) shall thereafter cease to have any rights with respect to such shares of Company Common Stock, except the right to receive the applicable Merger Consideration and any dividends or other distributions to which holders become entitled all in accordance with Article II.
- (iii) Each share of common stock, par value \$0.01 per share, of Merger Sub 1 issued and outstanding immediately prior to the Effective Time shall be converted into one share of common stock, par value \$0.01 per share, of the Surviving Corporation.
- (b) At the Subsequent Effective Time, all limited liability company interests of Merger Sub 2 issued and outstanding immediately prior to the Subsequent Effective Time shall be cancelled and retired and shall cease to exist. At the Subsequent Effective Time, each share of Surviving Corporation Common Stock issued and outstanding immediately prior to the Subsequent Effective Time shall be converted into one limited liability company interest of the Surviving Company.
- (c) Notwithstanding anything in this Agreement to the contrary, shares of Company Common Stock that are issued and outstanding immediately prior to the Effective Time and that are owned by stockholders that have properly perfected their rights of appraisal within the meaning of Section 262 of the DGCL (the “Dissenting Shares”) shall not be converted into the right to receive the Merger Consideration, unless and until such stockholders shall have failed to perfect any available right of appraisal under applicable law, but, instead, the holders thereof shall be entitled to payment of the appraised value of such Dissenting Shares in accordance with Section 262 of the DGCL. If any such holder shall have failed to perfect or shall have effectively withdrawn or lost such right of appraisal, the shares of Company Common Stock held by such stockholder shall not be deemed Dissenting Shares for purposes of this Agreement and shall

thereupon be deemed to have been converted into the Merger Consideration at the Effective Time in accordance with Section 1.7(a). The Company shall give Parent (A) prompt notice of any demands for appraisal filed pursuant to Section 262 of the DGCL received by the Company, withdrawals of such demands and any other instruments served or delivered in connection with such demands pursuant to the DGCL and received by the Company and (B) the opportunity and right to participate in all negotiations and proceedings with respect to demands made pursuant to Section 262 of the DGCL. The Company shall not, except with the prior written consent of Parent, (x) make any payment with respect to any such demand, (y) offer to settle or settle any such demand or (z) waive any failure to timely deliver a written demand for appraisal or timely take any other action to perfect appraisal rights in accordance with the DGCL.

(d) If prior to the Effective Time, Parent or the Company, as the case may be, should split, subdivide, consolidate, combine or otherwise reclassify the Parent Common Stock or the Company Common Stock, or pay a stock dividend or other stock distribution in Parent Common Stock or Company Common Stock, as applicable, or otherwise change the Parent Common Stock or Company Common Stock into any other securities, or make any other such stock dividend or distribution in capital stock of Parent or the Company in respect of the Parent Common Stock or the Company Common Stock, respectively, then any number or amount contained herein which is based upon the price of the Parent Common Stock or the number or fraction of shares of Company Common Stock or Parent Common Stock, as the case may be, will be appropriately adjusted to reflect such split, combination, dividend or other distribution or change.

Section 1.8. Treatment of Options, RSU Awards, Restricted Stock Awards and Employee Stock Purchase Plan.

(a) Company Options. Each outstanding stock option to purchase Company Common Stock granted under any Company Benefit Plan (including, for the avoidance of doubt, the Company's 1998 Employee Stock Option Plan, as amended, or the Company's Amended and Restated 2000 Employee Stock Plan, as amended (collectively, the "Company Stock Plans")) that is outstanding immediately prior to the Effective Time (collectively, the "Company Options"), whether or not then exercisable or vested, shall be cancelled and, in exchange therefor, each holder of such Company Option shall receive from Parent or the Surviving Company:

(i) within five Business Days following the Closing Date, an amount in cash in respect thereof, if any, equal to the product obtained by multiplying (A) the Cash Percentage by (B) the excess, if any, of the Deemed Value of Merger Consideration over the per share exercise price thereof by (C) the number of shares of Company Common Stock subject to such Company Option; and

(ii) within three Business Days following the Closing Date, a number of shares of Parent Common Stock in respect thereof, if any, equal to the quotient of (A) the product obtained by multiplying (1) the Stock Percentage by (2) the excess, if any, of the Deemed Value of Merger Consideration over the per share exercise price thereof by (3) the number of shares of Company Common Stock subject to such Company Option, divided by (B) the Parent Common Stock Price, provided, that, with respect to the aggregate number of shares of Company Common Stock

that the holder of Company Options is eligible to receive pursuant to this Section 1.8(a) when taking into account all Company Options held by such holder, any fractional shares that would otherwise be issuable pursuant to this Section 1.8(a) shall be rounded down to the nearest whole number.

Applicable Tax withholdings with respect to the consideration payable pursuant to this Section 1.8(a) first shall reduce the shares of Parent Common Stock payable pursuant to this Section 1.8(a) (based on the Parent Closing Price).

(b) Restricted Stock Units. Each outstanding award of restricted stock units granted under any Company Benefit Plan (including, for the avoidance of doubt, the Company Stock Plans) that is outstanding immediately prior to the Effective Time (collectively, “Company RSU Awards”), whether or not then vested, shall be cancelled and, in exchange therefor, each holder of such Company RSU Award shall receive from Parent or the Surviving Company within three Business Days following the Closing Date, the Merger Consideration in respect of each share of Company Common Stock covered by the Company RSU Award, provided, that any fractional shares that would otherwise be issuable pursuant to this Section 1.8(b) shall be rounded up to the nearest whole number. Applicable Tax withholdings with respect to the consideration payable pursuant to this Section 1.8(b) first shall reduce the shares of Parent Common Stock payable pursuant to this Section 1.8(b) (based on the Parent Closing Price).

(c) Restricted Stock. Each outstanding award of shares of restricted Company Common Stock granted under any Company Benefit Plan (including, for the avoidance of doubt, the Company Stock Plans) that is outstanding immediately prior to the Effective Time (collectively, the “Company Restricted Stock Awards”) shall vest in full immediately prior to the Effective Time and shall be cancelled and, in exchange therefor, each holder of such Company Restricted Stock Award shall receive from Parent or the Surviving Company within three Business Days following the Closing Date, the Merger Consideration in respect of each share of Company Common Stock covered by the Company Restricted Stock Award, provided, that any fractional shares that would otherwise be issuable pursuant to this Section 1.8(c) shall be rounded up to the nearest whole number. Applicable Tax withholdings with respect to the consideration payable pursuant to this Section 1.8(c) first shall reduce the shares of Parent Common Stock payable pursuant to this Section 1.8(c) (based on the Parent Closing Price).

(d) ESPP. With respect to the Company’s Employee Stock Purchase Plan (the “ESPP”), the Company shall take all actions necessary to (i) cause the current Offering Period (within the meaning of the ESPP) to terminate at the Effective Time (if the Effective Time is earlier than the date the current Offering Period would otherwise terminate); (ii) prevent any further contributions to the current Offering Period after the date hereof, and (iii) refrain from commencing any new Offering Periods under the ESPP thereafter.

(e) Company and Parent Actions. Prior to the Effective Time, the Company shall take all actions necessary (including adopting such resolutions of the Company’s Board of Directors (or any committee of the Company’s Board of Directors) to terminate, effective as of the Effective Time, each of the Company Stock Plans and to ensure that, as of the Effective Time, no Person shall have any right under any Company Stock Plan except for the right to receive the payments, if any, contemplated in this Section 1.8. Parent shall take all corporate action necessary

to reserve for issuance a sufficient number of shares of Parent Common Stock for delivery with respect to the settlement of Company Equity Awards contemplated by this Section 1.8, and include in the Registration Statement a sufficient number of shares for such purposes.

Section 1.9. Reorganization. This Agreement is intended to constitute a “plan of reorganization” for U.S. federal income Tax purposes pursuant to which, for such purposes, the Combination is to be treated as a “reorganization” under Section 368(a) of the Code (to which each of Parent and the Company are to be parties under Section 368(b) of the Code).

ARTICLE II.

EXCHANGE OF CERTIFICATES

Section 2.1. Exchange Fund. At or prior to the Effective Time, Parent shall deposit with Wells Fargo Bank, N.A. or such other bank or trust company as Parent shall determine and who shall be reasonably satisfactory to the Company (the “Exchange Agent”), in trust for the benefit of holders of shares of Company Common Stock, for exchange in accordance with Section 1.8, (i) uncertificated, book-entry shares representing the number of shares of Parent Common Stock sufficient to deliver, and Parent shall instruct the Exchange Agent to timely deliver, in accordance with the terms of Section 2.2 of this Agreement, the aggregate Stock Consideration, provided, that, if the Rights Agreement (or a successor plan) is in effect at the time of the Closing, Parent shall also deposit such number of Rights equal to the number of shares of Parent Common Stock delivered pursuant to this clause (i) and Parent shall instruct the Exchange Agent to timely deliver, in accordance with the terms of Section 2.2 of this Agreement, one Right per share of Parent Common Stock, and (ii) immediately available funds equal to the aggregate Cash Consideration and Parent shall instruct the Exchange Agent to timely pay the Cash Consideration subject to and in accordance with the terms of Section 2.2 of this Agreement. Parent agrees to make available to the Exchange Agent from time to time as needed, cash sufficient to pay any dividends and other distributions pursuant to Section 2.3. Any cash and uncertificated, book-entry shares of Parent Common Stock deposited with the Exchange Agent shall hereinafter be referred to as the “Exchange Fund.” Any amounts payable in respect of Company Equity Awards shall not be deposited with the Exchange Agent but shall instead be paid through the payroll of the Company and its Affiliates in accordance with Section 1.8.

Section 2.2. Exchange Procedures.

(a) As promptly as practicable after the Effective Time, the Exchange Agent will send to each record holder of a Certificate or holder of shares of Uncertificated Company Stock other than Certificates in respect of Dissenting Shares, (i) a letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to the Exchange Agent and shall be in a form and have such other provisions as Parent may reasonably specify) and (ii) instructions for use in effecting the surrender of the Certificates or Uncertificated Company Stock in exchange for the Merger Consideration. As soon as reasonably practicable after the Effective Time, each holder of a Certificate, upon surrender of a Certificate to the Exchange Agent together with such letter of transmittal, duly executed, and such other documents as may reasonably be required by the Exchange Agent, shall be entitled to receive in exchange therefor the number of full shares of Parent Common Stock

(which shall be in uncertificated, book-entry form), along with one Right per such share of Parent Common Stock, and the amount of cash (including amounts to be paid pursuant to Section 1.8(a) and in respect of any dividends or other distributions to which holders are entitled pursuant to Section 2.3, if any), into which the aggregate number of shares of Company Common Stock previously represented by such Certificate shall have been converted pursuant to this Agreement. The Exchange Agent shall accept such Certificates upon compliance with such reasonable terms and conditions as the Exchange Agent may impose to effect an orderly exchange thereof in accordance with normal exchange practices.

(b) No interest will be paid or will accrue on any cash payable pursuant to Section 1.8(a) or 2.3.

(c) In the event of a transfer of ownership of Company Common Stock which is not registered in the transfer records of the Company, one or more shares of Parent Common Stock evidencing, in the aggregate, the proper number of shares of Parent Common Stock, a check in the proper amount of cash pursuant to Section 1.8(a) and any dividends or other distributions to which such holder is entitled pursuant to Section 2.3, may be issued with respect to such Company Common Stock to such a transferee only if the Certificate representing such shares of Company Common Stock is presented to the Exchange Agent, accompanied by all documents required to evidence and effect such transfer and to evidence that any applicable stock transfer Taxes have been paid.

Section 2.3. Distributions with Respect to Unexchanged Shares. No dividends or other distributions declared or made with respect to shares of Parent Common Stock with a record date after the Effective Time shall be paid to the holder of any unsurrendered Certificate with respect to the shares of Parent Common Stock that such holder would be entitled to receive upon surrender of such Certificate. Following surrender of any such Certificate, there shall be paid to such holder of shares of Parent Common Stock issuable in exchange therefor, without interest, (a) promptly after the time of such surrender, the amount of dividends or other distributions with a record date after the Effective Time theretofore paid with respect to such whole shares of Parent Common Stock, and (b) at the appropriate payment date, the amount of dividends or other distributions with a record date after the Effective Time but prior to such surrender and a payment date subsequent to such surrender payable with respect to such shares of Parent Common Stock.

Section 2.4. No Further Ownership Rights in Company Common Stock. All shares of Parent Common Stock issued and cash paid upon conversion of shares of Company Common Stock in accordance with the terms of Article I and this Article II (including any cash paid pursuant to Section 2.3) shall be deemed to have been issued or paid in full satisfaction of all rights pertaining to the shares of Company Common Stock.

Section 2.5. No Fractional Shares of Parent Common Stock. No certificates or scrip representing less than one share of Parent Common Stock shall be issued upon the surrender for exchange of Certificates representing Company Common Stock pursuant to Section 1.9 hereof. Any fractional shares that would otherwise be issuable pursuant to Section 1.9 hereof shall be rounded up to the nearest whole number.

Section 2.6. Termination of Exchange Fund. Any portion of the Exchange

Fund which remains undistributed to the holders of Certificates for six months after the Effective Time shall be delivered to the Surviving Company or otherwise on the instruction of the Surviving Company, and any holders of Certificates who have not theretofore complied with this Article II shall thereafter look only to the Surviving Company and Parent (subject to abandoned property, escheat or other similar laws) for the Merger Consideration with respect to the shares of Company Common Stock formerly represented thereby to which such holders are entitled pursuant to Section 1.9 and any dividends or distributions with respect to shares of Parent Common Stock to which such holders are entitled pursuant to Section 2.3.

Section 2.7. No Liability. None of Parent, Merger Sub 1, Merger Sub 2, the Company, the Surviving Company or the Exchange Agent shall be liable to any Person in respect of any Merger Consideration from the Exchange Fund delivered to a public official pursuant to any applicable abandoned property, escheat or similar law.

Section 2.8. Investment of the Exchange Fund. Any funds included in the Exchange Fund may be invested by the Exchange Agent, as directed by Parent; provided that such investments shall be in obligations of or guaranteed by the United States of America and backed by the full faith and credit of the United States of America or in commercial paper obligations rated A-1 or P-1 or better by Moody's Investors Services, Inc. or Standard & Poor's Corporation, respectively. Any interest and other income resulting from such investments shall promptly be paid to Parent. Any loss of any of the funds included in the Exchange Fund shall be for the account of Parent and shall not alter Parent's obligation to pay the Merger Consideration.

Section 2.9. Lost Certificates. If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by the Surviving Company, the posting by such Person of a bond in such reasonable amount as the Surviving Company may direct as indemnity against any claim that may be made against it with respect to such Certificate or other documentation (including an indemnity in customary form) reasonably requested by Parent, the Exchange Agent will deliver in exchange for such lost, stolen or destroyed Certificate the applicable Merger Consideration with respect to the shares of Company Common Stock formerly represented thereby, and any unpaid dividends and distributions on shares of Parent Common Stock deliverable in respect thereof, pursuant to this Agreement.

Section 2.10. Withholding Rights. Each of the Surviving Company, Parent and the Exchange Agent shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any holder of shares of Company Common Stock or any holder of a Company Equity Award such amounts as it is required to deduct and withhold with respect to the making of such payment under the Code and the rules and regulations promulgated thereunder, or any provision of state, local or foreign Tax law. To the extent that amounts are so deducted and withheld by the Surviving Company, Parent or the Exchange Agent, as the case may be, and paid over to the relevant taxing authority, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

Section 2.11. Further Assurances. At and after the Effective Time, the officers and directors of the Surviving Company will be authorized to execute and deliver, in the name and

on behalf of the Company, Merger Sub 1 or Merger Sub 2, any deeds, bills of sale, assignments or assurances and to take and do, in the name and on behalf of the Company, Merger Sub 1 or Merger Sub 2, any other actions and things to vest, perfect or confirm of record or otherwise in the Surviving Company any and all right, title and interest in, to and under any of the rights, properties or assets acquired or to be acquired by the Surviving Company as a result of, or in connection with, the Merger.

Section 2.12. Stock Transfer Books. At the close of business, New York time, on the day the Effective Time occurs, the stock transfer books of the Company shall be closed and there shall be no further registration of transfers of shares of Company Common Stock thereafter on the records of the Company. From and after the Effective Time, the holders of Certificates shall cease to have any rights with respect to such shares of Company Common Stock formerly represented thereby, except as otherwise provided herein or by law. On or after the Effective Time, any Certificates presented to the Exchange Agent or Parent for any reason shall be converted into the Merger Consideration with respect to the shares of Company Common Stock formerly represented thereby, and any dividends or other distributions to which the holders thereof are entitled pursuant to Section 2.3.

ARTICLE III.

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as otherwise expressly disclosed in the Company SEC Reports filed prior to the date hereof (other than (i) any information that is contained solely in the “Risk Factors” section of such Company SEC Reports and (ii) any forward-looking statements, or other statements that are similarly predictive or forward-looking in nature, contained in such Company SEC Reports) or as set forth in the corresponding sections or subsections of the Company Disclosure Schedule (or, pursuant to Section 10.2(b), as set forth in any section or subsection of the Company Disclosure Schedule to the extent the applicability thereof is readily apparent from the face of the Company Disclosure Schedule), the Company hereby represents and warrants to Parent, Merger Sub 1 and Merger Sub 2 as follows:

Section 3.1. Organization.

(a) The Company is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has the requisite corporate power to own its properties and assets and to conduct its business as now conducted, except where the failure to be so qualified or in good standing in such jurisdiction would not, individually or in the aggregate, have a Company Material Adverse Effect. Copies of the Company Organizational Documents, with all amendments thereto to the date hereof, have been made available to Parent or its representatives, and such copies are accurate and complete as of the date hereof.

(b) Each of the Subsidiaries of the Company is duly organized, validly existing and in good standing or similar concept under the laws of the jurisdiction of its organization and has all requisite corporate, limited liability company or limited partnership power (as the case may be) to own its properties and assets and to conduct its business as now conducted, except where the failure thereof would not, individually or in the aggregate, have a Company Material Adverse

Effect. Copies of the organizational documents of each material Subsidiary of the Company, with all amendments thereto to the date hereof, have been made available to Parent or its representatives, and such copies are accurate and complete as of the date hereof.

Section 3.2. Qualification to Do Business. Each of the Company and its Subsidiaries is duly qualified to do business as a foreign corporation, limited liability company or partnership (as the case may be) and is in good standing or similar concept in every jurisdiction in which the character of the properties owned or leased by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to be so qualified or in good standing would not, individually or in the aggregate, have a Company Material Adverse Effect.

Section 3.3. No Conflict or Violation. The execution, delivery and, subject to the receipt of the Required Company Vote, performance by the Company of this Agreement do not and will not (i) violate or conflict with any provision of any Company Organizational Document or any of the organizational documents of the Subsidiaries of the Company, (ii) subject to the receipt of any consents set forth in Section 3.4 (including Schedule 3.4), violate any provision of law, or any order, judgment or decree of any Governmental Entity, (iii) subject to the receipt of any consents set forth in Section 3.4 (including Schedule 3.4), result in the creation or imposition of any Lien (other than any Permitted Lien) upon any of the assets, properties or rights of either of the Company or any of its Subsidiaries or result in or give to others any rights of cancellation, modification, amendment, acceleration, revocation or suspension of any of the Company Licenses and Permits or (iv) violate or result in a breach of or constitute (with due notice or lapse of time or both) a default under or result in or give to others any rights of cancellation, modification, amendment, or acceleration under, any contract, agreement, lease or instrument to which the Company or any of its Subsidiaries is a party or by which it is bound or to which any of its properties or assets is subject, except in each case for any of the foregoing arising as a result of the Financing and except with respect to clauses (iii) and (iv), for any such violations, breaches or defaults that would not, individually or in the aggregate, have a Company Material Adverse Effect. The Debt Tender Offer would not violate or conflict with any contract of the Company or its Subsidiaries, except for such violations or conflicts as would not have a Company Material Adverse Effect.

Section 3.4. Consents and Approvals. No consent, waiver, authorization or approval of any Governmental Entity, and no declaration or notice to or filing or registration with any Governmental Entity, is necessary or required in connection with the execution and delivery of this Agreement by the Company or the performance by the Company or its Subsidiaries of their obligations hereunder, except for: (i) the filing of the Certificate of Merger with the Secretary of State in accordance with the DGCL; (ii) the filing of the Subsequent Certificate of Merger with the Secretary of State in accordance with the DGCL and the DLLCA; (iii) the filing of a Notification and Report Form under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the “HSR Act”); (iv) the filing of applications jointly by the parties with the FCC and U.S. state public utility commissions for approval of the transfer of control of the Company, and receipt of such approvals; (v) applicable requirements of the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (the “Securities Act”) and of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (the “Exchange Act”); (vi) such consents, waivers, authorizations or approvals of any Governmental Entity set forth on Schedule 3.4; and (vii) such other consents, waivers, authorizations, approvals,

declarations, notices, filings or registrations as will be obtained or made prior to the Closing or which, if not obtained or made, would not have a Company Material Adverse Effect or prevent or materially delay the consummation of the transactions contemplated by this Agreement.

Section 3.5. Authorization and Validity of Agreement. The Company has all requisite corporate power and authority to execute, deliver and, subject to receipt of the Required Company Vote, perform its obligations under this Agreement and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement by the Company and the performance by the Company of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby have been duly authorized by the Board of Directors of the Company and all other necessary corporate action on the part of the Company, other than the Required Company Vote, and no other corporate proceedings on the part of the Company are necessary to authorize this Agreement and the transactions contemplated hereby and thereby. This Agreement has been duly and validly executed and delivered by the Company and, assuming due execution and delivery by Parent, Merger Sub 1 and Merger Sub 2, shall constitute a legal, valid and binding obligation of the Company, enforceable against it in accordance with its terms, subject to (i) the effect of bankruptcy, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting the enforcement of creditors' rights generally, and (ii) general equitable principles (whether considered in a proceeding in equity or at law).

Section 3.6. Capitalization and Related Matters.

(a) The authorized capital stock of the Company consists of 439,800,000 shares of Company Common Stock and 20,000,000 shares of Company's preferred stock (the "Company Preferred Stock"). As of May 31, 2014, 137,965,604 shares of Company Common Stock were issued and outstanding (comprised of 153,760,350 shares of common stock less 15,794,746 of treasury shares not retired), and there are no shares of Company Preferred Stock issued or outstanding. As of May 31, 2014, there were (i) Company Options to purchase an aggregate of 426,581 shares of Company Common Stock, with a weighted average exercise price of \$12.54 per share, issued and outstanding, (ii) 1,629,730 shares of Company Common Stock underlying outstanding and unvested Company Restricted Stock Awards, (iii) 2,098,926 shares of Company Common Stock underlying unvested Company RSU Awards, and (iv) 12,415,604 shares of Company Common Stock available for issuance under the Company Benefit Plans (comprised of 11,811,746 shares of Company Common Stock available for issuance under the Company Stock Plans and 603,858 shares of Common Stock available for issuance under the ESPP).

(b) The issued and outstanding shares of Company Common Stock (i) have been duly authorized and validly issued and are fully paid and nonassessable and (ii) were issued in compliance with all applicable U.S. federal and state securities laws. Except as set forth above in Section 3.6(a), and except for (x) shares of Company Common Stock issued since May 31, 2014 pursuant to Company Options or Company RSU Awards or Company Restricted Stock Awards outstanding as of May 31, 2014 and (y) a Company Restricted Stock Award granted on June 5, 2014 with respect to 3,938 shares of Company Common Stock and shares that may be issued pursuant to such Company Restricted Stock Award, no shares of capital stock of the Company are issued and outstanding and the Company does not have outstanding any securities convertible into or exchangeable for any shares of capital stock of the Company, any rights to subscribe for or to

purchase or any options for the purchase of, or any agreements providing for the issuance (contingent or otherwise) of, or any calls, commitments or known claims of any other character relating to the issuance of, any capital stock of the Company, or any stock or securities convertible into or exchangeable for any capital stock of the Company; and, the Company is not subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire, or to register under the Securities Act, any shares of capital stock of the Company. The Company does not have outstanding any bonds, debentures, notes or other obligations the holders of which have the right to vote (or convertible into or exercisable for securities having the right to vote) with the stockholders of the Company on any matter. Except as set forth above in Section 3.6(a) or in clause (y) of the second sentence of this Section 3.6(b), there are no outstanding stock options, restricted stock units, restricted stock, stock appreciation rights, “phantom” stock rights, performance units, or other compensatory rights or awards (in each case, issued by the Company or any of its Subsidiaries), that are convertible into or exercisable for a share of Company Common Stock on a deferred basis or otherwise or other rights that are linked to, or based upon, the value of Company Common Stock. All Company Equity Awards are evidenced by award agreements in the forms previously made available to Parent.

(c) The Company has no rights plan, “poison-pill” or, other similar agreement or arrangement or any anti-takeover provision in the Company Organizational Documents that is, or at the Effective Time shall be, applicable to the Company, the Company Common Stock, the Combination or the other transactions contemplated by this Agreement.

(d) All of the outstanding shares of capital stock, or membership interests or other ownership interests of, each Subsidiary of the Company, as applicable, are validly issued, fully paid and nonassessable and are owned of record and beneficially by the Company, directly or indirectly. The Company has, as of the date hereof and shall have on the Closing Date, valid and marketable title to all of the shares of capital stock of, or membership interests or other ownership interests in, each Subsidiary of the Company, free and clear of any Liens other than Permitted Liens. Such outstanding shares of capital stock of, or membership interests or other ownership interests in, the Subsidiaries of the Company, as applicable, are the sole outstanding securities of such Subsidiaries; the Subsidiaries of the Company do not have outstanding any securities convertible into or exchangeable for any capital stock of, or membership interests or other ownership interests in, such Subsidiaries, any rights to subscribe for or to purchase or any options for the purchase of, or any agreements providing for the issuance (contingent or otherwise) of, or any calls, commitments or claims of any other character relating to the issuance of, any capital stock of, or membership interests or other ownership interests in, such Subsidiaries, or any stock or securities convertible into or exchangeable for any capital stock of, or membership interests or other ownership interests in, such Subsidiaries; and neither the Company or any of its Subsidiaries is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire, or to register under the Securities Act, any capital stock of, or membership interests or other ownership interests in, any Subsidiary of the Company.

Section 3.7. Subsidiaries and Equity Investments. The Company and its Subsidiaries do not directly or indirectly own, or hold any rights to acquire, any material capital stock or any other material securities, interests or investments in any other Person other than investments that constitute cash or cash equivalents. No Subsidiary of the Company owns any shares of capital stock of the Company. There are no outstanding stock options, restricted stock

units, restricted stock, stock appreciation rights, “phantom” stock rights, performance units, or other compensatory rights or awards (in each case, issued by the Company or any of its Subsidiaries) that are convertible into or exercisable for any capital stock of, or membership interests or other ownership interests in, any Subsidiary of the Company, on a deferred basis or otherwise or other rights that are linked to, or based upon, the value of any capital stock of, or membership interests or other ownership interests in, any Subsidiary of the Company.

Section 3.8. Company SEC Reports.

(a) The Company and its Subsidiaries have filed each report and definitive proxy statement (together with all amendments thereof and supplements thereto) required to be filed by the Company or any of its Subsidiaries pursuant to the Exchange Act with the SEC since January 1, 2011 (as such documents have since the time of their filing been amended or supplemented, the “Company SEC Reports”). As of their respective dates, after giving effect to any amendments or supplements thereto filed prior to the date hereof, the Company SEC Reports (i) complied as to form in all material respects with the requirements of the Exchange Act, and (ii) did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(b) The audited consolidated financial statements and unaudited interim consolidated financial statements (including, in each case, the notes, if any, thereto) included in the Company SEC Reports complied as to form in all material respects with the published rules and regulations of the SEC with respect thereto, were prepared in accordance with GAAP applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto and except with respect to unaudited statements as permitted by Form 10-Q of the SEC) and fairly present (subject, in the case of the unaudited interim financial statements included therein, to normal year-end adjustments and the absence of complete footnotes) in all material respects the consolidated financial position of the Company and its consolidated Subsidiaries as of the respective dates thereof and the consolidated results of their operations and cash flows for the respective periods then ended.

Section 3.9. Absence of Certain Changes or Events.

(a) Since December 31, 2013, there has not been any Company Material Adverse Effect.

(b) Since December 31, 2013 through the date hereof, there has not been:

(i) any material loss, damage, destruction or other casualty to the assets or properties of either of the Company or any of its Subsidiaries (other than (x) any for which insurance awards have been received or guaranteed and (y) for such failures as would not individually or in the aggregate have a Company Material Adverse Effect);

(ii) any change in any method of financial accounting or financial

accounting practice of either of the Company or any of its Subsidiaries except for any such change required by reason of a concurrent change in GAAP; or

(iii) any loss of the employment, services or benefits of the chief executive officer of the Company or members of the Company's senior management.

(c) Since December 31, 2013 through the date hereof, each of the Company and each of its Subsidiaries has operated in the ordinary course of business and has not:

(i) (A) lent money to any Person (other than to the Company or any of its Wholly Owned Subsidiaries) or incurred or guaranteed any Indebtedness for borrowed money or (B) entered into any capital lease obligation, in each case, in excess of \$500,000 in the aggregate, other than among the Company or any of its Wholly Owned Subsidiaries;

(ii) failed to discharge or satisfy any material Lien or pay or satisfy any obligation or liability or accounts payable (whether absolute, accrued, contingent or otherwise) in excess of \$1,000,000, other than Permitted Liens and obligations and liabilities being contested in good faith and for which adequate reserves have been provided in accordance with GAAP;

(iii) mortgaged, pledged or subjected to any Lien (other than Permitted Liens) any of its assets, properties or rights in excess of \$1,000,000;

(iv) sold or transferred any of its material assets or cancelled any material debts or claims or waived any material rights in excess of \$1,000,000;

(v) other than increases in accordance with past practice not exceeding 5% of the annual base compensation then in effect of a Senior Vice President or above of the Company (a "Company Key Employee"), a director of the Company or an executive officer of the Company, granted a material increase in the compensation or benefits of any Company Key Employee, director of the Company or executive officer of the Company;

(vi) entered into, adopted or amended any change of control, retention or severance agreement or arrangement with respect to any Company Key Employee, director of the Company or executive officer of the Company, other than, in each case, in accordance with past practice;

(vii) in the case of the Company and any Subsidiary that is not a Wholly Owned Subsidiary, declared, paid, or set aside for payment any dividend or other distribution in respect of shares of its capital stock, membership interests or other securities, or redeemed, purchased or otherwise acquired, directly or indirectly, any shares of its capital stock, membership interests or other securities, or agreed to do so;

(viii) (A) changed any of its material accounting methods, principles or practices, except as required by GAAP or by the SEC, or (B) changed its material

Tax elections, or entered into any material closing agreement or settled or compromised any material claim or assessment, in each case in respect of material Taxes;

(ix) entered into any agreement or made any commitment to do any of the foregoing; or

(x) been notified in writing of any change, cancellation or modification to any Customer Contract or Vendor Contract that would materially and adversely affect the Company's relationship with the applicable Customer or Vendor.

Section 3.10. Tax Matters.

(a) Except as would not, individually or in the aggregate, have a Company Material Adverse Effect:

(i) (A) the Company and each of its Subsidiaries have filed when due all Tax Returns required by applicable law to be filed with respect to the Company and each of its Subsidiaries, (B) all such Tax Returns were true, correct and complete in all respects as of the time of such filing, and (C) all Taxes owed by the Company and each of its Subsidiaries (including any Taxes that are required to be deducted and withheld in connection with any amounts paid or owing to any employee, creditor, independent contractor or other third party), if required to have been paid, have been paid, except, in each case of clauses (A) through (C), for Taxes or Tax matters contested in good faith or that have been adequately provided for, in accordance with GAAP, in the Company SEC Reports filed prior to the date hereof;

(ii) there is no action, suit, proceeding, investigation or audit now pending with respect to the Company or any of its Subsidiaries in respect of any Tax, nor has any claim for additional Tax been asserted in writing by any taxing authority;

(iii) since January 1, 2011, no claim has been made in writing by any taxing authority in a jurisdiction where the Company or any of its Subsidiaries has not filed income or franchise Tax Returns that it is or may be subject to income or franchise Tax by such jurisdiction;

(iv) (A) there is no outstanding request for any extension of time for the Company or any of its Subsidiaries to pay any Taxes or file any Tax Returns, other than any such request made in the ordinary course of business; (B) there is no waiver or extension of any applicable statute of limitations for the assessment or collection of any Taxes of the Company or any of its Subsidiaries that is currently in force; and (C) neither the Company nor any of its Subsidiaries is a party to or bound by any agreement (other than (1) any commercial contract entered into in the ordinary course and not primarily related to Taxes or (2) any agreement solely among the Company and/or its Subsidiaries) providing for the payment of Taxes, payment for Tax losses, entitlements to refunds or similar Tax matters;

(v) neither the Company nor any of its Subsidiaries has participated in any

“listed transaction” as defined in Treasury Regulations Section 1.6011-4(b)(2);

(vi) within the last two years, neither the Company nor any of its Subsidiaries has distributed stock of another Person, or has had its stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Section 355 of the Code;

(vii) there is no Lien, other than a Permitted Lien, on any of the assets or properties of the Company and its Subsidiaries that arose in connection with any failure or alleged failure to pay any Tax;

(viii) neither the Company nor any of its Subsidiaries has any liability for the Taxes of any Person (other than any of the Company and its Subsidiaries) under Treasury Regulations § 1.1502-6 (or any similar provision of U.S. state or local or non-U.S. law), or as a transferee or successor; and

(ix) the Company and its Subsidiaries are not bound with respect to the current or any future taxable period by any closing agreement (within the meaning of Section 7121(a) of the Code) or other written agreement with a taxing authority.

(b) Neither the Company nor any of its Subsidiaries has taken or agreed to take any action, or is aware of the existence of any fact or circumstance, that would prevent the Combination from qualifying as a reorganization within the meaning of Section 368(a) of the Code.

(c) As of December 31, 2013, the consolidated federal income Tax Return group of which the Company is the common parent had federal net operating loss carryforwards of at least \$800 million. As of the date hereof, such net operating loss carryforwards are not subject to limitation under Section 382 of the Code or any similar provision of applicable law.

Section 3.11. Absence of Undisclosed Liabilities. There are no liabilities or obligations of the Company or any Subsidiary thereof of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or otherwise, other than (A) liabilities or obligations disclosed, reflected or reserved against and provided for in the consolidated balance sheet of the Company as of December 31, 2013 included in the Company SEC Reports filed prior to the date hereof or referred to in the notes thereto, (B) liabilities or obligations incurred in the ordinary course of business consistent with past practice since December 31, 2013, (C) liabilities or obligations that would not, individually or in the aggregate, have a Company Material Adverse Effect, or (D) liabilities or obligations incurred pursuant to this Agreement.

Section 3.12. Company Property.

(a) All material real property (other than repeater or amplifier sites) owned by the Company and its Subsidiaries as of the date hereof is hereinafter referred to as the “Company Owned Real Property”. The Company and its Subsidiaries have good and valid title to all of the Company Owned Real Property free and clear of Liens other than Permitted Liens. All leases, site leases, subleases and occupancy agreements, together with all material amendments thereto, in which either of the Company or its Subsidiaries has a leasehold interest, license or similar

occupancy rights, whether as lessor or lessee, and which involve payments by the Company or its Subsidiaries in excess of \$500,000 per year are hereinafter each referred to as a “ Company Lease ” and collectively as the “ Company Leases ”; the property covered by Company Leases under which either of the Company or its Subsidiaries is a lessee is referred to herein as the “ Company Leased Real Property ”; the Company Leased Real Property, together with the Company Owned Real Property, collectively being the “ Company Property ”.

(b) Since December 31, 2013, no Company Lease has been modified or amended in writing in any way materially adverse to the business of the Company and its Subsidiaries and no party to any Company Lease has given either of the Company or its Subsidiaries written notice of or, to the Knowledge of the Company, made a claim with respect to any breach or default, except for such defaults or breaches that, individually or in the aggregate, would not have a Company Material Adverse Effect.

(c) Other than with respect to IRUs, co-location, cross-connection, interconnection, entrance facilities or other rights incidental to the provision of services established in the ordinary course of business, none of the material Company Owned Real Property is subject to any option or other agreement granting to any Person or entity any right to obtain title to all or any portion of such property.

Section 3.13. Intellectual Property.

(a) Except as would not, individually or in the aggregate, have a Company Material Adverse Effect, (i) the Company and its Subsidiaries own all right, title and interest in and to, or have valid and enforceable licenses to use, all the Company Intellectual Property; (ii) to the Knowledge of the Company, no third party is infringing any Company Owned Intellectual Property; (iii) to the Knowledge of the Company, the Company and its Subsidiaries are not infringing, misappropriating or violating any Intellectual Property right of any third party; and (iv) as of the date hereof, there is no claim, suit, action or proceeding pending or, to the Knowledge of the Company, threatened against the Company or its Subsidiaries: (a) alleging any such violation, misappropriation or infringement of a third party’s Intellectual Property rights; or (b) challenging the Company’s or its Subsidiaries’ ownership or use of, or the validity or enforceability of, any Company Owned Intellectual Property.

(b) All material issued Patents, registered trademarks and service marks, registered copyrights, and applications for any of the foregoing, in each case issued by, filed with, or recorded by, any Governmental Entity and constituting Company Owned Intellectual Property are hereinafter referred to as the “ Company Registered Intellectual Property.” All Company Registered Intellectual Property is owned by the Company and/or its Subsidiaries, free and clear of all Liens other than Permitted Liens.

Section 3.14. Licenses and Permits.

(a) The Company and its Subsidiaries own or possess all right, title and interest in and to each of their respective material licenses, permits, franchises, registrations, authorizations and approvals issued or granted to any of the Company or its Subsidiaries by any Governmental Entity as of the date hereof (the “ Company Licenses and Permits ”). The Company has

taken all necessary action to maintain such Company Licenses and Permits, except for such failures that would not, individually or in the aggregate, have a Company Material Adverse Effect. Each Company License and Permit has been duly obtained, is valid and in full force and effect, and is not subject to any pending or, to the Knowledge of the Company, threatened administrative or judicial proceeding to revoke, cancel, suspend or declare such Company License and Permit invalid in any respect, except, in each case, as would not, individually or in the aggregate, have a Company Material Adverse Effect. The Company Licenses and Permits are sufficient and adequate in all material respects to permit the continued lawful conduct of the business of the Company and its Subsidiaries as presently conducted, and none of the operations of the Company or its Subsidiaries is being conducted in a manner that violates in any material respects any of the terms or conditions under which any Company License and Permit was granted, except for such failures that would not, individually or in the aggregate, have a Company Material Adverse Effect.

(b) The operations of the Company and its Subsidiaries are in compliance in all material respects with the terms and conditions of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the “Communications Act”), applicable U.S. state or non-U.S. law and the published rules, regulations, and policies promulgated by any Governmental Entity, and neither the Company nor its Subsidiaries have done anything or failed to do anything which reasonably could be expected to cause the loss of any of the material Company Licenses and Permits.

(c) No petition, action, investigation, notice of violation or apparent liability, notice of forfeiture, order to show cause, complaint, or proceeding seeking to revoke, reconsider the grant of, cancel, suspend, or modify any of the material Company Licenses and Permits is pending or, to the Knowledge of the Company, threatened before any Governmental Entity except for such failures that would not, individually or in the aggregate have a Company Material Adverse Effect. No notices have been received by and, no claims have been filed against, the Company or its Subsidiaries alleging a failure to hold any material requisite permits, regulatory approvals, licenses or other authorizations.

Section 3.15. Compliance with Law.

(a) Since January 1, 2011, the operations of the business of the Company and its Subsidiaries have been conducted in accordance in all material respects with all applicable laws, regulations, orders and other requirements of all Governmental Entities having jurisdiction over such entity and its assets, properties and operations. Since January 1, 2011, none of the Company or its Subsidiaries has received notice of any violation (or any investigation with respect thereto) of any such law, regulation, order or other legal requirement, and none of the Company or its Subsidiaries is in default with respect to any order, writ, judgment, award, injunction or decree of any national, federal, state or local court or governmental or regulatory authority or arbitrator, domestic or foreign, applicable to any of its assets, properties or operations, except for any of the foregoing that would not, individually or in the aggregate, have a Company Material Adverse Effect.

(b) The Company and each of its officers are in compliance in all material respects with (i) the applicable provisions of the Sarbanes-Oxley Act of 2002 and the related rules and regulations promulgated under such act or the Exchange Act (the “Sarbanes-Oxley Act”) and

(ii) the applicable listing and corporate governance rules and regulations of the Nasdaq Global Select Market. Except as permitted by the Exchange Act, including, without limitation, Sections 13(k)(2) and (3), since the enactment of the Sarbanes-Oxley Act, neither the Company nor any of its Affiliates has made, arranged or modified (in any material way) personal loans to any executive officer or director of the Company.

(c) The management of the Company has (i) implemented (x) disclosure controls and procedures to ensure that material information relating to the Company, including its consolidated Subsidiaries, is made known to the management of the Company by others within those entities and (y) a system of internal control over financial reporting sufficient to provide reasonable assurances regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP, and (ii) disclosed, based on its most recent evaluation prior to the date hereof, to the Company's auditors and the audit committee of the Company's Board of Directors (A) any significant deficiencies in the design or operation of internal controls which could adversely affect the Company's ability to record, process, summarize and report financial data and has identified for the Company's auditors any material weaknesses in internal controls and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal controls.

Section 3.16. Litigation. Except as would not have, individually or in the aggregate, a Company Material Adverse Effect, there are no claims, actions, suits, proceedings, subpoenas or investigations pending or, to the Knowledge of the Company, threatened, before any Governmental Entity, or before any arbitrator of any nature, brought by or against any of the Company or its Subsidiaries or any of their officers or directors involving or relating to the Company or its Subsidiaries, the assets, properties or rights of any of the Company and its Subsidiaries or the transactions contemplated by this Agreement. There is no material judgment, decree, injunction, ruling or order of any Governmental Entity or before any arbitrator of any nature outstanding, or to the Knowledge of the Company, threatened, against either of the Company or any of its Subsidiaries.

Section 3.17. Contracts.

(a) Schedule 3.17(a) sets forth a complete and correct list in all material respects of all Contracts as of the date hereof.

(b) Each Contract is valid, binding and enforceable against the Company or its Subsidiaries and, to the Knowledge of the Company, against the other parties thereto in accordance with its terms, and in full force and effect subject to the rights of creditors generally and the availability of equitable remedies, except to the extent the failure to be in full force and effect would not have, individually or in the aggregate, a Company Material Adverse Effect. Each of the Company and its Subsidiaries has performed all obligations required to be performed by it to date under, and is not in default or delinquent in performance, status or any other respect (claimed or actual) in connection with, any Contract, and no event has occurred which, with due notice or lapse of time or both, would, individually or in the aggregate, constitute such a default except as would not have a Company Material Adverse Effect. To the Knowledge of the Company, as of the date hereof, no other party to any Contract is in default in respect thereof, and no event has occurred which, with due notice or lapse of time or both, would, individually or in the aggregate,

constitute such a default except as would not have a Company Material Adverse Effect.

(c) A “Contract” means any written agreement, contract or commitment (provided, that in the case of Customer Contracts and Vendor Contracts, all such written agreements, contracts or commitments relating to such customer or vendor shall be deemed one Contract) to which either of the Company or any of its Subsidiaries is a party or by which it or any of its assets are bound constituting:

- (i) a contract or agreement with one of the top 20 customers (each, a “Customer”) by revenue derived by the Company and its Subsidiaries (taken together), for the year ended December 31, 2013, pursuant to which the Company or any of its Subsidiaries has sold goods and/or services (the “Customer Contracts”);
- (ii) a contract or agreement with one of the top 20 vendors that provide the Company or any of its Subsidiaries with equipment, telecommunications access services or fiber IRUs (each, a “Vendor”) by dollar amount paid to such vendors by the Company and its Subsidiaries (taken together), for the year ended December 31, 2013 (the “Vendor Contracts”);
- (iii) a material peering agreement of the Company and its Subsidiaries;
- (iv) a mortgage, indenture, security agreement, guaranty, pledge or other agreement or instrument relating to the borrowing of money or extension of credit (other than accounts receivable or accounts payable in the ordinary course of business and consistent with past practice) in an amount in excess of \$500,000;
- (v) a contract or agreement creating a capital lease obligation in excess of \$1,000,000;
- (vi) a joint venture, partnership or limited liability company agreement with third parties;
- (vii) other than Company permits restricting operations to a specific geographical territory, a non-competition agreement or any other agreement or obligation (other than customary agency, sales representative and distribution agreements entered into in the ordinary course) which purports to limit in any material respect (i) the manner in which, or the localities in which, the business of the Company or its Subsidiaries may be conducted or (ii) the ability of either of the Company or its Subsidiaries to provide any type of service;
- (viii) an agreement limiting or restricting the ability of either of the Company or its Subsidiaries to make distributions or declare or pay dividends in respect of its capital stock or membership interests, as the case may be;
- (ix) an agreement (other than capital leases) requiring capital expenditures (other than capital lease obligations) in excess of \$500,000, provided that this clause (ix) shall not include customer agreements, purchase orders or statements of work for software development entered into in the ordinary course of business

consistent with the Company's capital expenditure forecast;

(x) an agreement or offer to acquire all or a substantial portion of the capital stock, business, property or assets of any other Person in each case that would be material to the Company; or

(xi) an agreement pursuant to which the Company or its Subsidiaries uses or has the right to use material network infrastructure, including fiber, conduit, space, power and other associated property necessary to operate a fiber optic network requiring payments by the Company in excess of \$1,000,000 in a fiscal year.

Section 3.18. Employee Plans.

(a) Schedule 3.18(a) contains a correct and complete list of each Company Benefit Plan pursuant to which the Company or any of its Subsidiaries would reasonably be expected to have aggregate obligations or liabilities in excess of \$250,000 per year.

(b) The Company has provided or made available to Parent or its counsel with respect to each and every material Company Benefit Plan a true and complete copy of all plan documents, if any, including related trust agreements, funding arrangements, and insurance contracts and all amendments thereto; and, to the extent applicable, (i) the most recent determination letter received by the Company or any of its Subsidiaries from the IRS regarding the tax-qualified status of such Company Benefit Plan; (ii) the most recent financial statements for such Company Benefit Plan; (iii) the most recent actuarial valuation report; (iv) the current summary plan description and any summaries of material modifications; and (v) Form 5500 Annual Returns/Reports, together with all schedules thereto, for the most recent plan year.

(c) No Company Benefit Plan is (i) subject to Title IV or Section 302 of ERISA or Section 412 or 4971 of the Code, (ii) a "multiemployer plan" as defined in Section 3(37) of ERISA, or (iii) a plan that has two or more contributing sponsors at least two of whom are not under common control, within the meaning of Section 4063 of ERISA, and none of the Company or any of its ERISA Affiliates has withdrawn at any time within the preceding six years from any multiemployer plan, or incurred any withdrawal liability which remains unsatisfied, and no events have occurred and no circumstances exist that would reasonably be expected to result in any such liability to the Company or any of its Subsidiaries.

(d) With respect to each Company Benefit Plan that is intended to qualify under Section 401(a) of the Code, such plan, and its related trust, has received, has an application pending or remains within the remedial amendment period for obtaining, a determination letter from the IRS that it is so qualified and that its trust is exempt from Tax under Section 501(a) of the Code, and nothing has occurred with respect to the operation of any such plan which would reasonably be expected to cause the loss of such qualification or exemption or the imposition of any material liability, penalty or Tax under ERISA or the Code.

(e) There are no pending or, to the Knowledge of the Company, threatened material actions, claims or lawsuits against or relating to any Company Benefit Plan or against any fiduciary of any Company Benefit Plan with respect to the operation of such plan (other than routine benefits claims).

(f) Each Company Benefit Plan has been established and administered in all material respects in accordance with its terms, and in compliance in all material respects with the applicable provisions of ERISA, the Code and other applicable laws, and all contributions (including all employer contributions and employee salary reduction contributions) required to have been made under any of the Company Benefit Plans to any funds or trusts established thereunder or in connection therewith have been made or have been accrued and reported on the Company's financial statements.

(g) None of the Company Benefit Plans provide retiree health or life insurance benefits except as may be required by Section 4980B of the Code and Section 601 of ERISA or any other applicable law or at the expense of the participant or the participant's beneficiary. There has been no material violation of the "continuation coverage requirement" of "group health plans" as set forth in Section 4980B of the Code and Part 6 of Subtitle B of Title I of ERISA with respect to any Company Benefit Plan to which such continuation coverage requirements apply.

(h) Except as provided in this Agreement, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby or thereby will (either alone or in combination with another event) (i) result in any payment becoming due, or increase the amount of any compensation or benefits due, to any current or former employee of the Company and its Subsidiaries or with respect to any Company Benefit Plan; (ii) increase any benefits otherwise payable under any Company Benefit Plan; or (iii) result in the acceleration of the time of payment or vesting of any such compensation or benefits.

(i) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby or thereby will (either alone or in combination with another event) result in the payment of any amount that would, individually or in combination with any other such payment, not be deductible as a result of Section 280G of the Code.

(j) Except as would not reasonably be expected to result in a material liability to the Company or its Subsidiaries, each Company Benefit Plan that is a "nonqualified deferred compensation plan" (as defined in Section 409A(d)(1) of the Code) is in documentary compliance with, and has been administered (i) in good faith compliance with Section 409A of the Code for the period beginning October 1, 2004 through December 31, 2008, and (ii) in compliance with Section 409A of the Code since January 1, 2009.

(k) With respect to any Company Equity Award, (i) each grant of a Company Equity Award was duly authorized no later than the date on which the grant of such Company Equity Award was by its terms to be effective (the "Grant Date") by all necessary corporate action, including, as applicable, approval by the Board of Directors of the Company, or a committee thereof, or a duly authorized delegate thereof, and any required approval by the stockholders of the Company by the necessary number of votes or written consents, and the award agreement governing such grant, if any, was duly executed and delivered by each party thereto within a reasonable time following the Grant Date, (ii) each such grant was made in accordance with the terms of the applicable Company Benefit Plan (including the applicable Company Stock Plan), the Exchange Act and all other applicable Law, including the rules of NASDAQ, and (iii) the per share exercise price of each Company Option was not less than the fair market value of a share of Company Common Stock on the applicable Grant Date.

(l) Except as would not reasonably be expected to result in a material liability to the Company or its Subsidiaries, all Company Benefit Plans subject to the laws of any jurisdiction outside of the United States (i) have been maintained in accordance with all applicable requirements, (ii) that are intended to qualify for special Tax treatment, meet all requirements for such treatment, and (iii) that are intended to be funded and/or book-reserved, are fully funded and/or book reserved, as appropriate, based upon reasonable actuarial assumptions.

Section 3.19. Insurance. All material policies of title, liability, fire, casualty, business interruption, workers' compensation and other forms of insurance and bonds insuring each of the Company and its Subsidiaries and their assets, properties and operations are in full force and effect. None of the Company or its Subsidiaries is in material default under any provisions of any such policy of insurance nor has any of the Company or its Subsidiaries received notice of cancellation of or cancelled any such material insurance.

Section 3.20. Affiliate Transactions. There are no transactions, agreements, arrangements or understandings between the Company or any of its Subsidiaries, on the one hand, and any director or executive officer of the Company, on the other hand, that would be required to be disclosed under Item 404 of Regulation S-K under the Securities Act other than ordinary course of business employment agreements and similar employee arrangements otherwise set forth on Schedule 3.20.

Section 3.21. Vendors and Customers.

(a) Schedule 3.21(a) sets forth a list of the Vendors that are parties to the Vendor Contracts. Since December 31, 2013 and prior to the date hereof, no such Vendor has expressed in writing to the Company or any of its Subsidiaries its intention to cancel or otherwise terminate, or materially reduce or modify, its relationship with the Company or any of its Subsidiaries, except for any of the foregoing as would not, individually or in the aggregate, have a Company Material Adverse Effect.

(b) Schedule 3.21(b) sets forth a list of the Customers that are parties to the Customer Contracts. Since December 31, 2013 and prior to the date hereof, no Customer that is party to any Customer Contract has expressed in writing to the Company or any of its Subsidiaries its intention to cancel or otherwise terminate, or materially reduce or adversely modify, its relationship with the Company or any of its Subsidiaries, except for any of the foregoing as would not, individually or in the aggregate, have a Company Material Adverse Effect.

Section 3.22. Labor Matters.

(a) Neither the Company nor any of its Subsidiaries is a party to any collective bargaining agreement, labor union contract applicable to its employees or similar agreement or work rules or practices with any labor union, works council, labor organization or employee association applicable to employees of the Company or any of its Subsidiaries nor does the Company have Knowledge of any activities or proceedings of any labor union, works council, labor organization or employee association to organize any such employees.

(b) As of the date hereof, there are no strikes or lockouts pending with respect to any employees of the Company or any of its Subsidiaries, there is no union organizing effort

pending or, to the Knowledge of the Company, threatened against the Company or any of its Subsidiaries, there is no unfair labor practice, labor dispute (other than routine individual grievances), or labor arbitration proceeding pending or, to the Knowledge of the Company, threatened, with respect to the employees of the Company or any of its Subsidiaries, and there is no slowdown or work stoppage in effect or, to the Knowledge of the Company, threatened with respect to the employees of the Company or any of its Subsidiaries, except, in each case, as would not have, or would not reasonably be expected to have, a Company Material Adverse Effect.

(c) Except as would not have, or would not reasonably be expected to have, a Company Material Adverse Effect, (i) each of the Company and its Subsidiaries are, and have been, in compliance in all respects with all applicable laws relating to employment and employment practices, the classification of employees, wages, overtime, hours, collective bargaining, unlawful discrimination, civil rights, safety and health, workers' compensation and terms and conditions of employment, (ii) there are no charges with respect to or relating to either of the Company or its Subsidiaries pending or, to the Knowledge of the Company, threatened before the Equal Employment Opportunity Commission or any national, federal, state or local agency, domestic or foreign, responsible for the prevention of unlawful employment practices, and (iii) since January 1, 2011, neither the Company nor any of its Subsidiaries has received any written notice from any national, federal, state or local agency, domestic or foreign, responsible for the enforcement of labor or employment laws of an intention to conduct an investigation of either of the Company or its Subsidiaries and no such investigation is in progress.

(d) Except as would not have, or would not reasonably be expected to have, a Company Material Adverse Effect, neither the Company nor any of its Subsidiaries has incurred any liability or obligations with respect to any "mass layoff" or "plant closing" as defined by, and pursuant to, the Worker Adjustment and Retraining Notification Act or any similar U.S. state or local or non-U.S. "plant closing" law ("WARN") with respect to the current or former employees of the Company or its Subsidiaries.

(e) Except as would not have, or would not reasonably be expected to have, a Company Material Adverse Effect, (i) all independent contractors of the Company and its Subsidiaries (and any other independent contractor who previously rendered services for the Company or its Subsidiaries, at any time) have been, and currently are, properly classified and treated by the Company and its Subsidiaries, as applicable, as independent contractors and not as employees, (ii) all such independent contractors have in the past been, and continue to be, properly and appropriately treated as non-employees for all U.S. federal, state, and local and non-U.S. Tax purposes, (iii) the Company and its Subsidiaries have fully and accurately reported their independent contractors' compensation on IRS Forms 1099 (or otherwise in accordance with applicable law) when required to do so, and the Company and its Subsidiaries do not have any liability to provide benefits with respect to their independent contractors under the Company Benefit Plans or otherwise, and (iv) at no time within the preceding two years has any independent contractor brought a claim against the Company or its Subsidiaries challenging his or her status as an independent contractor or made a claim for additional compensation or any benefits under any Company Benefit Plan or otherwise.

Section 3.23. Environmental Matters.

(a) Except as would not have a Company Material Adverse Effect, each of the Company and its Subsidiaries is, and has been, in compliance in all material respects with all applicable laws, regulations, common law and other requirements of Governmental Entities relating to pollution, to the protection of the environment or to natural resources (“Environmental Laws”).

(b) To the Knowledge of the Company, since January 1, 2011:

(i) the Company and its Subsidiaries have not received any notice of violation or potential liability under any Environmental Laws from any Person or any Governmental Entity inquiry, request for information, or demand letter under any Environmental Law relating to operations or properties of the Company or its Subsidiaries which would be reasonably expected to result in the Company or any of its Subsidiaries incurring material liability under Environmental Laws;

(ii) none of the Company or its Subsidiaries is subject to any orders arising under Environmental Laws nor are there any administrative, civil or criminal actions, suits, proceedings or investigations pending or, to the Knowledge of the Company, threatened, against the Company or its Subsidiaries under any Environmental Law which would reasonably be expected to result in a Company Material Adverse Effect;

(iii) none of the Company or its Subsidiaries has entered into any agreement pursuant to which the Company or its Subsidiaries has assumed or will assume any liability under Environmental Laws, including without limitation, any obligation for costs of remediation, of any other Person that would reasonably be expected to result in a Company Material Adverse Effect; and

(iv) there has been no release or threatened release of a hazardous substance, hazardous waste, contaminant, pollutant, toxic substance or petroleum and its fractions, the presence of which requires investigation or remediation under any applicable Environmental Law (“Hazardous Material”), on, at or beneath any of the Company Property or other properties currently or previously owned or operated by the Company or its Subsidiaries or any surface waters or groundwaters thereon or thereunder which requires any material disclosure, investigation, cleanup, remediation, monitoring, abatement, deed or use restriction by the Company, or which would be expected to give rise to any other material liability or damages to the Company or its Subsidiaries under any Environmental Laws.

(c) Except as would not have a Company Material Adverse Effect, none of the Company or its Subsidiaries has arranged for the disposal of any Hazardous Material, or transported any Hazardous Material, in a manner that has given, or reasonably would be expected to give rise to any liability for any damages or costs of remediation.

Section 3.24. No Brokers. No broker, finder or similar intermediary has acted for or on behalf of, or is entitled to any broker’s, finder’s or similar fee or other commission from the

Company or its Subsidiaries in connection with this Agreement or the transactions contemplated hereby other than Evercore Group L.L.C. The Company has heretofore furnished to Parent a complete and correct copy of all agreements between the Company and Evercore Group L.L.C. pursuant to which Evercore Group L.L.C. would be entitled to any payment relating to the transactions contemplated hereby.

Section 3.25. Network Operations and Building Access.

(a) The network of the Company and its Subsidiaries, taken as a whole, is in good working condition and is without any material defects for purposes of operating the business of the Company and its Subsidiaries as operated by the Company and its Subsidiaries.

(b) The Company and its Subsidiaries have good and valid title to or otherwise have the right to use all items and equipment necessary to operate and maintain the network of the Company and its Subsidiaries and such items and equipment are in good operating condition and repair, free from all material defects, subject only to normal wear and tear, except for any of the foregoing as would not, individually or in the aggregate, have a Company Material Adverse Effect.

(c) The Company and its Subsidiaries have rights of access to the buildings served by its metropolitan fiber facilities that are consistent with reasonable industry standards.

Section 3.26. State Takeover Statutes. No “fair price”, “moratorium”, “control share acquisition” or other similar anti-takeover statute or regulation or any anti-takeover provision in the Company Organizational Documents is, or at the Effective Time will be, applicable to the Company, the Company Common Stock, the Combination or the other transactions contemplated by this Agreement.

Section 3.27. Opinion of Financial Advisor. The Board of Directors of the Company has received the opinion of Evercore Group L.L.C., dated as of the date hereof, to the effect that, as of such date, and subject to the limitations, qualifications and assumptions set forth therein, the Merger Consideration to be received by the holders of the Company Common Stock pursuant to the Merger is fair from a financial point of view to the holders of such Company Common Stock. A written copy of such opinion has been made available to Parent.

Section 3.28. Board Approval. The Board of Directors of the Company, at a meeting duly called and held, by unanimous vote (i) determined that this Agreement and the transactions contemplated hereby, including the Merger, are advisable and fair to, and in the best interests of, the Company and its stockholders, (ii) approved this Agreement and the transactions contemplated hereby and thereby, including the Merger, and (iii) resolved, subject to Section 7.4, to recommend that the holders of the shares of Company Common Stock approve and adopt this Agreement and the transactions contemplated hereby, including the Merger. The Company hereby agrees to the inclusion in the joint proxy statement/prospectus relating to the matters to be submitted to the holders of Company Common Stock at the Company stockholders meeting to approve and adopt this Agreement and the Merger (the “Company Stockholders Meeting”) and to the holders of the shares of Parent Common Stock at the Parent stockholders meeting (the “Parent Stockholders Meeting”) to approve the issuance of shares of Parent Common Stock in the Merger for purposes of the rules of the NYSE (the “Parent Share Issuance”) and to approve and adopt the

Parent Charter Amendment (such joint proxy statement/prospectus, and any amendments or supplements thereto, the “Joint Proxy Statement/Prospectus”), of the recommendation of the Board of Directors of the Company described in this Section 3.28 (subject to the right of the Board of Directors of the Company to withdraw, amend or modify such recommendation in accordance with Section 7.4).

Section 3.29. Vote Required. The affirmative vote of the holders of a majority of the outstanding shares of Company Common Stock entitled to vote thereon (the “Required Company Vote”) is the only vote of the holders of any class or series of the Company’s capital stock necessary to approve and adopt this Agreement and the transactions contemplated hereby, including the Merger.

Section 3.30. No Improper Payments to Foreign Officials; Trade Laws.

(a) Since January 1, 2011, (i) the Company and its Subsidiaries, directors, officers and employees have complied in all material respects with the U.S. Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. §§ 78a et seq. (1997 and 2000)) and any other material applicable foreign or domestic anticorruption or antibribery Laws (collectively, the “Fraud and Bribery Laws”), and (ii) neither the Company, any Subsidiary of the Company nor, to the Knowledge of the Company, any of the Company’s directors, officers, employees, agents or other representatives acting on the Company’s behalf have, directly or indirectly, in each case, in violation in any material respects of the Fraud and Bribery Laws (A) used any corporate funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity, (B) offered, promised, paid or delivered any fee, commission or other sum of money or item of value, however characterized, to any finder, agent or other party acting on behalf of or under the auspices of a governmental or political employee or official or governmental or political entity, political agency, department, enterprise or instrumentality, in the United States or any other country, (C) made any payment to any customer or supplier, or to any officer, director, partner, employee or agent of any such customer or supplier, for the unlawful sharing of fees to any such customer or supplier or any such officer, director, partner, employee or agent for the unlawful rebating of charges, (D) engaged in any other unlawful reciprocal practice, or made any other unlawful payment or given any other unlawful consideration to any such customer or supplier or any such officer, director, partner, employee or agent or (E) taken any action or made any omission in violation of any applicable law governing imports into or exports from the United States or any foreign country, or relating to economic sanctions or embargoes, corrupt practices, money laundering, or compliance with unsanctioned foreign boycotts.

(b) The United States government has not notified the Company or any of its Subsidiaries of any actual or alleged violation or breach of the Fraud and Bribery Laws. Other than the United States government, no Person has notified the Company or any of its Subsidiaries of any actual or, to the Knowledge of the Company, alleged violation or breach of the Fraud and Bribery Laws. To the Knowledge of the Company, none of the Company or any of its Subsidiaries is under investigation by any government for alleged violation (s) of the Fraud and Bribery Laws.

Section 3.31. No Other Representations or Warranties. Except for the representations and warranties contained in this Article III, neither the Company nor any other Person makes any other express or implied representation or warranty on behalf of the Company with

respect to the Company and its Subsidiaries.

ARTICLE IV.

REPRESENTATIONS AND WARRANTIES OF PARENT, MERGER SUB 1 AND MERGER SUB 2

Except as otherwise expressly disclosed in the Parent SEC Reports filed prior to the date hereof (other than (i) any information that is contained solely in the “Risk Factors” section of such Parent SEC Reports and (ii) any forward-looking statements, or other statements that are similarly predictive or forward-looking in nature, contained in such Parent SEC Reports) or as set forth in the corresponding sections or subsections of the Parent Disclosure Schedule (or, pursuant to Section 10.2(b), as set forth in any section or subsection of the Parent Disclosure Schedule to the extent the applicability thereof is readily apparent from the face of the Parent Disclosure Schedule), Parent, Merger Sub 1 and Merger Sub 2 hereby represent and warrant to the Company as follows:

Section 4.1. Organization .

(a) Parent is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, and has all requisite corporate power to own its properties and assets and to conduct its businesses as now conducted except where the failure to be so qualified or in good standing in such jurisdiction would not, individually or in the aggregate, have a Parent Material Adverse Effect. Copies of the Parent Organizational Documents, with all amendments thereto to the date hereof, have been made available to the Company or its representatives, and such copies are accurate and complete as of the date hereof.

(b) Each of Merger Sub 1, Merger Sub 2 and Parent’s other Subsidiaries is duly organized, validly existing and in good standing or similar concept under the laws of the jurisdiction of its organization, and has all requisite corporate, limited liability company or limited partnership power (as the case may be) to own its properties and assets and to conduct its businesses as now conducted except where the failure to be so qualified or in good standing in such jurisdiction would not, individually or in the aggregate, have a Parent Material Adverse Effect. Copies of the organizational documents of Merger Sub 1, Merger Sub 2 and each material Subsidiary of Parent, with all amendments thereto to the date hereof, have been made available to the Company or its representatives, and such copies are accurate and complete as of the date hereof.

Section 4.2. Qualification to Do Business . Each of Parent, Merger Sub 1, Merger Sub 2 and Parent’s other Subsidiaries is duly qualified to do business as a foreign corporation, limited liability company or partnership (as the case may be) and is in good standing or similar concept in every jurisdiction in which the character of the properties owned or leased by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to be so qualified or in good standing would not, individually or in the aggregate, have a Parent Material Adverse Effect.

Section 4.3. No Conflict or Violation . The execution, delivery and, subject to the receipt of the Required Parent Vote, performance by Parent, Merger Sub 1 and Merger Sub 2 of this Agreement do not and will not (i) violate or conflict with any provision of any Parent Organizational Document or any of the organizational documents of Merger Sub 1, Merger Sub 2, or any of Parent's other Subsidiaries, (ii) subject to the receipt of any consents set forth in Section 4.4 (including Schedule 4.4), violate any provision of law, or any order, judgment or decree of any Governmental Entity, (iii) subject to the receipt of any consents set forth in Section 4.4 (including Schedule 4.4) result in the creation or imposition of any Lien (other than any Permitted Lien) upon any of the assets, properties or rights of any of Parent, Merger Sub 1 or Merger Sub 2 or any of Parent's other Subsidiaries or result in or give to others any rights of cancellation, modification, amendment, acceleration, revocation or suspension of any of the Parent Licenses and Permits or (iv) violate or result in a breach of or constitute (with due notice or lapse of time or both) a default under or result in or give to others any rights of cancellation, modification, amendment, or acceleration under, any contract, agreement, lease or instrument to which Parent, Merger Sub 1 or Merger Sub 2 or any of Parent's other Subsidiaries is a party or by which it is bound or to which any of its properties or assets is subject, except in each case with respect to clauses (iii) and (iv), for any such violations, breaches or defaults that would not, individually or in the aggregate, have a Parent Material Adverse Effect.

Section 4.4. Consents and Approvals . No consent, waiver, authorization or approval of any Governmental Entity, and no declaration or notice to or filing or registration with any Governmental Entity, is necessary or required in connection with the execution and delivery of this Agreement by Parent or the performance by Parent or its Subsidiaries of their obligations hereunder, except for: (i) the filing of the Certificate of Merger with the Secretary of State in accordance with the DGCL; (ii) the filing of the Subsequent Certificate of Merger with the Secretary of State in accordance with the DGCL and the DLLCA; (iii) the filing of a Notification and Report Form under the HSR Act; (iv) the filing of applications jointly by the parties with the FCC and U.S. state public utility commissions for approval of the transfer of control of the Company, and receipt of such approvals; (v) applicable requirements of the Securities Act and of the Exchange Act; (vi) such consents, waivers, authorizations or approvals of any Governmental Entity set forth on Schedule 4.4; and (vii) such consents, waivers, authorizations, approvals, declarations, notices, filings or registrations as will be obtained or made prior to the Closing or which, if not obtained or made, would not have a Company Material Adverse Effect or prevent or materially delay the consummation of the transactions contemplated by this Agreement.

Section 4.5. Authorization and Validity of Agreement . Parent, Merger Sub 1 and Merger Sub 2 have all requisite corporate or limited liability power and authority to execute, deliver and, subject to receipt of the Required Parent Vote, perform their respective obligations under this Agreement and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement by Parent, Merger Sub 1 and Merger Sub 2 and the performance by Parent, Merger Sub 1 and Merger Sub 2 of their respective obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby have been duly authorized by the Board of Directors of each of Parent and Merger Sub 1 and the Board of Managers of Merger Sub 2 and all other necessary corporate or limited liability company action on the part of Parent, Merger Sub 1 and Merger Sub 2, other than the Required Parent Vote, and no other corporate proceedings on the part of either Parent, Merger Sub 1 or Merger Sub 2 are necessary to authorize this Agreement and the transactions contemplated hereby and thereby. This

Agreement has been duly and validly executed and delivered by Parent, Merger Sub 1 and Merger Sub 2 and, assuming due execution and delivery by the Company, shall constitute a legal, valid and binding obligation of each of Parent, Merger Sub 1 and Merger Sub 2, enforceable against each of Parent, Merger Sub 1 and Merger Sub 2 in accordance with its terms, subject to (i) the effect of bankruptcy, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting the enforcement of creditors' rights generally, and (ii) general equitable principles (whether considered in a proceeding in equity or at law).

Section 4.6. Capitalization and Related Matters.

(a) The authorized capital stock of Parent consists of 343,333,333 authorized shares of Parent Common Stock and 10,000,000 authorized shares of preferred stock, par value \$0.01 per share (“Parent Preferred Stock”). As of June 12, 2014, 237,435,229 shares of Parent Common Stock were issued and outstanding and no shares of Parent Preferred Stock were issued and outstanding. As of May 31, 2014, there were (i) Parent Options to purchase an aggregate of 10,665 shares of Parent Common Stock, with a weighted average exercise price of \$14.55 per share, issued and outstanding, (ii) 4,997,343 shares of Parent Common Stock underlying Parent SARs, assuming maximum achievement of any applicable performance goals, (iii) 0 shares of Parent Common Stock underlying Parent Restricted Stock Awards, and (iv) 3,906,420 shares of Parent Common Stock underlying Parent RSU Awards, assuming maximum achievement of any applicable performance goals. As of December 31, 2013, 15,278,650 shares of Parent Common Stock were available for grant under the Parent Benefit Plans (all of which is issuable under the Parent Stock Plan).

(b) The outstanding shares of Parent Common Stock (i) have been duly authorized and validly issued and are fully paid and nonassessable and (ii) were issued in compliance with all applicable U.S. federal and state securities laws and any non-U.S. securities laws. Except as set forth above in Section 4.6(a) and except for (x) equity- or equity-based awards granted under a Parent Benefit Plan and (y) shares of Parent Common Stock issued since May 31, 2014 pursuant to Parent Options or Parent SARs or Parent Restricted Stock Awards, no shares of capital stock of Parent are outstanding and Parent does not have outstanding any securities convertible into or exchangeable for any shares of capital stock of Parent, including Parent Equity Awards, any rights to subscribe for or to purchase or any options for the purchase of, or any agreements providing for the issuance (contingent or otherwise) of, or any calls, commitments or known claims of any other character relating to the issuance of, any capital stock of Parent, or any stock or securities convertible into or exchangeable for any capital stock of Parent; and Parent is not subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire, or to register under the Securities Act, any shares of capital stock of Parent. Except as set forth above in Section 4.6(a), Parent does not have outstanding any bonds, debentures, notes or other obligations the holders of which have the right to vote (or are convertible into or exercisable for securities having the right to vote) with the stockholders of Parent on any matter. Except as set forth above in Section 4.6(a) or clause (x) of the second sentence of this Section 4.6(b), there are no outstanding stock options, restricted stock units, restricted stock, stock appreciation rights, “phantom” stock rights, performance units, or other compensatory rights or awards (in each case, issued by Parent or any of its Subsidiaries), that are convertible into or exercisable for a share of Parent Common Stock on a deferred basis or otherwise or other rights that are linked to, or based upon, the value of Parent Common Stock. All Parent Equity Awards are evidenced by award agreements in the

forms previously made available to the Company.

(c) Except for the Rights Agreement, Parent has no rights plan, “poison-pill” or other similar agreement or arrangement or any anti-takeover provision in the Parent Organizational Documents that is, or at the Effective Time shall be, applicable to Parent, the Parent Common Stock, the Combination or the other transactions contemplated by this Agreement.

(d) All of the outstanding shares of capital stock, or membership interests or other ownership interests of, Merger Sub 1 and Merger Sub 2 and each other Subsidiary of Parent, as applicable, are validly issued, fully paid and nonassessable and are owned of record and beneficially by Parent, directly or indirectly. Parent has, as of the date hereof and shall have on the Closing Date, valid and marketable title to all of the shares of capital stock of, or membership interests or other ownership interests in, Merger Sub 1 and Merger Sub 2 and each other Subsidiary of Parent, free and clear of any Liens other than Permitted Liens. Such outstanding shares of capital stock of, or membership interests or other ownership interests in, Merger Sub 1 and Merger Sub 2 and each other Subsidiary of Parent, as applicable, are the sole outstanding securities of such Subsidiaries; the Subsidiaries of Parent do not have outstanding any securities convertible into or exchangeable for any capital stock of, or membership interests or other ownership interests in, such Subsidiaries, any rights to subscribe for or to purchase or any options for the purchase of, or any agreements providing for the issuance (contingent or otherwise) of, or any calls, commitments or claims of any other character relating to the issuance of, any capital stock of, or membership interests or other ownership interests in, such Subsidiaries, or any stock or securities convertible into or exchangeable for any capital stock of, or membership interests or other ownership interests in, such Subsidiaries; and neither Parent or any of its Subsidiaries are subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire, or to register under the Securities Act, any capital stock of, or membership interests or other ownership interests in, any Subsidiary of Parent.

Section 4.7. Subsidiaries and Equity Investments. Parent, Merger Sub 1, Merger Sub 2 and Parent’s other Subsidiaries do not directly or indirectly own, or hold any rights to acquire, any material capital stock or any other material securities, interests or investments in any other Person other than investments that constitute cash or cash equivalents. Parent, Merger Sub 1, Merger Sub 2 and Parent’s other Subsidiaries do not directly or indirectly own, or hold any rights to acquire, in any material amounts any cash equivalents consisting of auction-rate securities. There are no outstanding stock options, restricted stock units, restricted stock, stock appreciation rights, “phantom” stock rights, performance units, or other compensatory rights or awards (in each case, issued by Parent or any of its Subsidiaries) that are convertible into or exercisable for any capital stock of, or membership interests or other ownership interests in, any Subsidiary of Parent, on a deferred basis or otherwise or other rights that are linked to, or based upon, the value of any capital stock of, or membership interests or other ownership interests in, any Subsidiary of Parent.

Section 4.8. Parent SEC Reports.

(a) Parent and its Subsidiaries have filed each report and definitive proxy statement (together with all amendments thereof and supplements thereto) required to be filed by Parent or any of its Subsidiaries pursuant to the Exchange Act with the SEC since January 1, 2011

(as such documents have since the time of their filing been amended or supplemented, the “Parent SEC Reports”). As of their respective dates, after giving effect to any amendments or supplements thereto filed prior to the date hereof, the Parent SEC Reports (i) complied as to form in all material respects with the requirements of the Exchange Act, and (ii) did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(b) The audited consolidated financial statements and unaudited interim consolidated financial statements (including, in each case, the notes, if any, thereto) included in the Parent SEC Reports complied as to form in all material respects with the published rules and regulations of the SEC with respect thereto, were prepared in accordance with GAAP applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto and except with respect to unaudited statements as permitted by Form 10-Q of the SEC) and fairly present (subject, in the case of the unaudited interim financial statements included therein, to normal year-end adjustments and the absence of complete footnotes) in all material respects the consolidated financial position of Parent and its consolidated Subsidiaries as of the respective dates thereof and the consolidated results of their operations and cash flows for the respective periods then ended.

Section 4.9. Absence of Certain Changes or Events.

(a) Since December 31, 2013, there has not been any Parent Material Adverse Effect.

(b) Since December 31, 2013, through the date hereof, there has not been:

(i) any material loss, damage, destruction or other casualty to the assets or properties of either of Parent or any of its Subsidiaries (other than (x) any for which insurance awards have been received or guaranteed and (y) for such failures as would not individually or in the aggregate have a Parent Material Adverse Effect);

(ii) any change in any method of financial accounting or financial accounting practice of either of Parent or any of its Subsidiaries except for any such change required by reason of a concurrent change in GAAP; or

(iii) any loss of the employment, services or benefits of the chief executive officer of Parent and members of Parent’s senior management.

(c) Since December 31, 2013 through the date hereof, each of Parent and each of its Subsidiaries has operated in the ordinary course of business and has not :

(i) (A) lent money to any Person (other than to Parent or any of its Wholly Owned Subsidiaries) or incurred or guaranteed any Indebtedness for borrowed money in excess of \$2,500,000 in the aggregate, or (B) entered into any

capital lease obligation, other than among Parent or any of its Wholly Owned Subsidiaries;

(ii) failed to discharge or satisfy any material Lien or pay or satisfy any obligation or liability or accounts payable (whether absolute, accrued, contingent or otherwise) in excess of \$5,000,000, other than Permitted Liens and obligations and liabilities being contested in good faith and for which adequate reserves have been provided in accordance with GAAP;

(iii) mortgaged, pledged or subjected to any Lien (other than Permitted Liens) any of its assets, properties or rights in excess of \$5,000,000;

(iv) sold or transferred any of its material assets or cancelled any material debts or claims or waived any material rights in excess of \$5,000,000;

(v) in the case of Parent and any Subsidiary that is not a Wholly Owned Subsidiary, declared, paid, or set aside for payment any dividend or other distribution in respect of shares of its capital stock, membership interests or other securities, or redeemed, purchased or otherwise acquired, directly or indirectly, any shares of its capital stock, membership interests or other securities, or agreed to do so;

(vi) (A) changed any of its material accounting methods, principles or practices, except as required by GAAP or by the SEC, or (B) changed its material Tax elections, or entered into any material closing agreement or settled or compromised any material claim or assessment, in each case in respect of material Taxes; or

(vii) entered into any agreement or made any commitment to do any of the foregoing.

Section 4.10. Tax Matters.

(a) Except as would not, individually or in the aggregate, have a Parent Material Adverse Effect:

(i) (A) Parent and each of its Subsidiaries have filed when due all Tax Returns required by applicable law to be filed with respect to Parent and each of its Subsidiaries, (B) all such Tax Returns were true, correct and complete in all respects as of the time of such filing, and (C) all Taxes owed by Parent and each of its Subsidiaries (including any Taxes that are required to be deducted and withheld in connection with any amounts paid or owing to any employee, creditor, independent contractor or other third party), if required to have been paid, have been paid, except, in each case of clauses (A) through (C), for Taxes or Tax matters contested in good faith or that have been adequately provided for, in accordance with GAAP, in the Parent SEC Reports filed prior to the date hereof;

(ii) there is no action, suit, proceeding, investigation or audit now

pending with respect to Parent or any of its Subsidiaries in respect of any Tax, nor has any claim for additional Tax been asserted in writing by any taxing authority;

(iii) since January 1, 2011, no claim has been made in writing by any taxing authority in a jurisdiction where Parent or any of its Subsidiaries has not filed income or franchise Tax Returns that it is or may be subject to income or franchise Tax by such jurisdiction;

(iv) (A) there is no outstanding request for any extension of time for Parent or any of its Subsidiaries to pay any Taxes or file any Tax Returns, other than any such request made in the ordinary course of business; (B) there is no waiver or extension of any applicable statute of limitations for the assessment or collection of any Taxes of Parent or any of its Subsidiaries that is currently in force; and (C) neither Parent nor any of its Subsidiaries is a party to or bound by any agreement (other than (1) any commercial contract entered into in the ordinary course and not primarily related to Taxes or (2) any agreement solely among the Company and/or its Subsidiaries) providing for the payment of Taxes, payment for Tax losses, entitlements to refunds or similar Tax matters;

(v) neither Parent nor any of its Subsidiaries has participated in any “listed transaction” as defined in Treasury Regulations Section 1.6011-4(b)(2);

(vi) within the last two years, neither Parent nor any of its Subsidiaries has distributed stock of another Person, or has had its stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Section 355 of the Code;

(vii) there is no Lien, other than a Permitted Lien, on any of the assets or properties of Parent and its Subsidiaries that arose in connection with any failure or alleged failure to pay any Tax;

(viii) neither Parent nor any of its Subsidiaries has any liability for the Taxes of any Person (other than any of Parent and its Subsidiaries) under Treasury Regulations § 1.1502-6 (or any similar provision of U.S. state or local or non-U.S. law), or as a transferee or successor; and

(ix) Parent and its Subsidiaries are not bound with respect to the current or any future taxable period by any closing agreement (within the meaning of Section 7121(a) of the Code) or other written agreement with a taxing authority.

(b) Neither Parent nor any of its Subsidiaries, including Merger Sub 1 and Merger Sub 2, has taken or agreed to take any action, or is aware of the existence of any fact or circumstance, that would prevent the Combination from qualifying as a reorganization within the meaning of Section 368(a) of the Code.

(c) As of December 31, 2013, the consolidated federal income Tax Return group of which Parent is the common parent had federal net operating loss carryforwards of at least \$9 billion. As of immediately after the Effective Time, such net operating loss carryforwards

will not be subject to limitation under Section 382 of the Code or any similar provision of applicable law.

Section 4.11. Absence of Undisclosed Liabilities . There are no liabilities or obligations of Parent or any Subsidiary thereof of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or otherwise, other than (A) liabilities or obligations disclosed, reflected or reserved against and provided for in the consolidated balance sheet of Parent as of December 31, 2013 included in the Parent SEC Reports filed prior to the date hereof or referred to in the notes thereto, (B) liabilities or obligations incurred in the ordinary course of business consistent with past practice since December 31, 2013, (C) liabilities or obligations that would not, individually or in the aggregate, have a Parent Material Adverse Effect, or (D) liabilities or obligations incurred pursuant to this Agreement.

Section 4.12. Intellectual Property .

(a) Except as would not, individually or in the aggregate, have a Parent Material Adverse Effect, (i) Parent and its Subsidiaries own all right, title and interest in and to, or have valid and enforceable licenses to use, all the Parent Intellectual Property; (ii) to the Knowledge of Parent, no third party is infringing any Parent Owned Intellectual Property; (iii) to the Knowledge of Parent, Parent and its Subsidiaries are not infringing, misappropriating or violating any Intellectual Property right of any third party; and (iv) as of the date hereof, there is no claim, suit, action or proceeding pending or, to the Knowledge of Parent, threatened against Parent or its Subsidiaries: (a) alleging any such violation, misappropriation or infringement of a third party's Intellectual Property rights; or (b) challenging Parent's or its Subsidiaries' ownership or use of, or the validity or enforceability of, any Parent Owned Intellectual Property.

(b) All Parent Registered Intellectual Property is owned by Parent and/or its Subsidiaries, free and clear of all Liens other than Permitted Liens.

Section 4.13. Licenses and Permits .

(a) Parent and its Subsidiaries own or possess all right, title and interest in and to each of their respective material licenses, permits, franchises, registrations, authorizations and approvals issued or granted to any of Parent or its Subsidiaries by any Governmental Entity as of the date hereof (the "Parent Licenses and Permits"). Parent has taken all necessary action to maintain such Parent Licenses and Permits, except for such failures that would not, individually or in the aggregate, have a Parent Material Adverse Effect. Each Parent License and Permit has been duly obtained, is valid and in full force and effect, and is not subject to any pending or, to the Knowledge of Parent, threatened administrative or judicial proceeding to revoke, cancel, suspend or declare such Parent License and Permit invalid in any respect, except, in each case, as would not, individually or in the aggregate, have a Parent Material Adverse Effect. The Parent Licenses and Permits are sufficient and adequate in all material respects to permit the continued lawful conduct of the business of Parent and its Subsidiaries as presently conducted, and none of the operations of Parent or its Subsidiaries is being conducted in a manner that violates in any material respects any of the terms or conditions under which any Parent License and Permit was granted, except for such failures that would not, individually or in the aggregate, have a Parent Material Adverse Effect.

(b) The operations of Parent and its Subsidiaries are in compliance in all material respects with the terms and conditions of the Communications Act, applicable U.S. state or non-U.S. law and the published rules, regulations, and policies promulgated by any Governmental Entity, and neither Parent nor its Subsidiaries have done anything or failed to do anything which reasonably could be expected to cause the loss of any of the material Parent Licenses and Permits.

(c) No petition, action, investigation, notice of violation or apparent liability, notice of forfeiture, order to show cause, complaint, or proceeding seeking to revoke, reconsider the grant of, cancel, suspend, or modify any of the material Parent Licenses and Permits is pending or, to the Knowledge of Parent, threatened before any Governmental Entity except for such failures that would not, individually or in the aggregate, have a Company Material Adverse Effect. No notices have been received by and, no claims have been filed against, Parent or its Subsidiaries alleging a failure to hold any material requisite permits, regulatory approvals, licenses or other authorizations.

Section 4.14. Compliance with Law.

(a) Since January 1, 2011, the operations of the business of Parent and its Subsidiaries have been conducted in accordance in all material respects with all applicable laws, regulations, orders and other requirements of all Governmental Entities having jurisdiction over such entity and its assets, properties and operations. Since January 1, 2011, none of Parent or its Subsidiaries has received notice of any violation (or any investigation with respect thereto) of any such law, regulation, order or other legal requirement, and none of Parent or its Subsidiaries is in default with respect to any order, writ, judgment, award, injunction or decree of any national, federal, state or local court or governmental or regulatory authority or arbitrator, domestic or foreign, applicable to any of its assets, properties or operations, except for any of the foregoing that would not, individually or in the aggregate, have a Parent Material Adverse Effect.

(b) Parent and each of its officers are in compliance in all material respects with (i) the applicable provisions of the Sarbanes-Oxley Act and (ii) the applicable listing and corporate governance rules and regulations of the NYSE. Except as permitted by the Exchange Act, including, without limitation, Sections 13(k)(2) and (3), since the enactment of the Sarbanes-Oxley Act, neither Parent nor any of its Affiliates has made, arranged or modified (in any material way) personal loans to any executive officer or director of Parent.

(c) The management of Parent has (i) implemented (x) disclosure controls and procedures to ensure that material information relating to Parent, including its consolidated Subsidiaries, is made known to the management of Parent by others within those entities and (y) a system of internal control over financial reporting sufficient to provide reasonable assurances regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP, and (ii) disclosed, based on its most recent evaluation prior to the date hereof, to Parent's auditors and the audit committee of Parent's Board of Directors (A) any significant deficiencies in the design or operation of internal controls which could adversely affect Parent's ability to record, process, summarize and report financial data and has identified for Parent's auditors any material weaknesses in internal controls and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in Parent's internal controls.

Section 4.15. Litigation. Except as would not have, individually or in the aggregate, a Parent Material Adverse Effect, there are no claims, actions, suits, proceedings, subpoenas or, to the Knowledge of Parent, investigations pending or, to the Knowledge of Parent, threatened, before any Governmental Entity, or before any arbitrator of any nature, brought by or against any of Parent or its Subsidiaries or any of their officers or directors involving or relating to Parent or its Subsidiaries, the assets, properties or rights of any of Parent and its Subsidiaries or the transactions contemplated by this Agreement. There is no material judgment, decree, injunction, ruling or order of any Governmental Entity or before any arbitrator of any nature outstanding, or to the Knowledge of Parent, threatened, against either of Parent or its Subsidiaries.

Section 4.16. Contracts. Each contract between Parent and any of its Subsidiaries that is a “material contract” within the meaning of Item 601(b)(4), (9) and (10) of Regulation S-K of the SEC to be performed after the date hereof (each such Contract, a “Parent Material Contract”) is valid, binding and enforceable against Parent or its Subsidiaries and, to the Knowledge of Parent, against the other parties thereto in accordance with its terms, and in full force and effect, subject to the rights of creditors generally and the availability of equitable remedies, except to the extent the failure to be in full force and effect would not have, individually or in the aggregate, a Parent Material Adverse Effect. Each of Parent and its Subsidiaries has performed all obligations required to be performed by it to date under, and is not in default or delinquent in performance, status or any other respect (claimed or actual) in connection with, any Parent Material Contract, and no event has occurred which, with due notice or lapse of time or both, would constitute such a default, except as would not have a Parent Material Adverse Effect. To the Knowledge of Parent, as of the date hereof, no other party to any Parent Material Contract is in material default in respect thereof, and no event has occurred which, with due notice or lapse of time or both, would constitute such a default, except as would not have a Parent Material Adverse Effect.

Section 4.17. Employee Plans.

(a) Parent has provided or made available to the Company or its counsel with respect to each and every material Parent Benefit Plan a true and complete copy of all plan documents, if any, including related trust agreements, funding arrangements, and insurance contracts and all amendments thereto; and, to the extent applicable, (i) the most recent determination letter received by Parent or any of its Subsidiaries from the IRS regarding the tax-qualified status of such Parent Benefit Plan; (ii) the most recent financial statements for such Parent Benefit Plan; (iii) the most recent actuarial valuation report; (iv) the current summary plan description and any summaries of material modifications; and (v) Form 5500 Annual Returns/Reports, together with all schedules thereto, for the most recent plan year.

(b) With respect to each Parent Benefit Plan that is a “single-employer plan” (within the meaning of Section 3(41) of ERISA) and is subject to Title IV or Section 302 of ERISA or Section 412 or 4971 of the Code (each, a “Title IV Plan”): (i) the minimum funding standards (within the meaning of Sections 412 and 430 of the Code or Section 302 of ERISA) are satisfied, whether or not waived, and no application for a waiver of the minimum funding standard has been submitted to the IRS; (ii) no “reportable event” (within the meaning of Section 4043(c) of ERISA) for which the 30-day notice requirement has not been waived has occurred; (iii) no liability other than for premiums to the Pension Benefit Guarantee Corporation (“PBGC”) under Title IV of

ERISA has been or is reasonably expected to be incurred by Parent or any of its ERISA Affiliates, and all premiums to the PBGC have been timely paid in full; (iv) the PBGC has not instituted proceedings to terminate any such plan, and, to the Knowledge of Parent, no condition exists that presents a risk that such proceedings will be instituted or which would constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any such plan; (v) no such plan is currently, or is reasonably expected to be, in “at-risk” status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code); (vi) the fair market value of the assets and liabilities of such plan has been reported in accordance with GAAP by Parent on the most recent financial statements of Parent; and (vii) neither Parent nor its Subsidiaries have engaged in a “substantial cessation of operations” within the meaning of Section 4062(e) of ERISA, and the consummation of the transactions contemplated by this Agreement will not result in the occurrence of any such event. No Parent Benefit Plan is (i) a “multiemployer plan” as defined in Section 3(37) of ERISA or (ii) a plan that has two or more contributing sponsors at least two of whom are not under common control, within the meaning of Section 4063 of ERISA, and none of Parent or any of its ERISA Affiliates has withdrawn at any time within the preceding six years from any multiemployer plan, or incurred any withdrawal liability which remains unsatisfied, and no events have occurred and no circumstances exist that would reasonably be expected to result in any such liability to the Parent or any of its Subsidiaries.

(c) With respect to each Parent Benefit Plan that is intended to qualify under Section 401(a) of the Code, such plan, and its related trust, has received, has an application pending or remains within the remedial amendment period for obtaining, a determination letter from the IRS that it is so qualified and that its trust is exempt from Tax under Section 501(a) of the Code, and nothing has occurred with respect to the operation of any such plan which would reasonably be expected to cause the loss of such qualification or exemption or the imposition of any material liability, penalty or Tax under ERISA or the Code.

(d) There are no pending or, to the Knowledge of Parent, threatened material actions, claims or lawsuits against or relating to any Parent Benefit Plan or against any fiduciary of any Parent Benefit Plan with respect to the operation of such plan (other than routine benefits claims).

(e) Each Parent Benefit Plan has been established and administered in all material respects in accordance with its terms, and in compliance in all material respects with the applicable provisions of ERISA, the Code and other applicable laws, and all contributions (including all employer contributions and employee salary reduction contributions) required to have been made under any of the Parent Benefit Plans to any funds or trusts established thereunder or in connection therewith have been made or have been accrued and reported on Parent’s financial statements.

(f) None of the Parent Benefit Plans provide retiree health or life insurance benefits except as may be required by Section 4980B of the Code and Section 601 of ERISA or any other applicable law or at the expense of the participant or the participant’s beneficiary. There has been no material violation of the “continuation coverage requirement” of “group health plans” as set forth in Section 4980B of the Code and Part 6 of Subtitle B of Title I of ERISA with respect to any Parent Benefit Plan to which such continuation coverage requirements apply.

(g) Except as provided in this Agreement, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby or thereby will (either alone or in combination with another event) (i) result in any payment becoming due, or increase the amount of any compensation or benefits due, to any current or former employee of Parent and its Subsidiaries or with respect to any Parent Benefit Plan; (ii) increase any benefits otherwise payable under any Parent Benefit Plan; or (iii) result in the acceleration of the time of payment or vesting of any such compensation or benefits.

(h) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby or thereby will (either alone or in combination with another event) result in the payment of any amount that would, individually or in combination with any other such payment, not be deductible as a result of Section 280G of the Code.

(i) Except as would not reasonably be expected to result in a material liability to Parent or its Subsidiaries, each Parent Benefit Plan that is a “nonqualified deferred compensation plan” (as defined in Section 409A(d)(1) of the Code) is in documentary compliance with, and has been administered (i) in good faith compliance with Section 409A of the Code for the period beginning October 1, 2004 through December 31, 2008, and (ii) in compliance with Section 409A of the Code since January 1, 2009.

(j) With respect to any Parent Equity Award, (a) each grant of a Parent Equity Award was duly authorized no later than the Grant Date by all necessary corporate action, including, as applicable, approval by the Board of Directors of Parent, or a committee thereof, or a duly authorized delegate thereof, and any required approval by the stockholders of Parent by the necessary number of votes or written consents, and the award agreement governing such grant, if any, was duly executed and delivered by each party thereto within a reasonable time following the Grant Date, (b) each such grant was made in accordance with the terms of the applicable Parent Benefit Plan (including the applicable Parent Stock Plan), the Exchange Act and all other applicable Law, including the rules of the NYSE, and (c) the per share exercise price of each Parent Option and Parent SAR was not less than the fair market value of a share of Parent Common Stock on the applicable Grant Date.

(k) Except as would not result in a material liability to Parent or its Subsidiaries, all Parent Benefit Plans subject to the laws of any jurisdiction outside of the United States (i) have been maintained in accordance with all applicable requirements, (ii) that are intended to qualify for special Tax treatment, meet all requirements for such treatment, and (iii) that are intended to be funded and/or book-reserved, are fully funded and/or book reserved, as appropriate, based upon reasonable actuarial assumptions.

Section 4.18. Affiliate Transactions. There are no transactions, agreements, arrangements or understandings between Parent or any of its Subsidiaries, on the one hand, and any director or executive officer of Parent or any of its Subsidiaries, on the other hand, that would be required to be disclosed under Item 404 of Regulation S-K under the Securities Act other than ordinary course of business employment agreements and similar employee arrangements otherwise set forth on Schedule 4.18.

Section 4.19. Labor Matters.

(a) Neither Parent nor any of its Subsidiaries is a party to any collective bargaining agreement, labor union contract applicable to its employees or similar agreement or work rules or practices with any labor union, works council, labor organization or employee association applicable to employees of Parent or any of its Subsidiaries nor does Parent have Knowledge of any activities or proceedings of any labor union, works council, labor organization or employee association to organize any such employees; except, in the case of employees of Parent or any of its Subsidiaries who are employed outside of the United States, as would not have, or would not reasonably be expected to have, a Parent Material Adverse Effect.

(b) As of the date hereof, there are no strikes or lockouts pending with respect to any employees of Parent or any of its Subsidiaries, there is no union organizing effort pending or, to the Knowledge of Parent, threatened against Parent or any of its Subsidiaries, there is no unfair labor practice, labor dispute (other than routine individual grievances), or labor arbitration proceeding pending or, to the Knowledge of Parent, threatened, with respect to the employees of Parent or any of its Subsidiaries, and there is no slowdown or work stoppage in effect or, to the Knowledge of Parent, threatened with respect to the employees of Parent or any of its Subsidiaries, except, in each case, as would not have, or would not reasonably be expected to have, a Parent Material Adverse Effect.

(c) Except as would not have, or would not reasonably be expected to have, a Parent Material Adverse Effect, (i) each of Parent and its Subsidiaries are, and have been, in compliance in all respects with all applicable laws relating to employment and employment practices, the classification of employees, wages, overtime, hours, collective bargaining, unlawful discrimination, civil rights, safety and health, workers' compensation and terms and conditions of employment, (ii) there are no charges with respect to or relating to either of Parent or its Subsidiaries pending or, to the Knowledge of Parent, threatened before the Equal Employment Opportunity Commission or any national, federal, state or local agency, domestic or foreign, responsible for the prevention of unlawful employment practices, and (iii) since January 1, 2011, neither Parent nor any of its Subsidiaries has received any written notice from any national, federal, state or local agency, domestic or foreign, responsible for the enforcement of labor or employment laws of an intention to conduct an investigation of either of Parent or its Subsidiaries and no such investigation is in progress.

(d) Except as would not have, or would not reasonably be expected to have, a Parent Material Adverse Effect, neither Parent nor any of its Subsidiaries has incurred any liability or obligations with respect to any "mass layoff" or "plant closing" as defined by, and pursuant to, WARN with respect to the current or former employees of Parent or its Subsidiaries.

(e) Except as would not have, or would not reasonably be expected to have, a Parent Material Adverse Effect, (i) all independent contractors of Parent and its Subsidiaries (and any other independent contractor who previously rendered services for Parent or its Subsidiaries, at any time) have been, and currently are, properly classified and treated by Parent and its Subsidiaries, as applicable, as independent contractors and not as employees, (ii) all such independent contractors have in the past been, and continue to be, properly and appropriately treated as non-employees for all U.S. federal, state, and local and non-U.S. Tax purposes, (iii) Parent and its Subsidiaries have fully and accurately reported their independent contractors' compensation on IRS Forms 1099 (or otherwise in accordance with applicable law) when required

to do so, and Parent and its Subsidiaries do not have any liability to provide benefits with respect to their independent contractors under the Parent Benefit Plans or otherwise, and (iv) at no time within the preceding two years has any independent contractor brought a claim against Parent or its Subsidiaries challenging his or her status as an independent contractor or made a claim for additional compensation or any benefits under any Parent Benefit Plan or otherwise.

Section 4.20. Environmental Matters.

- (a) Except as would not have a Parent Material Adverse Effect, each of Parent and its Subsidiaries is, and has been, in compliance in all material respects with all applicable Environmental Laws.
- (b) To the Knowledge of Parent, since January 1, 2011:
 - (i) Parent and its Subsidiaries have not received any notice of violation or potential liability under any Environmental Laws from any Person or any Governmental Entity inquiry, request for information, or demand letter under any Environmental Law relating to operations or properties of Parent or its Subsidiaries which would be reasonably expected to result in Parent or any of its Subsidiaries incurring material liability under Environmental Laws;
 - (ii) none of Parent or its Subsidiaries is subject to any orders arising under Environmental Laws nor are there any administrative, civil or criminal actions, suits, proceedings or investigations pending or, to the Knowledge of Parent, threatened, against Parent or its Subsidiaries under any Environmental Law which would reasonably be expected to result in a Parent Material Adverse Effect;
 - (iii) none of Parent or its Subsidiaries has entered into any agreement pursuant to which Parent or its Subsidiaries has assumed or will assume any liability under Environmental Laws, including without limitation, any obligation for costs of remediation, of any other Person that would reasonably be expected to result in a Parent Material Adverse Effect; and
 - (iv) there has been no release or threatened release of any Hazardous Material, on, at or beneath any of the Parent Property or other properties currently or previously owned or operated by Parent or its Subsidiaries or any surface waters or groundwaters thereon or thereunder which requires any material disclosure, investigation, cleanup, remediation, monitoring, abatement, deed or use restriction by Parent, or which would be expected to give rise to any other material liability or damages to Parent or its Subsidiaries under any Environmental Laws.
- (c) Except as would not have a Parent Material Adverse Effect, none of Parent or its Subsidiaries has arranged for the disposal of any Hazardous Material, or transported any Hazardous Material, in a manner that has given, or reasonably would be expected to give rise to any liability for any damages or costs of remediation.

Section 4.21. No Brokers. The Company will not be liable for any brokerage, finder's or other fee or commission to any consultant, broker, finder or investment banker in

connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Parent, Merger Sub 1 or Merger Sub 2.

Section 4.22. Financing. As of the date of this Agreement, Parent has delivered to the Company true, complete and correct copies of the fully executed Commitment Letter and the fully executed Fee Letter executed in connection with the Financing (with only fee amounts, dates and certain other economic terms, including in respect of the “market flex” and “securities demand” provisions, redacted) (none of which would adversely affect the amount or availability of the Financing other than through original issue discount). As of the date hereof, the Commitment Letter is in full force and effect and constitutes the legal, valid, binding and enforceable obligations of Parent and, to the Knowledge of Parent, the other parties thereto (subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws affecting creditors’ rights generally and general principles of equity). As of the date hereof, the Commitment Letter and Fee Letter have not been amended or modified in any respect and, to the Knowledge of Parent, the commitments in the Commitment Letter have not been withdrawn or terminated. There are no conditions precedent to the funding of the full amount of the Financing on the terms set forth in the Commitment Letter (as such terms may be altered in accordance with the “market flex” provisions set forth in the Fee Letter executed in connection with the Financing) other than as expressly set forth as of the date hereof in the Commitment Letter. As of the date hereof, no event has occurred that, with or without notice, lapse of time or both, would constitute a breach by Parent or any other party thereto under the Commitment Letter. Subject to the terms and conditions of the Commitment Letter, as of the date hereof, assuming satisfaction of the conditions set forth in Section 8.1 and Section 8.2, the aggregate proceeds to be disbursed pursuant to the agreements contemplated by the Commitment Letter, together with other financial resources of Parent, including its cash on hand and marketable securities, and cash on hand of the Company, will, in the aggregate, be sufficient to fund the Cash Consideration, the cash payable to holders of Company Equity Awards, pursuant to Section 1.8, the payment of any debt required to be repaid, redeemed, retired, canceled, terminated or otherwise satisfied or discharged in connection with the Merger as of the date hereof (including all Indebtedness of the Company and its Subsidiaries required to be repaid, redeemed, retired, canceled, terminated or otherwise satisfied or discharged in connection with the Merger, including premiums and fees incurred in connection therewith (the “Required Indebtedness”)), and all other fees and expenses incurred by Parent, Merger Sub 1 and Merger Sub 2 in connection with the Merger and the other transactions contemplated hereby. As of the date hereof, assuming satisfaction of the conditions set forth in Section 8.2, Parent has no reason to believe that either it or any other party will be unable to satisfy on a timely basis any condition of the Financing under the Commitment Letter or any related Fee Letter or that the Financing contemplated by the Commitment Letter will not be made available to Parent on the Closing Date. Assuming satisfaction of the conditions set forth in Sections 8.1 and 8.2, if the Closing were to occur on the date hereof, the incurrence of the indebtedness contemplated by the Commitment Letter, including the liens and guarantees provided in connection therewith as set forth in the Commitment Letter, and the consummation of the transactions contemplated by this Agreement, would not result in a default or event of default under the Parent Existing Credit Agreement, the Parent Existing Notes and the indentures governing the Parent Existing Notes. There are no other letters, agreements or understandings (other than customary non-disclosure agreements and diligence non-reliance letters) between Parent, on the one hand, and the Financing Sources, on the other hand, in connection with the Financing. Parent has fully paid all fees and expenses and other amounts required to be paid on or prior to the date of this Agreement pursuant

to the Commitment Letter.

Section 4.23. Network Operations.

(a) The network of Parent and its Subsidiaries, taken as a whole, is in good working condition and is without any material defects for purposes of operating the business of Parent and its Subsidiaries as operated by Parent and its Subsidiaries.

(b) Parent and its Subsidiaries have good and valid title to or otherwise have the right to use all items and equipment necessary to operate and maintain the network of Parent and its Subsidiaries and such items and equipment are in good operating condition and repair, free from all material defects, subject only to normal wear and tear.

Section 4.24. State Takeover Statutes. No “fair price”, “moratorium”, “control share acquisition” or other similar anti-takeover statute or regulation or any anti-takeover provision in Parent Organizational Documents is, or at the Effective Time will be, applicable to Parent, Parent Common Stock, the Merger or the other transactions contemplated by this Agreement.

Section 4.25. Board Approval. The Board of Directors of Parent, at a meeting duly called and held, by unanimous vote (i) determined that this Agreement and the transactions contemplated hereby and thereby, including the Merger, are advisable and fair to, and in the best interests of, Parent, (ii) approved this Agreement and the transactions contemplated hereby, including the Combination, and (iii) resolved to recommend that the holders of the shares of Parent Common Stock approve the Parent Share Issuance and adopt the Parent Charter Amendment and directed that such matters be submitted for consideration by Parent stockholders at the Parent Stockholders Meeting. Parent hereby agrees to the inclusion in the Joint Proxy Statement/Prospectus of the recommendation of the Board of Directors of Parent described in this Section 4.25 (subject to the right of the Board of Directors of Parent to withdraw, amend or modify such recommendation in accordance with Section 7.4).

Section 4.26. Vote Required. The affirmative vote (i) to approve the Parent Share Issuance by the holders of Parent Common Stock representing a majority of the votes cast by such holders at a meeting of stockholders of Parent called for such purpose and entitled to vote thereon (provided that the total vote cast on the proposal represents over 50% in interest of all Parent Common Stock entitled to vote thereon) and (ii) to approve and adopt the Parent Charter Amendment by the holders of Parent Common Stock representing at least a majority of the outstanding shares of Parent Common Stock (together, the “Required Parent Vote”) is the only vote or consent of the holders of any class or series of Parent’s capital stock necessary in connection with the transactions contemplated by this Agreement and the transactions contemplated hereby and thereby, including the Merger.

Section 4.27. No Improper Payments to Foreign Officials; Trade Laws.

(a) Since January 1, 2011, (i) Parent and its Subsidiaries, directors, officers and employees have complied in all material respects with the Fraud and Bribery Laws, and (ii) neither Parent, any Subsidiary of the Company nor, to the Knowledge of Parent, any of the Company’s directors, officers, employees, agents or other representatives acting on Parent’s behalf have,

directly or indirectly, in each case, in violation in any material respects of the Fraud and Bribery Laws (A) used any corporate funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity, (B) offered, promised, paid or delivered any fee, commission or other sum of money or item of value, however characterized, to any finder, agent or other party acting on behalf of or under the auspices of a governmental or political employee or official or governmental or political entity, political agency, department, enterprise or instrumentality, in the United States or any other country, (C) made any payment to any customer or supplier, or to any officer, director, partner, employee or agent of any such customer or supplier, for the unlawful sharing of fees to any such customer or supplier or any such officer, director, partner, employee or agent for the unlawful rebating of charges, (D) engaged in any other unlawful reciprocal practice, or made any other unlawful payment or given any other unlawful consideration to any such customer or supplier or any such officer, director, partner, employee or agent or (E) taken any action or made any omission in violation of any applicable law governing imports into or exports from the United States or any foreign country, or relating to economic sanctions or embargoes, corrupt practices, money laundering, or compliance with unsanctioned foreign boycotts.

(b) The United States government has not notified Parent or any of its Subsidiaries of any actual or alleged violation or breach of the Fraud and Bribery Laws. Other than the United States government, no Person has notified Parent or any of its Subsidiaries of any actual or, to the Knowledge of Parent, alleged violation or breach of the Fraud and Bribery Laws. To the Knowledge of Parent, none of Parent or any of its Subsidiaries is under investigation by any government for alleged violation(s) of the Fraud and Bribery Laws.

Section 4.28. Opinion of Financial Advisor. The Board of Directors of the Parent has received the opinion of Rothschild Inc., dated as of the date hereof, to the effect that, as of its date, and subject to the limitations, qualifications and assumptions set forth therein, the Merger Consideration to be paid by Parent pursuant to the Merger is fair from a financial point of view to Parent.

Section 4.29. No Other Representations or Warranties. Except for the representations and warranties contained in this Article IV, none of Parent, Merger Sub 1, Merger Sub 2 or any other Person makes any other express or implied representation or warranty on behalf of Parent, Merger Sub 1 or Merger Sub 2 with respect to Parent and its Subsidiaries.

Section 4.30. Solvency. None of Parent, Merger Sub 1 or Merger Sub 2 is entering into this Agreement with the intent to hinder, delay or defraud creditors. Immediately after giving effect to all of the transactions contemplated by this Agreement (including the Financing), the payment of aggregate Cash Consideration and any other repayment or refinancing of debt that may be contemplated, and payment of all related fees and expenses, assuming (i) the satisfaction of the conditions to Parent's obligation to consummate the Merger set forth in Section 8.1 and Section 8.2 and (ii) the accuracy of the representations and warranties of the Company contained in Article III, the Parent and its Subsidiaries, taken as a whole, will be Solvent on the Closing Date. For purposes of this Section 4.30, the term "Solvent" with respect to Parent and its Subsidiaries, taken as a whole, means that, as of any date of determination, (a) the amount of the fair saleable value of the assets of Parent and its Subsidiaries, taken as a whole, exceeds, as of such date, the amount that will be required to pay the liabilities of Parent and its Subsidiaries, taken as a whole,

on its existing debts (including a reasonable estimate of contingent liabilities), (b) Parent and its Subsidiaries, taken as a whole, will not have, as of such date, an unreasonably small amount of capital for the operation of the business in which it is engaged on such date, and (c) Parent and its Subsidiaries, taken as a whole, will be able to pay its liabilities as they mature.

ARTICLE V.

COVENANTS OF THE COMPANY

The Company hereby covenants as follows:

Section 5.1. Conduct of Business Before the Closing Date .

(a) The Company covenants and agrees that, during the period from the date hereof to the earlier of the termination of this Agreement in accordance with its terms and the Effective Time (except as otherwise specifically contemplated by the terms of this Agreement), unless Parent shall otherwise consent in writing: (i) the businesses of the Company and its Subsidiaries shall be conducted, in all material respects, in the ordinary course of business and in a manner consistent with past practice and, in all material respects, in compliance with applicable laws, including without limitation the timely filing of all reports, forms or other documents with the SEC required pursuant to the Securities Act, the Exchange Act or the Sarbanes-Oxley Act, as well as the timely filing of all reports, forms and other documents, and payment of all applicable regulatory fees and assessments, under applicable state and federal law; (ii) the Company shall use its commercially reasonable efforts to, and shall cause its Subsidiaries to use their commercially reasonable efforts to, continue to maintain, in all material respects, its assets, properties, rights and operations in accordance with present practice in a condition suitable for their current use; and (iii) the Company shall use its commercially reasonable efforts consistent with the foregoing to preserve substantially intact the business organization of the Company and its Subsidiaries, to keep available the services of the present officers and the Company Key Employees and to preserve, in all material respects, the present relationships of the Company and its Subsidiaries with persons with which the Company or any of its Subsidiaries has significant business relations. Without limiting the generality of the foregoing, neither the Company nor any of its Subsidiaries shall (except as specifically contemplated by the terms of this Agreement or as set forth on Schedule 5.1(a)), between the date of this Agreement and the earlier of the termination of this Agreement in accordance with its terms and the Effective Time, directly or indirectly, do any of the following without the prior written consent of Parent (which shall not be unreasonably delayed, withheld or conditioned other than with respect to clauses (ii), (iii), (iv), (v) with respect to acquisitions of any businesses, or (xiii)):

(i) make any change in any of its organizational documents; issue any additional shares of capital stock (other than upon the exercise of options to purchase shares of Company Common Stock or pursuant to the terms of Company RSU Awards, in each case outstanding on the date hereof), membership interests or partnership interests or other equity securities or grant any option, warrant or right to acquire any capital stock, membership interests or partnership interests or other equity securities or issue any security convertible into or exchangeable for such securities or alter in any way any of its outstanding securities or make any change in

outstanding shares of capital stock, membership interests or partnership interests or other ownership interests or its capitalization, whether by reason of a reclassification, recapitalization, stock split or combination, exchange or readjustment of shares, stock dividend or otherwise;

(ii) make any sale, assignment, transfer, abandonment, sublease or other conveyance of any material asset or Company Property that have a fair market value in excess of \$1,000,000 individually and \$5,000,000 in the aggregate;

(iii) subject any of its assets, properties or rights or any part thereof, to any Lien or suffer such to exist other than Permitted Liens;

(iv) (A) redeem, retire, purchase or otherwise acquire, directly or indirectly, any shares of the capital stock (including restricted stock), membership interests or partnership interests or other ownership interests of the Company, other than in connection with (i) the payment of the exercise price of Company Options with Company Common Stock (including but not limited to in connection with “net exercises”), (ii) required Tax withholding in connection with the exercise of Company Options, the vesting of Company Restricted Stock Awards and the vesting of Company RSU Awards, and (iii) forfeitures of Company Options, Company Restricted Stock Awards and Company RSU Awards, pursuant to their terms as in effect on the date of this Agreement; (B) declare, set aside or pay any dividends or other distribution in respect of such shares or interests, other than for the purpose of satisfying withholding Tax obligations or the purchase, redemption or other acquisition of shares of Company Common Stock from current or former employees or directors of the Company pursuant to the terms of any employment or option agreement or Company Benefit Plan, (C) repurchase or retire any of the Company’s Indebtedness, or (D) prepay or otherwise satisfy any obligations outstanding under any of the Company’s capital leases, other than pursuant to the applicable scheduled payments provided for under the corresponding capital leases;

(v) acquire, lease or sublease any material assets or properties (including any real property) other than in the ordinary course of business consistent with the Company’s capital expenditure forecast as set forth on Schedule 5.1(a)(vii);

(vi) except, in each case, (x) as required by the terms of any Company Benefit Plan, (y) as required by law or (z) as contemplated by this Agreement, (A) increase the compensation or benefits payable or to become payable to any current or former employee, officer, director or consultant of the Company or any of its Subsidiaries, other than increases in base compensation or wages in the ordinary course of business for employees who are not party to a Change of Control Employment Agreement or a Company Key Employee, (B) establish, adopt, enter into or amend (except in the case of immaterial amendments that do not increase liabilities of the Company or its Subsidiaries) any Company Benefit Plan (or any benefit plan, agreement, program, policy, commitment or other arrangement that

would be a Company Benefit Plan if it were in existence on the date of this Agreement) or other collective bargaining, bonus, retention, profit sharing, thrift, compensation, employment, termination, change in control, severance, stock incentive or other plan, agreement, trust, fund, policy or arrangement for the benefit of any current or former director, officer, consultant or employee, (C) increase the compensation or benefits payable under any existing severance, termination, change in control or retention pay policy or employment or other agreement, (D) take any affirmative action to accelerate the vesting of any stock or stock-based compensation except for administrative actions required under any applicable agreement, (E) grant any awards under any bonus, incentive, performance or other compensation plan or arrangement (including the grant of stock options, stock appreciation rights, stock based or stock related awards, performance units, restricted stock, or other equity-based compensation, or the removal of existing restrictions in any outstanding agreement) except for administrative actions required under any applicable agreement, (F) take any action to fund or in any other way secure the payment of compensation or benefits under any Company Benefit Plan except for administrative actions required under any applicable agreement, (G) grant or promise any Tax offset payment award under any Company Benefit Plan, (H) make any loan or cash advance to any current or former director, officer, employee or independent contractor, (I) hire, or promote any employee who would qualify as a Company Key Employee or whose annual cash compensation is expected to be in excess of \$350,000 or any consultant with annual cash compensation that is expected to be in excess of \$350,000, (J) hire, promise to hire or promote any consultant or employee who is not covered by clause (I), other than (1) in the ordinary course of business consistent with past practice, (2) to fill open positions or (3) in accordance with the Company's forecast, (K) terminate without "cause" any employee, director or consultant with aggregate annual cash compensation that is in excess of \$350,000, or (L) implement any facility closings or employee layoffs that do not comply with WARN;

(vii) enter into any agreement, contract, or commitment (or series of such similar transactions), that would require capital expenditures in the aggregate in excess of the Company's capital expenditure forecast as set forth on Schedule 5.1(a)(vii), other than as may be necessary in connection with any unexpected repair, maintenance or replacement;

(viii) pay, lend or advance any amount to, or sell, transfer or lease any properties or assets to, or enter into any agreement or arrangement with, any of its Affiliates (other than Wholly Owned Subsidiaries);

(ix) fail to keep in full force and effect insurance comparable in amount and scope to coverage currently maintained;

(x) make any change in any method of financial accounting or financial accounting principle, method, estimate or practice except for any such change required by GAAP;

(xi) except as required by law or in the ordinary course of business consistent with past practice (A) make or change any material Tax election, (B) change an annual accounting period, (C) file any amended material Tax Return, (D) enter into any closing agreement with respect to a material amount of Tax, (E) settle any material Tax claim or assessment relating to the Company or any of its Subsidiaries, or (F) surrender any right to claim a refund of material Taxes;

(xii) settle, release or forgive any claim requiring net payments to be made by the Company or any of its Subsidiaries in excess of \$750,000 individually or \$4,000,000 in the aggregate, other than intercompany claims or billing disputes or intercarrier compensation disputes with carriers in the ordinary course of business, or waive any right with respect to any material claim held by the Company or any of its Subsidiaries other than in the ordinary course of business and consistent with past practice, or settle or resolve any claim against the Company or any of its Subsidiaries on terms that require the Company or any of its Subsidiaries to materially alter its existing business practices, in each case other than any claim with respect to Taxes, which shall be governed by Section 5.1(a)(xi);

(xiii) lend money to any Person (other than to the Company or to Wholly Owned Subsidiaries) or incur or guarantee any Indebtedness for borrowed money (other than from the Company or its Wholly Owned Subsidiaries); or

(xiv) commit to do any of the foregoing.

(b) Nothing contained in this Agreement shall give to Parent, Merger Sub 1 or Merger Sub 2, directly or indirectly, rights to control or direct the operations of the Company or its Subsidiaries prior to the Closing Date. Prior to the Closing Date, the Company and its Subsidiaries shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision of its and its Subsidiaries' operations.

Section 5.2. Notice of Breach. From and after the date hereof and until the earlier to occur of the Closing Date or the termination of this Agreement pursuant to Article IX hereof, the Company shall promptly give written notice with particularity upon having Knowledge of (i) any matter that would constitute a material breach of any representation, warranty, agreement or covenant of the Company contained in this Agreement or (ii) the existence of any event or circumstance that would reasonably be expected to cause any condition to the obligations of any party hereto to effect the transactions contemplated by this Agreement not to be satisfied; provided, however that a failure to give notice pursuant to this Section 5.2) shall be excluded for purposes of the condition set forth in Section 8.2.

ARTICLE VI.

COVENANTS OF PARENT, MERGER SUB 1 AND MERGER SUB 2

Parent, Merger Sub 1 and Merger Sub 2 hereby covenant as follows:

Section 6.1. Conduct of the Business Before the Closing Date.

(a) Parent covenants and agrees that, during the period from the date hereof to the earlier of the termination of this Agreement in accordance with its terms and the Effective Time (except as otherwise specifically contemplated by the terms of this Agreement), unless the Company shall otherwise consent in writing: (i) the businesses of Parent and its Subsidiaries shall be conducted, in all material respects, in the ordinary course of business and in a manner consistent with past practice and, in all material respects, in compliance with applicable laws, including without limitation the timely filing of all reports, forms or other documents with the SEC required pursuant to the Securities Act, the Exchange Act or the Sarbanes-Oxley Act, as well as the timely filing of all reports, forms and other documents, and payment of all applicable regulatory fees and assessments, under applicable state and federal law; and (ii) Parent shall use its commercially reasonable efforts to, and shall cause its Subsidiaries to use their commercially reasonable efforts to, continue to maintain, in all material respects, its assets, properties, rights and operations in accordance with present practice in a condition suitable for their current use. Without limiting the generality of the foregoing, neither Parent nor any of its Subsidiaries shall (except as specifically contemplated by the terms of this Agreement or as set forth on Schedule 6.1(a)), between the date of this Agreement and the earlier of the termination of this Agreement in accordance with its terms and the Effective Time, directly or indirectly do, any of the following without the prior written consent of the Company (which shall not be unreasonably delayed, withheld or conditioned other than with respect to clauses (i), (iii), (iv) with respect to acquisitions of any businesses and (vii)):

(i) make, in the case of Parent, any change in any of its organizational documents; issue any additional shares of capital stock, membership interests or partnership interests or other equity securities or grant any option, warrant or right to acquire any capital stock, membership interests or partnership interests or other equity securities or issue any security convertible into or exchangeable for such securities or alter in any way any of its outstanding securities or make any change in outstanding shares of capital stock, membership interests or partnership interests or other ownership interests or its capitalization, whether by reason of a reclassification, recapitalization, stock split or combination, exchange or readjustment of shares, stock dividend or otherwise; except, in each case, for (A) grants of stock options or restricted stock units (including performance restricted stock units) under the Parent Benefit Plans in the ordinary course of business consistent with past practice, (B) shares of Parent Common Stock issuable upon exercise of outperform stock appreciation rights or settlement of restricted stock units, (C) shares of Parent Common Stock issuable upon conversion of outstanding convertible notes, (D) shares of Parent Common Stock issuable to directors of Parent in accordance with Parent's director compensation plans or (E) as provided on Schedule 6.1(a);

(ii) subject any of its assets, properties or rights or any part thereof, to any Lien or suffer such to exist other than Permitted Liens in excess of \$85 million in the aggregate or in connection with the Financing or any Alternative Financing;

(iii) redeem, retire, purchase or otherwise acquire, directly or indirectly, any shares of the capital stock, membership interests or partnership interests or

other ownership interests of Parent and its Subsidiaries or declare, set aside or pay any dividends or other distribution in respect of such shares or interests of Parent other than (A) the purchase, redemption or other acquisition of Parent Common Stock or Parent RSU Awards from current or former employees of Parent as permitted or contemplated by the terms of any employment or option agreement or Parent Benefit Plan or (B) the distribution of rights pursuant to the terms of the Rights Agreement;

(iv) acquire any material assets, or properties (including any real property), or enter into any other transaction, other than in the ordinary course of business and consistent with past practice, or in connection with transactions that would not reasonably be expected to (A) prevent, materially hinder or materially delay the receipt of the necessary or required waiting period expirations or terminations, consents, approvals and authorizations for the transactions contemplated by this Agreement under the HSR Act or the Communications Act, or the consents set forth on Schedule 8.1(e), (B) materially impair Parent's ability to obtain the Financing, (C) result in an ownership change of Parent pursuant to Section 382(g) of the Code prior to or upon the Closing or (D) otherwise prevent or materially delay or materially impair the consummation of the Merger;

(v) make any change in any method of accounting or accounting principle, method, estimate or practice except for any such change required by reason of a concurrent change in GAAP, or write off as uncollectible any material accounts receivable except in the ordinary course of business and consistent with past practice;

(vi) except as required by law or in the ordinary course of business consistent with past practice, (A) make or change any material Tax election, (B) change an annual accounting period, (C) file any amended material Tax Return, (D) enter into any closing agreement with respect to a material amount of Tax, (E) settle any material Tax claim or assessment relating to Parent or any of its Subsidiaries, or (F) surrender any right to claim a refund of material Taxes;

(vii) lend money to any Person (other than Wholly Owned Subsidiaries) or incur or guarantee any Indebtedness for borrowed money or enter into any capital lease obligation other than as permitted under the Commitment Letter as of the date hereof or in connection with the Required Indebtedness; provided that (A) Level 3 Financing may conduct a registered exchange offer with respect to each of the Floating Rate Senior Notes due 2018 and the Senior Notes due 2021 in connection with which it may issue new Floating Rate Senior Notes due 2018 and new Senior Notes due 2021, in exchange for outstanding Floating Rate Senior Notes due 2018 and outstanding Senior Notes due 2021, respectively, (B) Parent and its Subsidiaries may guarantee any Indebtedness of Parent and its Subsidiaries in existence on the date hereof or permitted to be incurred in compliance with the terms hereof prior to the Termination Date, to the extent required under the terms of the agreement or indenture governing such Indebtedness; and (C) Parent and its Subsidiaries may incur additional Indebtedness as set forth on Schedule 6.1(a)(vii)(C); or

(viii) commit to do any of the foregoing.

(b) Nothing contained in this Agreement shall give to the Company, directly or indirectly, rights to control or direct the operations of Parent or its Subsidiaries prior to the Closing Date. Prior to the Closing Date, Parent and its Subsidiaries shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision of its and its Subsidiaries' operations.

Section 6.2. Employee Benefits.

(a) From and after the Effective Time, Parent shall, and Parent shall cause the Surviving Company to, honor all Company Benefit Plans and compensation arrangements and agreements in accordance with their terms as in effect immediately before the Effective Time, provided that, for the avoidance of doubt, the foregoing shall not prohibit Parent from amending or terminating the Company Benefit Plans in accordance with their terms. For the period commencing on the Effective Time and ending on the one (1) year anniversary of the Effective Time, Parent agrees that each employee of the Company or its Subsidiaries who shall have been an employee of the Company or its Subsidiaries as of the Effective Time (each, a "Continuing Company Employee"), while such Continuing Company Employee remains employed by Parent or any of its Subsidiaries (including, after the Effective Time, the Company and its Subsidiaries), shall be eligible to either, at the sole discretion of Parent: (i) participate in Parent's employee benefit plans and programs, including any pension plan, defined benefit plan, defined contribution plan, bonus plan, profit sharing plan, severance plan, medical plan, dental plan, life insurance plan, time off programs and disability plan, in each case to the same extent and on the same terms (for the avoidance of doubt, including with respect to level of benefits) as similarly situated employees of Parent or its Subsidiaries; or (ii) continue to participate in employee benefit plans, programs and policies of the Company and its Subsidiaries, which provide benefits that are no less favorable in the aggregate to the benefits provided to such Continuing Company Employee under the Company Benefit Plans immediately before the Closing Date.

(b) Parent agrees that any Continuing Company Employee whose employment is terminated by the Surviving Corporation without "cause" within the one (1) year period commencing on the Effective Time, other than an employee who is party to an individual employment agreement or other Contract or other Company Benefit Plan which provides for the payment of severance, will be entitled to cash severance benefits that are no less favorable, and welfare benefits that are no less favorable in the aggregate, in each case than the cash severance benefits and welfare benefits, respectively, if any, determined in accordance with the terms of the applicable Company Benefit Plan providing for severance benefits to such Continuing Company Employee in effect as of the date of this Agreement, subject to such employee providing a timely and effective release of claims in favor of Parent, the Surviving Corporation and their respective Affiliates to the extent not otherwise required.

(c) With respect to any Company Benefit Plan or Parent Benefit Plan in which any Continuing Company Employee first become eligible to participate on or after the Effective Time (collectively, the "New Plans"), each Continuing Company Employee shall, to the extent

permitted by applicable law, receive full credit for the years of continuous service by such Continuing Company Employee recognized by the Company or its Subsidiaries prior to the Effective Time pursuant to a Company Benefit Plan to the same extent as if it were service with Parent for all purposes other than benefit accrual under defined benefit pension plans, where such credit would result in a duplication of benefits or where such services were not recognized under the corresponding Company Benefit Plan or no corresponding Company Benefit Plan existed. With respect to any New Plan that is a welfare benefit plan in which any Continuing Company Employees first become eligible to participate on or after the Effective Time, Parent shall use commercially reasonable efforts to, (i) cause to be waived any eligibility requirements or pre-existing condition limitations except to the extent such eligibility requirements or pre-existing conditions would apply under the analogous Company Benefit Plan in which any such Continuing Company Employee was a participant or eligible to participate as of immediately prior to the Effective Time, and (ii) give effect, in determining any deductibles, co-insurance or maximum out of pocket limitations, to amounts paid by such Continuing Company Employees prior to the Effective Time under a Company Benefit Plan in which any such Continuing Company Employee was a participant as of immediately prior to the Effective Time (to the same extent that such credit was given under such Company Benefit Plan prior to the Effective Time) in satisfying such requirements during the plan year in which the Effective Time occurs.

(d) Each of the Company and Parent hereby acknowledges that a “change of control” (or similar phrase) within the meaning of the Company Benefit Plans will, for purposes of the Company Benefit Plans only, occur at or prior to the Effective Time, as applicable.

(e) If requested by Parent at least ten Business Days prior to the Closing Date, the Company shall take (or cause to be taken) all actions reasonably necessary or appropriate to terminate, effective no later than the day immediately prior to the Closing Date, any defined contribution Company Benefit Plan that contains a cash or deferred arrangement intended to meet the requirements of Section 401 (k) of the Code (a “Company Defined Contribution Plan”); provided, however, that the effectiveness of such termination may be conditioned on the consummation of the Merger. If the Company is required to terminate any Company Defined Contribution Plan, then the Company shall provide to Parent prior to the Closing Date written evidence of the adoption by the Board of Directors of the Company of resolutions authorizing the termination of such Company Defined Contribution Plan (the form and substance of which resolutions shall be subject to the prior review and approval of Parent, which approval shall not be unreasonably withheld or delayed). In the event that Parent requests that the Company Defined Contribution Plan be terminated in accordance with this Section 6.2(e), Parent shall, or shall cause one of its Affiliates to, designate a tax-qualified defined contribution plan of Parent or one of its Affiliates (the “Parent Defined Contribution Plan”) that either (i) currently allows for the receipt from participants in the Company Defined Contribution Plan of “eligible rollover distributions” (as such term is defined under Section 402 of the Code), including loans, or (ii) shall be amended prior to the Effective Time to allow for the receipt from such participants of eligible rollover distributions, including loans. In the event that Parent requests that the Company Defined Contribution Plan be terminated in accordance with this Section 6.2(e), each participant in the Company Defined Contribution Plan shall immediately as of the Closing Date be eligible to commence participation in the Parent Defined Contribution Plan and be given the opportunity to receive a distribution of his or her account balance under the Company Defined Contribution Plan,

and shall be given the opportunity to elect to “roll over” such account balance (including any outstanding loan) to the Parent Defined Contribution Plan.

(f) Parent and the Company agree to the additional provisions set forth in Schedule 6.2(f) of the Company Disclosure Letter.

(g) Prior to making any broad-based communication or written communications that would reasonably be interpreted to create a legally binding right to any future compensation on the part of a Continuing Employee, in each case, pertaining to compensation or benefit matters that are affected by the transactions contemplated by this Agreement (including any schedules hereto), the Company shall provide Parent with a copy of the intended communication, Parent shall have a reasonable period of time to review and comment on the communication, and Parent and the Company shall cooperate in providing any such mutually agreeable communication.

(h) Nothing contained in this Section 6.2 or any other provision of this Agreement, express or implied: (i) shall be construed to establish, amend, or modify any benefit plan, program, agreement or arrangement, including without limitation, any Company Benefit Plan or any Parent Benefit Plan, (ii) shall alter or limit the ability of any of Parent, the Surviving Company, or any of their respective Subsidiaries to amend, modify or terminate any benefit plan, program, agreement or arrangement at any time assumed, established, sponsored or maintained by any of them, (iii) is intended to confer upon any current or former employee any right to employment or continued employment for any period of time by reason of this Agreement, or any right to a particular term or condition of employment, or (iv) is intended to confer upon any Person (including for the avoidance of doubt any current or former employee, director, officer or other service provider or any participant in a Company Benefit Plan or other employee benefit plan, agreement or other arrangement) any right as a third-party beneficiary of this Agreement.

Section 6.3. Indemnification Continuation

(a) For purposes of this Section 6.3, (i) “Indemnified Person” shall mean any person who is now, or has been at any time prior to the Effective Time, (x) an officer or director of the Company or any of its Subsidiaries or (y) serving at the request of the Company as an officer or director of another corporation, joint venture or other enterprise or general partner of any partnership or a trustee of any trust, and (ii) “Proceeding” shall mean any claim, action, suit, proceeding or investigation.

(b) From and after the Effective Time, Parent shall, or Parent shall cause the Surviving Company, to the fullest extent permitted by applicable law, to provide indemnification to each Indemnified Person in connection with any Proceeding based directly or indirectly (in whole or in part) on, or arising directly or indirectly (in whole or in part) out of, the fact that such Indemnified Person is or was an officer or director of the Company or any of its Subsidiaries, or is or was serving at the request of the Company as an officer or director of another corporation, joint venture or other enterprise or general partner of any partnership or a trustee of any trust, whether pertaining to any matter arising before or after the Effective Time. In the event of any such claim, action, suit or proceeding, each Indemnified Person will be entitled to advancement of expenses incurred in the defense of any such claim, action, suit or proceeding from Parent or the Surviving

Company within a reasonable period of time following receipt by Parent or the Surviving Company from the Indemnified Person of a request therefor; provided that an Indemnified Person shall repay Parent or the Surviving Company for any expenses incurred by Parent or Surviving Company in connection with the indemnification of such Indemnified Person pursuant to this Section 6.3 if it is ultimately determined that such Indemnified Person did not meet the standard of conduct necessary for indemnification by Parent or the Surviving Company as set forth in the Company Organizational Documents. The Surviving Company (i) shall not amend, repeal or otherwise modify the exculpation, indemnification and advancement of expenses provisions of the Company's and any of its Subsidiaries' certificates of incorporation and by-laws or similar organizational documents as in effect immediately prior to the Effective Time in any manner that would adversely affect the rights thereunder of any individuals who at the Effective Time were directors, officers or employees of the Company or any of its Subsidiaries and (ii) shall comply with and shall not amend without the consent of the other parties thereto, any indemnification contracts of the Company or its Subsidiaries with any of their respective current or former directors, officers or employees as in effect immediately prior to the Effective Time. In the event that Parent consolidates with or merges into any other Person and is not the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers or conveys all or substantially all of its properties and assets to any Person, then, and in each such case, Parent shall cause proper provision to be made so that the successors and assigns of Parent assume the obligations set forth in this Section 6.3, unless such assumption occurs by operation of law.

(c) Parent shall cause the Surviving Company to, and the Surviving Company shall, maintain in effect for six years from the Effective Time the Company's current directors' and officers' liability insurance policies covering acts or omissions occurring (or alleged to occur) prior to or at the Effective Time with respect to Indemnified Persons; provided, however, that in no event shall the Surviving Company be required to expend pursuant to this Section 6.3(c) more than an amount per year equal to 300% of current annual premiums paid by the Company for such insurance. In the event that, but for the proviso to the immediately preceding sentence, the Surviving Company would be required to expend more than 300% of current annual premiums, the Surviving Company shall obtain the maximum amount of such insurance obtainable by payment of annual premiums equal to 300% of current annual premiums. In lieu of the foregoing, the Company may purchase, prior to the Effective Time, a six-year "tail" prepaid officers' and directors' liability insurance policy in respect of acts or omissions occurring prior to the Effective Time covering each such Indemnified Person. If such "tail" policy has been established by the Company, Parent shall not terminate such policy and shall cause all obligations of the Company thereunder to be honored by it and the Surviving Company.

(d) The provisions of this Section 6.3 shall survive the consummation of the Merger for a period of six years and are expressly intended to benefit each of the Indemnified Persons; provided, however, that in the event that any claim or claims for indemnification are asserted or made within such six-year period, all rights to indemnification in respect of any such claim or claims shall continue until disposition of any and all such claims.

(e) Parent shall, and shall cause the Surviving Company to, pay all reasonable expenses, including reasonable attorneys' fees, that may be incurred by any Indemnified Person in enforcing the indemnity and other obligations provided in this Section 6.3 to the same extent and under the same conditions and procedures (and subject to the same conditions, including with

respect to the advancement of expenses) as such Indemnified Person is entitled on the date hereof under the Company Organizational Documents (or the corresponding organizational documents of any Subsidiary of the Company).

Section 6.4. Notice of Breach. From and after the date hereof and until the earlier to occur of the Closing Date or the termination of this Agreement pursuant to Article IX hereof, Parent shall promptly give written notice with particularity upon having Knowledge of (i) any matter that would constitute a material breach of any representation, warranty, agreement or covenant of Parent contained in this Agreement or (ii) the existence of any event or circumstance that would reasonably be expected to cause any condition to the obligations of any party hereto to effect the transactions contemplated by this Agreement not to be satisfied or that would reasonably be expected to cause the Financing not to occur; provided, however that a failure to give notice pursuant to this Section 6.4 shall be excluded for purposes of the condition set forth in Section 8.3.

ARTICLE VII.

ADDITIONAL COVENANTS OF THE PARTIES

Section 7.1. Preparation of Joint Proxy Statement/Prospectus and Registration Statement; Stockholder Meetings.

(a) As promptly as practicable, and in any event within 40 days after the execution of this Agreement, the Company and Parent shall cooperate in preparing and cause to be filed with the SEC the Joint Proxy Statement/Prospectus, and Parent shall prepare, together with the Company, and file with the SEC the registration statement on Form S-4 or any amendment or supplement thereto pursuant to which shares of Parent Common Stock issuable in the Merger will be registered with the SEC (the “Registration Statement”) (in which the Joint Proxy Statement/Prospectus will be included). Parent and the Company shall use their reasonable best efforts to cause the Registration Statement to become effective under the Securities Act as soon after such filing as practicable and to keep the Registration Statement effective as long as is necessary to consummate the Merger. The Joint Proxy Statement/Prospectus shall include the recommendation of each of the Boards of Directors of the Company and Parent in favor of approval and adoption of this Agreement and the Combination, and any resolution required by Rule 14a-21(c) under the Exchange Act to approve, on an advisory basis, the compensation required to be disclosed in the Registration Statement pursuant to Item 402(t) of Regulation S-K, except to the extent the Board of Directors of the Company shall have withdrawn or modified its approval or recommendation of this Agreement or the Combination to the extent such action is permitted by Section 7.4, and, with respect to the Board of Directors of Parent, in favor of approval and adoption of the Parent Share Issuance and the Parent Charter Amendment. Each of the Company and Parent shall use its reasonable best efforts to cause the Joint Proxy Statement/Prospectus to be mailed to its respective stockholders as promptly as practicable after the Registration Statement becomes effective. The parties shall promptly provide copies, consult with each other and prepare written responses with respect to any written comments received from the SEC with respect to the Joint Proxy Statement/Prospectus and the Registration Statement and advise one another of any oral comments received from the SEC. The Registration Statement and the Joint Proxy Statement/Prospectus shall, at the time of each of the Company Stockholders Meeting and the Parent Stockholders Meeting, comply as to form in all material respects with the Securities Act and the Exchange Act

and the rules and regulations promulgated by the SEC thereunder.

(b) Parent and the Company shall make all necessary filings with respect to the Merger and the transactions contemplated thereby under the Securities Act and the Exchange Act and applicable “blue sky” laws and the rules and regulations thereunder. Each party will advise the other, promptly after it receives notice thereof, of the time when the Registration Statement has become effective or any supplement or amendment has been filed, the issuance of any stop order, the suspension of the qualification of the Parent Common Stock issuable in connection with the Merger for offering or sale in any jurisdiction, or any request by the SEC for amendment of the Joint Proxy Statement/Prospectus or the Registration Statement or comments thereon and responses thereto or requests by the SEC for additional information. No amendment or supplement to the Joint Proxy Statement/Prospectus or the Registration Statement shall be filed without the approval of both parties hereto, which approval shall not be unreasonably withheld, conditioned or delayed; provided that with respect to documents filed by a party which are incorporated by reference in the Joint Proxy Statement/Prospectus or the Registration Statement, this right of approval shall apply only with respect to information relating to the other party or such other party’s business, financial condition or results of operations. If at any time prior to the Effective Time, any information relating to Parent or the Company, or any of their respective Affiliates, officers or directors, should be discovered by Parent or the Company that should be set forth in an amendment or supplement to the Registration Statement or the Joint Proxy Statement/Prospectus, so that such documents would not include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the party which discovers such information shall promptly notify the other parties hereto and an appropriate amendment or supplement describing such information shall be promptly filed with the SEC and, to the extent required by law, disseminated to the stockholders of the Company and Parent.

(c) The Company shall cause the Company Stockholders Meeting to be duly called and held as soon as reasonably practicable for the purpose of obtaining the Required Company Vote. In connection with such meeting, the Company will (i) subject to Section 7.4(b) and Section 7.4(c), use its reasonable best efforts to obtain the Required Company Vote and (ii) otherwise comply with all legal requirements applicable to such meeting. The information supplied or to be supplied by the Company specifically for inclusion or incorporation in the Registration Statement shall not at the time the Registration Statement is declared effective by the SEC contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading. The information supplied or to be supplied by the Company specifically for inclusion in the Joint Proxy Statement/Prospectus, which shall be included in the Registration Statement, shall not, on the date(s) the Joint Proxy Statement/Prospectus is first mailed to the stockholders of the Company and the stockholders of Parent, respectively, or at the time of the Company Stockholders Meeting or the Parent Stockholders Meeting, respectively, or at the Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Notwithstanding the foregoing, if on a date for which the Company Stockholders Meeting is scheduled, the Company has not received proxies representing a sufficient number of shares of Company Common Stock to obtain the Required Company Vote, whether or not a quorum is present, the Company shall have the right on one or more occasions to

postpone or adjourn the Company Stockholders Meeting for not more than an aggregate of forty (40) days, solely for the purpose of soliciting shares of Company Common Stock to obtain the Required Company Vote.

(d) Parent shall cause the Parent Stockholders Meeting to be duly called and held as soon as reasonably practicable for the purpose of obtaining the Required Parent Vote. In connection with such meeting, Parent will (i) subject to Section 7.4(h), use its reasonable best efforts to obtain the Required Parent Vote and (ii) otherwise comply with all legal requirements applicable to such meeting. The information supplied or to be supplied by Parent specifically for inclusion or incorporation in the Registration Statement shall not at the time the Registration Statement is declared effective by the SEC contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading. The information supplied or to be supplied by Parent specifically for inclusion in the Joint Proxy Statement/Prospectus, which shall be included in the Registration Statement, shall not, on the date(s) the Joint Proxy Statement/Prospectus is first mailed to the stockholders of the Company and the stockholders of Parent, respectively, or at the time of the Company Stockholders Meeting or the Parent Stockholders Meeting, respectively, or at the Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Notwithstanding the foregoing, if on a date for which the Parent Stockholders Meeting is scheduled, Parent has not received proxies representing a sufficient number of shares of Parent Common Stock to obtain the Required Parent Vote, whether or not a quorum is present, Parent shall have the right on one or more occasions to postpone or adjourn the Parent Stockholders Meeting for not more than an aggregate of forty (40) days, solely for the purpose of soliciting shares of Parent Common Stock to obtain the Required Parent Vote. Parent shall cause the Parent Charter Amendment to be duly filed with the Secretary of the State of Delaware such that it is effective no later than the Closing Date, immediately prior to Closing.

Section 7.2. Access to Information.

Upon reasonable notice, each of Parent and the Company shall (and shall cause its respective Subsidiaries to) afford to the other party hereto and its representatives (including Financing Sources and their representatives) reasonable access during normal business hours, during the period prior to the Effective Time, to all its officers, employees, properties, offices, plants and other facilities and to all books and records, including financial statements, other financial data and monthly financial statements within the time such statements are customarily prepared, and, during such period, each of Parent and the Company shall (and shall cause its respective Subsidiaries to) furnish promptly to the other party hereto and its representatives (including Financing Sources and their representatives), consistent with its legal obligations, all other information concerning its business, properties and personnel as such Person may reasonably request; provided, however, that either party hereto may restrict the foregoing access to the extent that, in such Person's reasonable judgment, (i) providing such access would result in the waiver of any attorney-client privilege, in the disclosure of any trade secrets of third parties or violate any of its obligations with respect to confidentiality if such Person shall have used all reasonable efforts to obtain the consent of such third party to such access, or (ii) any law, treaty, rule or regulation of any Governmental Entity applicable to such Person requires such Person or its Subsidiaries to

preclude the other party and its representatives from gaining access to any properties or information. Each party hereto will hold any such information that is non-public in confidence to the extent required by, and in accordance with, the provisions of that certain agreement, dated May 22, 2014 (the “Confidentiality Agreement”), between the Company and Parent.

Section 7.3. Efforts.

(a) Subject to the terms and conditions of this Agreement, each party will use its reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate the Merger and the other transactions contemplated by this Agreement as soon as practicable after the date hereof, including, without limitation, (i) preparing and filing, in consultation with the other party and as promptly as practicable and advisable after the date hereof, all documentation to effect all necessary applications, notices, petitions, filings, and other documents and to obtain as promptly as practicable all waiting period expirations or terminations, consents, clearances, waivers, licenses, orders, registrations, approvals, permits, and authorizations necessary or advisable to be obtained from any third party and/or any Governmental Entity in order to consummate the Merger or any of the other transactions contemplated by this Agreement and (ii) taking all steps as may be necessary to obtain all such waiting period expirations or terminations, consents, clearances, waivers, licenses, registrations, permits, authorizations, orders and approvals; provided, however, that efforts in connection with the Financing and the Required Indebtedness shall be governed by Section 7.12 and not this Section 7.3. In furtherance and not in limitation of the foregoing, each party hereto agrees (i) to make an appropriate filing of a Notification and Report Form pursuant to the HSR Act with respect to the transactions contemplated hereby as promptly as practicable, and in any event within 15 Business Days after the execution of this Agreement, and to supply as promptly as practicable any additional information and documentary material that may be requested pursuant to the HSR Act and to take all other actions necessary to cause the expiration or termination of the applicable waiting periods under the HSR Act as soon as practicable, (ii) to file all applications required to be filed with the FCC within 30 calendar days after the execution of this Agreement; and (iii) to file all notices and applications with PUCs within 15 Business Days after the execution of this Agreement.

(b) Each of Parent and the Company shall, in connection with the efforts referenced in Section 7.3(a) to obtain all waiting period expirations or terminations, consents, clearances, waivers, licenses, orders, registrations, approvals, permits, and authorizations for the transactions contemplated by this Agreement under the HSR Act, the Communications Act or any other Regulatory Law (as defined below), (i) cooperate in all respects and consult with each other in connection with any communication, filing or submission and in connection with any investigation or other inquiry, including any proceeding initiated by a private party, including by allowing the other party and/or its counsel to have a reasonable opportunity to review in advance and comment on drafts of any communications, filings and submissions (and documents submitted therewith); (ii) promptly inform the other party of any communication received by such party from, or given by such party to, the Antitrust Division of the Department of Justice (the “DOJ”), the Federal Trade Commission (the “FTC”), the FCC, any other Governmental Entity or, in connection with any proceeding by a private party, with any other person, including by promptly providing copies to the other party of any such written communications, and of any material communication received or given in connection with any proceeding by a private party, in each

case regarding any of the transactions contemplated by this Agreement, and (iii) permit the other party to review any communication it gives to, and consult with each other in advance of any meeting substantive telephone call, or conference with the DOJ, the FTC, FCC, or such other Governmental Entity or other person, and to the extent permitted by the DOJ, the FTC, the FCC, or any other applicable Governmental Entity or other Person, give the other party and/or its counsel the opportunity to attend and participate in such meetings, substantive telephone calls and conferences, provided, however, that materials may be redacted (x) to remove references concerning the valuation of Parent, the Company or any of their Subsidiaries, (y) as necessary to comply with contractual arrangements, and (z) as necessary to address reasonable privilege or confidentiality concerns. Parent and the Company may, as each deems advisable and necessary, reasonably designate any competitively sensitive material to be provided to the other under this Section 7.3(b) as “Antitrust Counsel Only Material.” Such materials and the information contained therein shall be given only to the outside counsel of the recipient and will not be disclosed by such outside counsel to employees, officers or directors of the recipient unless express permission is obtained in advance from the source of the materials (Parent or the Company, as the case may be) or its legal counsel. For purposes of this Agreement, “Regulatory Law” means the Sherman Act, as amended, the Clayton Act, as amended, the HSR Act, the Federal Trade Commission Act, as amended, the Communications Act, and all other national, federal or state, domestic or foreign, if any, statutes, rules, regulations, orders, decrees, administrative and judicial doctrines and other laws that are designed or intended to (i) prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or affecting competition or market conditions through merger, acquisition or other transaction or (ii) regulate telecommunications businesses. In furtherance and not in limitation of the covenants of the parties contained in Section 7.3(a) and this Section 7.3(b), each party hereto shall use its reasonable best efforts to resolve objections, if any, as may be asserted with respect to the transactions contemplated by this Agreement under any Regulatory Law. Notwithstanding anything to the contrary contained in this Agreement, Parent shall not be required to (and without the consent of the Company shall not) agree to any terms, conditions or modifications (including Parent, the Company or any of their respective Subsidiaries having to cease operating, sell or otherwise dispose of any assets or business (including the requirement that any such assets or businesses be held separate)) with respect to obtaining the expiration or termination of any waiting period or any consents, permits, waivers, approvals, authorizations or orders in connection with the Combination or the consummation of the transactions contemplated by this Agreement that would result in, or would be reasonably likely to result in, either individually or in the aggregate, a material adverse effect on Parent and its Subsidiaries, taken as a whole, after giving effect to the Combination (assuming Parent and its Subsidiaries, taken as a whole, after to giving effect to the Combination, are the size of the Company and its Subsidiaries, taken as a whole, prior to giving effect to the Combination) (a “Specified Material Adverse Effect”); provided, however, that nothing contained in this Agreement shall require Company to agree to, or take, any action in connection with Section 7.3 of this Agreement unless such agreement or action is conditioned upon the consummation of the Transactions contemplated herein.

(c) Each of Parent and the Company shall use its reasonable best efforts to obtain the expiration or termination of all waiting periods and all consents, waivers, authorizations and approvals of all third parties, including Governmental Entities (except those contemplated by Section 7.3(b), which shall be governed by that Section), necessary, proper or advisable for the consummation of the transactions contemplated by this Agreement and to provide any notices to

third parties required to be provided prior to the Effective Time; provided that, without the prior written consent of Parent, the Company shall not incur any significant expense or liability, enter into any significant new commitment or agreement or agree to any significant modification to any contractual arrangement to obtain such consents or certificates in each case, that would have a material adverse effect on the business or operations of the Company and its Subsidiaries, taken as a whole.

Section 7.4. Acquisition Proposals.

(a) Except as otherwise expressly permitted by this Section 7.4, none of the Company or any of its Subsidiaries shall (whether directly or indirectly through Affiliates, directors, officers, employees, representatives, advisors or other intermediaries), nor shall (directly or indirectly) the Company authorize or permit any of its or their controlled Affiliates, officers, directors, representatives, advisors or other intermediaries or Subsidiaries to: (i) solicit, initiate or knowingly encourage the submission of inquiries, proposals or offers from any Person (other than Parent) relating to any Company Acquisition Proposal, or agree to or endorse any Company Acquisition Proposal; (ii) enter into any agreement to (x) consummate any Company Acquisition Proposal, (y) approve or endorse any Company Acquisition Proposal or (z) in connection with any Company Acquisition Proposal, require it to abandon, terminate or fail to consummate the Combination; (iii) enter into or participate in any discussions or negotiations in connection with any Company Acquisition Proposal or inquiry with respect to any Company Acquisition Proposal, or furnish to any Person any non-public information with respect to its business, properties or assets in connection with any Company Acquisition Proposal; or (iv) agree to resolve to take, or take, any of the actions prohibited by clause (i), (ii) or (iii) of this sentence. The Company shall immediately cease, and cause its representatives, advisors and other intermediaries to immediately cease, any and all existing activities, discussions or negotiations with any parties conducted heretofore with respect to any of the foregoing. The Company shall promptly inform its representatives and advisors of the Company's obligations under this Section 7.4. Any violation of this Section 7.4 by any representative of the Company or its Subsidiaries shall be deemed to be a breach of this Section 7.4 by the Company. For purposes of this Section 7.4, the term "Person" means any person, corporation, entity or "group," as defined in Section 13(d) of the Exchange Act, other than, with respect to the Company, Parent or any Subsidiaries of Parent and, with respect to Parent, the Company.

"Company Acquisition Proposal" means any offer or proposal for a merger, amalgamation, reorganization, recapitalization, consolidation, scheme of arrangement, share exchange, business combination or other similar transaction involving the Company or any of its Subsidiaries or any proposal or offer to acquire, directly or indirectly, securities representing more than 20% of the voting power of the Company or more than 20% of the assets of the Company and its Subsidiaries taken as a whole, other than the Merger contemplated by this Agreement.

(b) Notwithstanding the foregoing, the Board of Directors of the Company, directly or indirectly through Affiliates, directors, officers, employees, representatives, advisors or other intermediaries, may, prior to the Company Stockholders Meeting, (i) comply with Rule 14d-9 and Rule 14e-2 promulgated under the Exchange Act with regard to any Company Acquisition Proposal, so long as any such compliance rejects any Company Acquisition Proposal and reaffirms its recommendation of the transactions contemplated by this Agreement, except to

the extent such action is permitted by Section 7.4(c), or issue a “stop, look and listen” statement, (ii) engage in negotiations or discussions with any Person (and its representatives, advisors and intermediaries) that has made an unsolicited bona fide written Company Acquisition Proposal not resulting from or arising out of a breach of Section 7.4(a), and/or (iii) furnish to such Person information relating to the Company or any of its Subsidiaries pursuant to a confidentiality agreement with confidentiality provisions that are no less favorable to the Company than those contained in the Confidentiality Agreement (it being understood that such confidentiality agreement need not contain standstill provisions) and to the extent nonpublic information that has not been made available to Parent is made available to such Person, make available or furnish such nonpublic information to Parent substantially concurrent with the time it is provided to such Person; provided that the Board of Directors of the Company shall be permitted to take an action described in the foregoing clauses (ii) or (iii) if, and only if, prior to taking such particular action, the Board of Directors of the Company has determined in good faith after consultation with its financial advisors and outside legal counsel that such Company Acquisition Proposal constitutes or would reasonably be expected to result in, a Company Superior Proposal.

“Company Superior Proposal” means any proposal (on its most recently amended or modified terms, if amended or modified) made by a third party that is not affiliated with the Company to enter into any transaction involving a Company Acquisition Proposal that the Board of Directors of the Company determines in its good faith judgment (after consultation with the Company’s financial advisors and outside legal counsel) would be, if consummated, more favorable to the Company’s stockholders than this Agreement, and the Combination, taking into account all terms and conditions of such transaction (including any breakup fees, expense reimbursement provisions and financial terms) and the anticipated timing and prospects for completion of such transaction, including the prospects for obtaining regulatory approvals and financing, and any third party approvals, except that the reference to “20%” in the definition of “Company Acquisition Proposal” shall be deemed to be a reference to “50%”. Reference to “this Agreement”, and “the Combination” in this paragraph shall be deemed to include any proposed alteration of the terms of this Agreement or the Combination that are agreed to by Parent pursuant to Section 7.4(d).

(c) Notwithstanding anything in Section 7.1 or this Section 7.4 to the contrary, at any time prior to the receipt of the Required Company Vote, the Company’s Board of Directors may (x) withdraw, modify or amend in any manner adverse to Parent its approval or recommendation of this Agreement or the Combination (“Company Change in Recommendation”) (i) in response to a Company Intervening Event, or (ii) following receipt of an unsolicited bona fide written Company Acquisition Proposal that did not result from or arise out of a breach of this Section 7.4 and which the Company’s Board of Directors determines in good faith, in consultation with its financial advisors and outside legal counsel is a Company Superior Proposal, in each case, if and only if, the Company’s Board of Directors has determined in good faith, after consultation with its financial advisors and outside legal counsel, that the failure to take such action is inconsistent with the fiduciary duties of the Company’s Board of Directors to the Company’s stockholders under applicable law and the Company complies with Section 7.4(d) or (y) following receipt a bona fide written Company Acquisition Proposal which the Company’s Board of Directors determines in good faith, in consultation with its financial advisors and outside legal counsel is a Company Superior Proposal, terminate this Agreement for the purpose of entering into a definitive acquisition agreement, merger agreement or similar definitive agreement (a “Company”).

Alternative Acquisition Agreement”) with respect to such Company Superior Proposal, if, and only if, the Company’s Board of Directors has determined in good faith, after consultation with its financial advisors and outside legal counsel, that the failure to take such action is inconsistent with the fiduciary duties of the Company’s Board of Directors to the Company’s stockholders under applicable law and the Company complies with Section 7.4(d) and concurrently with entering into a Company Alternative Acquisition Agreement with respect to such Company Superior Proposal, (1) the Company terminates this Agreement in accordance with the provisions of Section 9.1(g) and (2) the Company pays the Company Termination Fee and the Parent Expenses in accordance with Section 9.2(f).

(d) Prior to the Company taking any action permitted (i) under Section 7.4(c)(x)(i), the Company shall provide Parent with five (5) Business Days’ prior written notice advising Parent it intends to effect a Company Change in Recommendation and specifying, in reasonable detail, the reasons therefor and, during such five (5) Business Day period, if requested by Parent, the Company engages in good faith negotiations with Parent to amend the terms of this Agreement in a manner that obviates the need to effect a Company Change in Recommendation or (ii) under Section 7.4(c)(x)(ii) or Section 7.4(c)(y) the Company shall provide Parent with five (5) Business Days’ prior written notice (it being understood and agreed that any material amendment to the amount or form of consideration payable in connection with the applicable Company Acquisition Proposal shall require a new notice and an additional two (2) Business Day period) advising Parent that the Company’s Board of Directors intends to take such action, and specifying the material terms and conditions of the Company Superior Proposal and that the Company shall, during such five (5) Business Day period (or subsequent two (2) Business Day period), negotiate in good faith with Parent to make such adjustments to the terms and conditions of this Agreement such that such Company Acquisition Proposal would no longer constitute a Company Superior Proposal.

(e) The Company shall notify Parent promptly (but in any event within 24 hours) after receipt or occurrence of any Company Acquisition Proposal, of (i) the material terms and conditions of any such Company Acquisition Proposal and (ii) the identity of the Person making any such Company Acquisition Proposal. In addition, the Company shall promptly (but in any event within 24 hours) after the receipt thereof, provide to Parent copies of any written documentation material to understanding such Company Acquisition Proposal which is received by the Company from the Person (or from any representatives, advisors or agents of such Person) making such Company Acquisition Proposal. The Company shall not, and shall cause each of its Subsidiaries not to, terminate, waive, amend or modify any provision of any existing standstill or confidentiality agreement to which it or any of its Subsidiaries is a party, and the Company shall, and shall cause its Subsidiaries to, enforce the provisions of any such agreement; provided, however, that, the Company may waive any such provision in response to a Company Acquisition Proposal to the Board of Directors of the Company made under circumstances in which the Company is permitted under this Section 7.4 to participate in discussions regarding a Company Acquisition Proposal, but only to the extent necessary to allow it to respond to such Company Acquisition Proposal as permitted under this Section 7.4. The Company shall keep Parent reasonably informed of the status and material details (including any amendments or proposed amendments) of any such Company Acquisition Proposal and keep Parent reasonably informed as to the material details of all discussions or negotiations with respect to any such Company Acquisition Proposal and shall provide to Parent within 24 hours after receipt thereof all copies of

any other documentation material to understanding such Company Acquisition Proposal (as determined by the Company in good faith) received by the Company from the Person (or from any representatives, advisors or agents of such Person) making such Company Acquisition Proposal. The Company shall promptly provide to Parent any material non-public information concerning the Company provided to any other Person in connection with any Company Acquisition Proposal that was not previously provided to Parent. The Board of Directors of the Company shall promptly consider in good faith (in consultation with its outside legal counsel and financial advisors) any proposed alteration of the terms of this Agreement or the Combination proposed by Parent in response to any Company Acquisition Proposal. The Company shall not take any action to exempt any Person from the restrictions on “business combinations” contained in any applicable law or otherwise cause such restrictions not to apply.

(f) Except as otherwise expressly permitted by this Section 7.4, none of Parent or any of its Subsidiaries shall (whether directly or indirectly through Affiliates, directors, officers, employees, representatives, advisors or other intermediaries), nor shall (directly or indirectly) Parent authorize or permit any of its or their controlled Affiliates, officers, directors, representatives, advisors or other intermediaries or Subsidiaries to: (i) solicit, initiate or knowingly encourage the submission of inquiries, proposals or offers from any Person (other than the Company) relating to any Parent Acquisition Proposal, or agree to or endorse any Parent Acquisition Proposal; (ii) enter into any agreement to (x) consummate any Parent Acquisition Proposal, (y) approve or endorse any Parent Acquisition Proposal or (z) in connection with any Parent Acquisition Proposal, require it to abandon, terminate or fail to consummate the Combination; (iii) enter into or participate in any discussions or negotiations in connection with any Parent Acquisition Proposal or inquiry with respect to any Parent Acquisition Proposal, or furnish to any Person any non-public information with respect to its business, properties or assets in connection with any Parent Acquisition Proposal; or (iv) agree to resolve to take, or take, any of the actions prohibited by clause (i), (ii) or (iii) of this sentence. Parent shall immediately cease, and cause its representatives, advisors and other intermediaries to immediately cease, any and all existing activities, discussions or negotiations with any parties conducted heretofore with respect to any of the foregoing. Parent shall promptly inform its representatives and advisors of Parent’s obligations under this Section 7.4. Any violation of this Section 7.4 by any representative of Parent or its Subsidiaries shall be deemed to be a breach of this Section 7.4 by Parent.

“Parent Acquisition Proposal” means any offer or proposal for a merger, amalgamation, reorganization, recapitalization, consolidation, scheme of arrangement, share exchange, business combination or other similar transaction involving Parent or any of its Subsidiaries or any proposal or offer to acquire, directly or indirectly, securities representing more than 20% of the voting power of Parent or more than 20% of the assets of Parent and its Subsidiaries taken as a whole, other than the Merger contemplated by this Agreement.

(g) Notwithstanding the foregoing, the Board of Directors of Parent, directly or indirectly through Affiliates, directors, officers, employees, representatives, advisors or other intermediaries, may, prior to the Parent Stockholders Meeting, (i) comply with Rule 14d-9 and Rule 14e-2 promulgated under the Exchange Act with regard to any Parent Acquisition Proposal, so long as any such compliance rejects any Parent Acquisition Proposal and reaffirms its recommendation of the transactions contemplated by this Agreement, except to the extent such action is permitted by Section 7.4(h), or issue a “stop, look and listen” statement, (ii) engage in

negotiations or discussions with any Person (and its representatives, advisors and intermediaries) that has made an unsolicited bona fide written Parent Acquisition Proposal not resulting from or arising out of a breach of Section 7.4(f), and/or (iii) furnish to such Person information relating to Parent or any of its Subsidiaries pursuant to a confidentiality agreement with confidentiality provisions that are no less favorable to Parent than those contained in the Confidentiality Agreement (it being understood that such confidentiality agreement need not contain standstill provisions) and to the extent nonpublic information that has not been made available to the Company is made available to such Person, make available or furnish such nonpublic information to the Company substantially concurrent with the time it is provided to such Person; provided that the Board of Directors of Parent shall be permitted to take an action described in the foregoing clauses (ii) or (iii) if, and only if, prior to taking such particular action, the Board of Directors of Parent has determined in good faith after consultation with its financial advisors and outside legal counsel that such Parent Acquisition Proposal constitutes or would reasonably be expected to result in, a Parent Superior Proposal.

“Parent Superior Proposal” means any proposal (on its most recently amended or modified terms, if amended or modified) made by a third party that is not affiliated with Parent to enter into any transaction involving a Parent Acquisition Proposal that the Board of Directors of Parent determines in its good faith judgment (after consultation with Parent’s financial advisors and outside legal counsel) would be, if consummated, more favorable to Parent’s stockholders than this Agreement and the Combination, taking into account all terms and conditions of such transaction (including any breakup fees, expense reimbursement provisions and financial terms) and the anticipated timing and prospects for completion of such transaction, including the prospects for obtaining regulatory approvals and financing, and any third party approvals, except that the reference to “20%” in the definition of “Parent Acquisition Proposal” shall be deemed to be a reference to “50%”. Reference to “this Agreement” and “the Combination” in this paragraph shall be deemed to include any proposed alteration of the terms of this Agreement or the Combination that are agreed to by the Company pursuant to Section 7.4(h).

(h) Notwithstanding anything in Section 7.1 or this Section 7.4 to the contrary, at any time prior to the receipt of the Required Parent Vote, Parent’s Board of Directors may (x) withdraw, modify or amend in any manner adverse to the Company its approval or recommendation of this Agreement or the Combination (“Parent Change in Recommendation”) (i) in response to a Parent Intervening Event, or (ii) following receipt of an unsolicited bona fide written Parent Acquisition Proposal that did not result from or arise out of a breach of this Section 7.4 and which Parent’s Board of Directors determines in good faith, in consultation with its financial advisors and outside legal counsel is a Parent Superior Proposal, in each case, if and only if, Parent’s Board of Directors has determined in good faith, after consultation with its financial advisors and outside legal counsel, that the failure to take such action is inconsistent with the fiduciary duties of Parent’s Board of Directors to Parent’s stockholders under applicable law and Parent complies with Section 7.4(i) or (y) following receipt of a bona fide written Parent Acquisition Proposal which Parent’s Board of Directors determines in good faith, in consultation with its financial advisors and outside legal counsel is a Parent Superior Proposal, terminate this Agreement for the purpose of entering into a definitive acquisition agreement, merger agreement or similar definitive agreement (a “Parent Alternative Acquisition Agreement”) with respect to such Parent Superior Proposal, if, and only if, Parent’s Board of Directors has determined in good faith, after consultation with its financial advisors and outside legal counsel, that the failure to take such

action is inconsistent with the fiduciary duties of Parent's Board of Directors to Parent's stockholders under applicable law and Parent complies with Section 7.4(i) and concurrently with entering into a Parent Alternative Acquisition Agreement with respect to such Parent Superior Proposal, (1) Parent terminates this Agreement in accordance with the provisions of Section 9.1(h) and (2) Parent pays the Parent Termination Fee and the Parent Expenses in accordance with Section 9.2(g).

(i) Prior to Parent taking any action permitted (i) under Section 7.4(h)(x)(i), Parent shall provide the Company with five (5) Business Days' prior written notice advising the Company it intends to effect a Parent Change in Recommendation and specifying, in reasonable detail, the reasons therefor and, during such five (5) Business Day period, if requested by the Company, Parent engages in good faith negotiations with the Company to amend the terms of this Agreement in a manner that obviates the need to effect a Parent Change in Recommendation or (ii) under Section 7.4(h)(x)(ii) or Section 7.4(h)(y) Parent shall provide the Company with five (5) Business Days' prior written notice (it being understood and agreed that any material amendment to the amount or form of consideration payable in connection with the applicable Parent Acquisition Proposal shall require a new notice and an additional two (2) Business Day period) advising the Company that Parent's Board of Directors intends to take such action and specifying the material terms and conditions of the Parent Superior Proposal and that Parent shall, during such five (5) Business Day period (or subsequent two (2) Business Day period), negotiate in good faith with the Company to make such adjustments to the terms and conditions of this Agreement such that such Parent Acquisition Proposal would no longer constitute a Parent Superior Proposal.

(j) Parent shall notify the Company promptly (but in any event within 24 hours) after receipt or occurrence of any Parent Acquisition Proposal, of (i) the material terms and conditions of any such Parent Acquisition Proposal and (ii) the identity of the Person making any such Parent Acquisition Proposal. In addition, Parent shall promptly (but in any event within 24 hours) after the receipt thereof, provide to the Company copies of any written documentation material to understanding such Parent Acquisition Proposal which is received by Parent from the Person (or from any representatives, advisors or agents of such Person) making such Parent Acquisition Proposal. Parent shall not, and shall cause each of its Subsidiaries not to, terminate, waive, amend or modify any provision of any existing standstill or confidentiality agreement to which it or any of its Subsidiaries is a party, and Parent shall, and shall cause its Subsidiaries to, enforce the provisions of any such agreement; provided, however, that, Parent may waive any such provision in response to a Parent Acquisition Proposal to the Board of Directors of Parent made under circumstances in which Parent is permitted under this Section 7.4 to participate in discussions regarding a Parent Acquisition Proposal, but only to the extent necessary to allow it to respond to such Parent Acquisition Proposal as permitted under this Section 7.4. Parent shall keep the Company reasonably informed of the status and material details (including any amendments or proposed amendments) of any such Parent Acquisition Proposal and keep the Company reasonably informed as to the material details of all discussions or negotiations with respect to any such Parent Acquisition Proposal and shall provide to the Company within 24 hours after receipt thereof all copies of any other documentation material to understanding such Parent Acquisition Proposal (as determined by Parent in good faith) received by Parent from the Person (or from any representatives, advisors or agents of such Person) making such Parent Acquisition Proposal. Parent shall promptly provide the Company any material non-public information concerning Parent provided to any other Person in connection with any Parent Acquisition Proposal that was

not previously provided to the Company. The Board of Directors of Parent shall promptly consider in good faith (in consultation with its outside legal counsel and financial advisors) any proposed alteration of the terms of this Agreement or the Combination proposed by the Company in response to any Parent Acquisition Proposal. Parent shall not take any action to exempt any Person from the restrictions on “business combinations” contained in any applicable law or otherwise cause such restrictions not to apply.

Section 7.5. Stockholder Litigation. Each of the Company and Parent shall keep the other party hereto informed of, and cooperate with such party in connection with, any stockholder litigation or claim against such party and/or its directors or officers relating to the Combination or the other transactions contemplated by this Agreement; provided, however, that no settlement in connection with such stockholder litigation shall be agreed to without Parent’s prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 7.6. Maintenance of Insurance. Each of Parent and the Company will use commercially reasonable efforts to maintain in full force and effect through the Closing Date all material insurance policies applicable to Parent and its Subsidiaries and the Company and its Subsidiaries, respectively, and their respective properties and assets in effect on the date hereof.

Section 7.7. Public Announcements. Except with respect to any Company Change in Recommendation or Parent Change in Recommendation made in accordance with the terms of this Agreement and except in connection with any Company Superior Proposal or Parent Superior Proposal, each of the Company, Parent, Merger Sub 1 and Merger Sub 2 agrees that no public release or announcement concerning the transactions contemplated hereby shall be issued by any party without the prior written consent of the Company and Parent (which consent shall not be unreasonably withheld or delayed), except as such release or announcement may be required by law or the rules or regulations of any applicable United States securities exchange, in which case the party required to make the release or announcement shall use its commercially reasonable efforts to allow each other party reasonable time to comment on such release or announcement in advance of such issuance, it being understood that the final form and content of any such release or announcement, to the extent so required, shall be at the final discretion of the disclosing party.

Section 7.8. No Rights Plan. From the date hereof through the earlier of termination of this Agreement and the Effective Time, the Company will not adopt, approve, or agree to adopt, a rights plan, “poison-pill” or other similar agreement or arrangement or any anti-takeover provision in the Company Organizational Documents that is, or at the Effective Time shall be, applicable to the Company, the Company Common Stock, the Combination or the other transactions contemplated by this Agreement.

Section 7.9. Section 16 Matters. Assuming that the Company delivers to Parent the Company Section 16 Information (as hereinafter defined) in a timely fashion prior to the Effective Time, the Board of Directors of Parent, or a committee of non-employee directors thereof (as such term is defined for purposes of Rule 16b-3(d) under the Exchange Act), shall reasonably promptly thereafter and in any event prior to the Effective Time adopt a resolution providing in substance that the receipt by the Company Insiders (as hereinafter defined) of Parent Common Stock in exchange for Company Common Stock and derivative securities with respect to Company Common Stock pursuant to the transactions contemplated by this Agreement are

intended to be exempt from liability pursuant to Section 16(b) under the Exchange Act in accordance with Rule 16b-3 and interpretations of the SEC thereunder. In addition, the Board of Directors of the Company, or a committee of non-employee Directors thereof, shall, prior to the Effective Time, adopt a resolution providing in substance that the dispositions by the Company Insiders of Company Common Stock (including derivative securities with respect to Company Common Stock) in exchange for shares of Parent Common Stock pursuant to the transactions contemplated by this Agreement are intended to be exempt from liability pursuant to Section 16(b) under the Exchange Act in accordance with Rule 16b-3 and interpretations of the SEC thereunder. “Company Section 16 Information” shall mean information accurate in all material respects regarding Company Insiders, the number of shares of Company Common Stock and derivative securities with respect to Company Common Stock held by each such Company Insider and expected to be exchanged for shares of Parent Common Stock pursuant to the transaction contemplated by this Agreement and any other information that may be required under applicable interpretations of the SEC under Rule 16b-3. “Company Insiders” shall mean those officers and directors of the Company who are subject to the reporting requirements of Section 16(a) of the Exchange Act and who are listed in the Company Section 16 Information.

Section 7.10. Reorganization.

(a) The parties intend that the Combination qualify as a reorganization within the meaning of Section 368(a) of the Code and will report it as such for U.S. federal, state and local income Tax purposes. None of the parties will knowingly take any action or fail to take any action, which action or failure to act is reasonably likely to cause the Combination to fail to qualify as a reorganization within the meaning of Section 368(a) of the Code and the regulations promulgated thereunder.

(b) Each of the Company, Parent, Merger Sub 1 and Merger Sub 2 shall use its commercially reasonable efforts to (i) provide the representations referred to in Section 8.2(c) and Section 8.3(c), respectively, as of the date of the Joint Proxy Statement/Prospectus, if required, and as of the Closing Date and (ii) obtain the opinions referred to in Section 8.2(c) and Section 8.3(c), respectively.

Section 7.11. Parent Board of Directors. On or prior to the Effective Time, Parent shall appoint to Parent’s Board of Directors three members of the Company’s Board of Directors selected by the Company from any of the Directors elected at the 2014 Annual Meeting (all of whom are eligible for such selection) and approved by Parent; provided, however, that Parent shall not exercise its approval rights to such an extent that it fails to approve at least three of the Company’s current directors; provided, further, that if any of such Company-selected directors that have been approved by Parent are unable or unwilling to serve on Parent’s Board of Directors, then the number of Company-selected directors shall be decreased by the number of candidates unable or unwilling to serve. Subject to the consent of the Company-selected directors appointed to the Parent’s Board of Directors, Parent shall cause all such directors who are appointed pursuant to this Section 7.11 to be nominated for election to the Parent’s Board of Directors at the first annual meeting following the Closing.

Section 7.12. Financing/Financing Assistance.

(a) Parent shall use its reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, advisable or proper to consummate and obtain the Financing on the terms and conditions described in the Commitment Letter and Fee Letter, including using reasonable best efforts to (i) maintain in effect the Commitment Letter, (ii) satisfy on a timely basis all conditions to the funding of the Financing set forth in the Commitment Letter, Fee Letter and any definitive agreements executed in connection therewith, (iii) negotiate and enter into definitive agreements with respect thereto on the terms and conditions contemplated by the Commitment Letter and Fee Letter (including after giving effect to any “market flex” provisions set forth in the Fee Letter executed in connection with the Financing) or on other terms, (iv) in the event that all conditions contained in the Commitment Letter and Fee Letter have been satisfied and Parent and Merger Sub 1 and Merger Sub 2 are required to consummate the Closing pursuant to the terms hereof, draw a sufficient amount of the Financing or Alternative Financing to enable Parent, Merger Sub 1 and Merger Sub 2 to consummate the Merger; it being understood that the receipt of the Financing or Alternative Financing is not a condition to Parent’s, Merger Sub 1’s or Merger Sub 2’s obligation to consummate the Closing on the terms and conditions set forth herein (subject to the terms and conditions of Section 9.1 and Section 9.2); and (v) enforce the counterparties’ obligations and Parent’s rights under the Commitment Letter in the event of a breach or repudiation by any party thereto that would reasonably be expected to materially impede or delay the Closing.

(b) Parent shall not, and shall not permit Merger Sub 1 or Merger Sub 2 to, agree to or permit any amendment, replacements, supplement or other modification of, or waive any of its rights or remedies under, the Commitment Letter or Fee Letter without the Company’s prior written consent; provided that Parent may (x) enter into any amendment, replacement, supplement or other modification to or waiver of any provision of the Commitment Letter or Fee Letter if such amendment, replacement, supplement or other modification or waiver does not (i) add new (or adversely modify any existing) condition to the consummation of the Financing as compared to those in the Commitment Letter and Fee Letter as in effect on the date hereof, (ii) adversely affect the ability of Parent to enforce its rights against the other parties to the Commitment Letter and Fee Letter as in effect on the date hereof or in any definitive agreements executed in connection herewith, (iii) reduce the aggregate amount of the Financing contemplated thereunder, or (iv) contain any provisions that otherwise would reasonably be expected to prevent, materially delay or materially impede the consummation of the Financing or the transactions contemplated by this Agreement; and (y) amend the Commitment Letter to add lenders, lead arrangers, book runners, syndication agents or similar entities who had not executed the Commitment Letter as of the date of this Agreement so long as any such addition would not reasonably be expected to prevent, materially hinder or materially delay the consummation of the Financing or the transactions contemplated by this Agreement or the availability of the Financing under the Commitment Letter. Parent shall promptly deliver to the Company copies (redacted only as to fee amounts, dates and certain other economic terms, including in respect of the “market flex” and “securities demand” provisions, in the case of the Fee Letter) of any such amendment, replacement, supplement or other modification or waiver of the Commitment Letter or Fee Letter.

(c) In the event any portion of the Financing becomes unavailable on the terms and conditions described in or contemplated by the Commitment Letter (including after giving

effect to the “market flex” provisions set forth in the Fee Letter executed in connection with the Financing) for any reason, Parent shall, in consultation with the Company, use its reasonable best efforts to arrange to obtain, as promptly as practicable following the occurrence of such event, alternative financing from the same or alternative sources (the “Alternative Financing”) in an amount sufficient (together with cash on hand of the Company) to fund the Cash Consideration, the cash payable to holders of Company Equity Awards pursuant to Section 1.8, the Required Indebtedness and all other fees and expenses incurred by Parent, Merger Sub 1, Merger Sub 2 and the Company in connection with the Merger and the other transactions contemplated hereby and which would not contain any provisions that would reasonably be expected to prevent, materially delay or materially impede the consummation of the Financing or Alternative Financing or the transactions contemplated by this Agreement, including any conditions to the closing of such Financing or Alternative Financing that are materially less favorable to Parent than the conditions to closing in the Commitment Letter (as defined immediately prior to such Alternative Financing). If an Alternative Financing is required in accordance with this Section 7.12(c), Parent shall obtain, and when obtained, provide the Company with a copy of, a new financing commitment that provides for such Alternative Financing, and Parent shall comply with its covenants in Section 7.12(a) and Section 7.12(b) with respect to the Commitment Letter (as defined immediately after receipt of such Alternative Financing).

(d) Parent shall give the Company prompt written notice of any material breach or repudiation by any party of the Commitment Letter or Fee Letter of which Parent becomes aware or any termination of the Commitment Letter or Fee Letter. Parent shall keep the Company informed on a reasonably current basis in reasonable detail of the status of its efforts to arrange and consummate the Financing.

(e) Parent, Merger Sub 1, Merger Sub 2 or an affiliate thereof may (i) commence an offer to purchase with respect to any and all of the outstanding aggregate principal amount of the Company’s Notes for cash on price terms that are determined by Parent and in compliance with applicable law (including SEC rules and regulations) and the provisions of the indentures governing the applicable series of Notes to be consummated substantially simultaneously with the Closing and no earlier than the Effective Time using funds provided by Parent (the “Offers to Purchase”), and (ii) solicit the consent of the holders of each series of Notes, regarding certain proposed amendments to the indenture governing such series of Notes (the “Indenture Amendments”) as determined by Parent and in compliance with applicable law (including SEC rules and regulations) and the provisions of the indentures governing the applicable series of Notes and as set forth in the tender offer and consent solicitation documents sent to holders of such series of Notes to become effective substantially simultaneously with the Closing and no earlier than the Effective Time, which amendments may include the elimination of all or substantially all of the restrictive covenants and certain other provisions contained in the indenture governing such series of Notes that can be eliminated upon the favorable vote of the holders of a majority of the principal amount thereof (the “Consent Solicitations” and, together with the Offers to Purchase, the “Debt Tender Offer”); provided, in each case, that this Agreement shall not have been terminated in accordance with Article IX. Any documentation relating to the Debt Tender Offer (including all amendments or supplements thereto) (the “Offer Documents”) and all material requested to be published or mailed to the holders of the Notes in connection with any Debt Tender Offer shall be subject to the prior review of, and comment (which review shall be made as promptly as reasonably practical) of the Company and reasonably acceptable to the Company; provided that, in

any event, Parent and the Company hereby agree that (i) the terms and conditions of the Debt Tender Offer shall provide that the closing thereof shall be contingent upon the consummation of the Merger at the Effective Time; (ii) the Indenture Amendments shall not require the consent of the holders of more than a majority of the outstanding principal amount of the applicable series of Notes in the aggregate, and (iii) promptly upon expiration of the Consent Solicitations, assuming the requisite consents have been received with respect to such series of Notes, the Company shall execute a supplemental indenture to the indentures governing each series of Notes that will not become operative prior to the Effective Time and shall use reasonable best efforts to cause the trustee under each such indenture to enter into such supplemental indenture prior to or substantially simultaneously with the Closing. Concurrent with the Effective Time, and in accordance with the terms of the Debt Tender Offer, the Surviving Company shall accept for purchase and purchase each series of Notes properly tendered and not properly withdrawn in the Debt Tender Offer using funds provided by or at the direction of Parent. Parent hereby covenants and agrees to, promptly following the Effective Time, directly or indirectly pay for the Notes properly tendered and not withdrawn to the extent required pursuant to the terms of the Debt Tender Offer. Any Indenture Amendments contemplated by the Debt Tender Offer shall revert to the form in effect prior to the effectiveness of any Indenture Amendments and be of no further effect if the Closing does not occur.

(f) If at any time prior to the completion of the Debt Tender Offer any information should be discovered by the Company or by Parent that the Company or Parent reasonably believes should be set forth in an amendment or supplement to the Offer Documents, so that the Offer Documents shall not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, the party that discovers such information shall promptly notify the other party, and an appropriate amendment or supplement prepared by Parent describing such information shall be disseminated by or on behalf of the Company to the holders of the applicable Notes. The parties shall comply with the requirements of Rule 14e-1 under the Exchange Act, to the extent applicable, and any other applicable laws in connection with the Debt Tender Offer.

(g) Parent shall pay the fees and out-of-pocket expenses of any dealer manager, information agent, depositary or other agent retained in connection with the Debt Tender Offer. At Parent's expense, the Company shall provide all cooperation reasonably requested by Parent that is necessary or reasonably required in connection with the Debt Tender Offer, including, without limitation, executing supplemental indentures to the indentures governing each series of Notes that will become operative only immediately upon the Effective Time, using reasonable best efforts to cause the trustee under each such indenture to enter such supplemental indenture prior or substantially simultaneously with the Closing, and providing the information necessary to distribute the applicable Offer Documents to the holders of the applicable series of Notes. The Company shall not be required to deliver or to cause its counsel to deliver any legal opinions in connection with the Debt Tender Offer or the execution by the trustee under any indenture of any supplemental indentures required in connection with the consummation thereof.

(h) Notwithstanding anything to the contrary contained in this Section 7.12, the Company shall not be required to take any action in connection with the Debt Tender Offer that it believes, after consultation with counsel, (i) could reasonably be expected to cause the Company

to violate (A) federal or state securities laws or (B) the provisions of the indentures governing the applicable series of Notes or (ii) would reasonably be expected to cause the Company to materially violate the provisions of any other material contract of the Company and its Subsidiaries. It is expressly agreed by the parties hereto that the failure to obtain the consent of the holders of the Notes in connection with any Debt Offer shall not be deemed to be a breach by the Company under this Agreement or a failure of any condition hereto.

(i) Prior to the Closing, the Company shall provide to Parent, Merger Sub 1 and Merger Sub 2, and shall cause its Subsidiaries to, and shall use its reasonable best efforts to cause the respective officers, employees, agents and representatives of the Company and its Subsidiaries to, provide to Parent, Merger Sub 1 and Merger Sub 2 all cooperation reasonably requested by Parent that is necessary or reasonably required in connection with the Financing, including the following: (i) using reasonable best efforts to make the Company's and its Subsidiaries' senior management and other representatives available to participate in a reasonable number of meetings and calls, presentations, road shows, due diligence sessions (including accounting due diligence sessions), drafting sessions and sessions with rating agencies, investors and prospective lenders on reasonable advance notice; (ii) assisting with the preparation of appropriate and customary materials for rating agency presentations, offering and syndication documents, bank information memoranda, business projections, other marketing documentation and similar documents reasonably required in connection with the Financing (and executing customary representation letters in connection therewith); provided, that any such marketing materials shall reflect that one or more of Parent and its Subsidiaries will be the obligors at Closing and that the Company and its Subsidiaries shall have no obligations thereunder unless and until the Effective Time occurs; (iii) executing and delivering definitive financing documents, (and assisting in the preparation of applicable schedules and other information necessary in connection therewith) including any pledge and security documents, any loan agreements, currency or interest hedging agreements, certificates, and other definitive financing documents usual and customary for transactions of the type contemplated by the Commitment Letter on terms reasonably requested by Parent, provided that no obligation of the Company or any of its Subsidiaries under any such document or agreement shall be effective until the Effective Time; (iv) using reasonable best efforts to facilitate the pledging of collateral (including cooperation in connection with the pay-off of existing Indebtedness to the extent contemplated by this Agreement and the release of related Liens and terminations of security interests), provided that no pledge or pay-off of existing Indebtedness shall be effective or required, as the case may be, until the Effective Time; (v) using reasonable best efforts to furnish, on a confidential basis (other than the financial statements required by clause (vii) below), to Parent, Merger Sub 1 and Merger Sub 2 and the Financing Sources, as promptly as reasonably practicable, financial and other pertinent information regarding the Company as may be reasonably requested by Parent in connection with the Financing, including all financial statements and other financial data regarding the Company reasonably required by the Commitment Letter (but excluding pro forma financial information); (vi) executing and delivering (or using reasonable best efforts to obtain from its advisors), and causing its Subsidiaries to execute and deliver (or use reasonable best efforts to obtain from its advisors), customary certificates, accounting comfort letters (including consents of accountants for use of their audit reports in any financial statements relating to the Financing) or other documents and instruments relating to guarantees and other matters ancillary to the Financing as may be reasonably requested by Parent as necessary and customary in connection with the Financing, (vii) providing audited consolidated financial statements of the Company covering the three (3) fiscal

years immediately preceding the Closing for which audited consolidated financial statements are required to have been filed pursuant to the Exchange Act, and unaudited financial statements (excluding footnotes) for any regular quarterly interim fiscal period or periods of the Company ended after the date of the most recent audited financial statements and at least 45 days prior to the Closing Date (the information required to be delivered pursuant to this clause (vii) being referred to as the “Required Financial Information”), (viii) requesting that its independent accountants cooperate with and assist Parent in preparing customary and appropriate information packages and offering materials as the parties to the Commitment Letter may reasonably request for use in connection with the offering and/or syndication of debt securities, (ix) using reasonable best efforts to assist in obtaining third party consents in connection with the Financing, and in extinguishing Existing Indebtedness of the Company and its Subsidiaries and releasing liens securing such indebtedness, in each case to take effect at the Effective Time, (x) furnishing all documentation and other information required by Governmental Entities under applicable “know your customer” and anti-money laundering rules and regulations, including the U.S.A. Patriot Act of 2001, but in each case, solely as relating to the Company and its Subsidiaries to the extent reasonably requested by Parent or Merger Sub 1 or Merger Sub 2, and (xi) taking such other customary actions as are reasonably requested by Parent or the Financing Sources to facilitate the satisfaction of all conditions precedent to obtaining the Financing set forth in the Commitment Letter to the extent within the control of the Company (including delivery of the stock and other equity certificates of the Company’s Subsidiaries to Parent); provided that nothing herein shall require until the Effective Time occurs, either the Company or any of its Subsidiaries to (A) pay any fees, expenses or other amounts in connection with the Financing, (B) have any liability or obligation under any loan agreement or any related document or any other agreement or document related to the Financing, (C) incur any liability in connection with the Financing contemplated by the Commitment Letter, (D) enter into any definitive agreement or commitment that would be effective prior to the Effective Time (other than customary management representation letters), (E) provide any such cooperation to the extent that it would interfere materially and unreasonably with the business or operations of the Company and its Subsidiaries, (F) deliver (x) any financial information in a form not customarily prepared by the Company or its Subsidiaries or (y) any financial information with respect to a fiscal period that has not yet ended or (G) take any action that would conflict with or violate the Company’s or any of its Subsidiaries’ organizational documents or any applicable laws. For the avoidance of doubt, the Board of Directors of the Company and each of its Subsidiaries, in each case as constituted prior to the Effective Time, shall not be required to adopt any resolutions or take any other action in connection with the authorization of any of the Financing other than to approve regulatory filings relating to the Company and its Subsidiaries in connection therewith.

(j) All material non-public information regarding the Company and its Subsidiaries provided to Parent, Merger Sub 1, Merger Sub 2 and their respective representatives pursuant to this Section 7.12 shall be kept confidential by them in accordance with the Confidentiality Agreement. The Company hereby consents to the use of all of its and its Subsidiaries’ logos in connection with the Financing; provided that such logos are used solely in a manner that is not intended to nor is reasonably likely to harm or disparage the Company or any of its Subsidiaries, the reputation or goodwill of the Company or any of its Subsidiaries or any of their assets, including their logos and marks.

(k) Parent shall, promptly upon written request by the Company, reimburse the

Company for all reasonable and documented out-of-pocket costs and expenses (including without limitation professional fees and expenses of accountants, legal counsel and other advisors) to the extent such costs are incurred by the Company or its Subsidiaries in connection with cooperation provided by the Company, its Subsidiaries, their respective officers, employees and other representatives pursuant to the terms of Section 7.12 (including in connection with the Financing and/or the Debt Tender Offer), or in connection with compliance with its obligations under Section 7.12, and Parent hereby agrees to indemnify and hold harmless the Company and its Subsidiaries and their respective officers, employees, agents and representatives (collectively, the “Financing Indemnitees”) from and against any and all liabilities, damages, claims, costs, expenses or losses suffered or incurred by them in connection with the Financing and Debt Tender Offers, any information utilized in connection therewith (other than arising from information provided in writing by the Company or its Subsidiaries) and any misuse of the logos or marks of the Company or its Subsidiaries, except to the extent that such liabilities, damages, claims, costs, expenses or losses arose out of or result from the willful misconduct of a Financing Indemnatee (the obligations in this sentence, the “Financing Cooperation Indemnity”). The obligations of Parent in the foregoing sentence shall survive the consummation of the Merger and any termination of this Agreement. After the Effective Time, the Financing Cooperation Indemnity only may be amended or waived in respect of any Financing Indemnatee with the consent of such Financing Indemnatee.

ARTICLE VIII.

CONDITIONS PRECEDENT

Section 8.1. Conditions to Each Party’s Obligation to Effect the Combination. The obligations of the Company, Parent, Merger Sub 1 and Merger Sub 2 to effect the Combination are subject to the satisfaction or waiver on or prior to the Closing Date of the following conditions:

(a) Company Stockholder Approval. The Company shall have obtained the Required Company Vote in connection with the approval and adoption of this Agreement and the Combination by the stockholders of the Company.

(b) Parent Stockholder Approval. Parent shall have obtained the Required Parent Vote in connection with the approval of the Parent Share Issuance and the approval and adoption of the Parent Charter Amendment by the stockholders of Parent.

(c) No Injunctions or Restraints, Illegality. No statute, rule, regulation, executive order, decree or ruling, shall have been adopted or promulgated, and no temporary restraining order, preliminary or permanent injunction or other order issued by a court or other U.S. governmental authority of competent jurisdiction shall be in effect, having the effect of making the Combination illegal or otherwise prohibiting consummation of the Combination; provided, however, that the provisions of this Section 8.1(c) shall not be available to any party whose failure to fulfill its obligations pursuant to Section 7.3 shall have been the cause of, or shall have resulted in, such order or injunction.

(d) HSR Act. The waiting period (and any extension thereof) applicable to the Merger and the other transactions contemplated pursuant to this Agreement under the HSR Act

shall have been terminated or shall have expired.

(e) FCC and State Regulator Approvals. The (i) authorization required to be obtained from the FCC and (ii) Consents required to be obtained from the State Regulators or other Governmental Entities set forth on Schedule 8.1(e) in connection with the consummation of the Merger shall have been obtained, except, in the case of clause (ii), to the extent the failure to obtain such Consents would not have a Specified Material Adverse Effect or prevent Parent and its Subsidiaries from operating in the relevant state following the Combination.

(f) NYSE Listing. The shares of Parent Common Stock to be issued in the Merger shall have been approved for listing on the NYSE (or any successor inter-dealer quotation system or stock exchange thereto) subject to official notice of issuance.

(g) Effectiveness of the Registration Statement. The Registration Statement shall have been declared effective by the SEC under the Securities Act. No stop order suspending the effectiveness of the Registration Statement shall have been issued by the SEC and no proceedings for that purpose shall have been initiated by the SEC.

Section 8.2. Additional Conditions to Obligations of Parent, Merger Sub 1 and Merger Sub 2. The obligations of Parent, Merger Sub 1 and Merger Sub 2 to effect the Combination are subject to the satisfaction, or waiver by Parent, on or prior to the Closing Date, of the following additional conditions:

(a) Representations and Warranties. (i) The representations and warranties of the Company contained in Section 3.1 (a) (Organization), Section 3.5 (Authorization and Validity of Agreement), Section 3.6(c) and the first sentence of Section 3.6 (b) (Capitalization and Related Matters), Section 3.24 (No Brokers), Section 3.28 (Board Approval) and Section 3.29 (Vote Required) shall be true and correct in all material respects, in each case both when made and at and as of the Closing Date, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date), (ii) the representations and warranties of the Company contained in Sections 3.6(a) and (b) (Capitalization and Related Matters) (other than the first and last sentences of Section 3.6(b)) shall be true and correct in all respects (except for such inaccuracies as are de minimis in the aggregate), in each case both when made and at and as of the Closing Date, as if made at and as of such date (except to the extent expressly made as of an earlier date, in which case as of such date), (iii) the representation and warranty of the Company contained in Section 3.9(a) (Absence of Certain Changes or Events) shall be true and correct in all respects both when made and at and as of the Closing Date, and (iv) all other representations and warranties of the Company set forth in this Agreement shall be true and correct both when made and at and as of the Closing Date, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date), except, in the case of this clause (iv), where the failure of such representations and warranties to be so true and correct (without giving effect to any limitation as to “materiality” or “Company Material Adverse Effect” set forth therein) does not have, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Parent shall have received a certificate of an executive officer of the Company to such effect.

(b) Performance of Obligations of the Company. The Company shall have

performed in all material respects and complied in all material respects with all agreements and covenants required to be performed or complied with by it under this Agreement at or prior to the Closing Date. Parent shall have received a certificate of an executive officer of the Company to such effect.

(c) **Tax Opinion.** Parent shall have received from Willkie Farr & Gallagher LLP, counsel to Parent, on the Closing Date, a written opinion dated as of such date in form and substance reasonably satisfactory to Parent, to the effect that, on the basis of certain facts, representations and assumptions set forth or referred to in such opinion, for U.S. federal income Tax purposes, the Combination will be treated as a reorganization within the meaning of Section 368(a) of the Code. In rendering such opinion, such counsel shall be entitled to receive and rely upon representations of officers of Parent, Merger Sub 1, Merger Sub 2 and the Company. The condition set forth in this Section 8.2(c) shall not be waivable after receipt of the approval and adoption of this Agreement by the stockholders of Parent unless further stockholder approval is obtained with appropriate disclosure.

Section 8.3. Additional Conditions to Obligations of the Company. The obligations of the Company to effect the Combination are subject to the satisfaction of, or waiver by the Company, on or prior to the Closing Date of the following additional conditions:

(a) **Representations and Warranties.** (i) The representations and warranties of Parent, Merger Sub 1 and Merger Sub 2 contained in Section 4.1(a) (Organization), Section 4.5 (Authorization and Validity of Agreement), Section 4.6(c) and the first sentence of Section 4.6(b) (Capitalization and Related Matters), Section 4.21 (No Brokers), Section 4.25 (Board Approval) and Section 4.26 (Vote Required) shall be true and correct in all material respects, in each case both when made and at and as of the Closing Date, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date), (ii) the representations and warranties of Parent contained in Sections 4.6(a) and (b) (Capitalization and Related Matters) (other than the first and last sentences of Section 4.6(b)) shall be true and correct in all respects (except for such inaccuracies as are de minimis in the aggregate), in each case both when made and at and as of the Closing Date, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date), (iii) the representations and warranties of Parent, Merger Sub 1 and Merger Sub 2 contained in Section 4.9(a) (Absence of Certain Changes or Events) shall be true and correct in all respects both when made and at and as of the Closing Date, and (iv) all other representations and warranties of Parent, Merger Sub 1 and Merger Sub 2 set forth in this Agreement shall be true and correct both when made and at and as of the Closing Date, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date), except in the case of this clause (iv), where the failure of such representations and warranties to be so true and correct (without giving effect to any limitation as to “materiality” or “Parent Material Adverse Effect” set forth therein) does not have, and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect. The Company shall have received a certificate of an executive officer of Parent to such effect.

(b) **Performance of Obligations of Parent.** Parent shall have performed in all material respects and complied in all material respects with all agreements and covenants required to be performed or complied with by it under this Agreement at or prior to the Closing Date. The

Company shall have received a certificate of an executive officer of Parent to such effect.

(c) **Tax Opinion.** The Company shall have received from Wachtell, Lipton, Rosen & Katz, special counsel to the Company, on the Closing Date, a written opinion dated as of such date in form and substance reasonably satisfactory to the Company, to the effect that, on the basis of certain facts, representations and assumptions set forth or referred to in such opinion, for U.S. federal income Tax purposes, the Combination will be treated as a reorganization within the meaning of Section 368(a) of the Code. In rendering such opinion, such counsel shall be entitled to receive and rely upon representations of officers of Parent, Merger Sub 1, Merger Sub 2 and the Company. The condition set forth in this Section 8.3(c) shall not be waivable after receipt of the approval and adoption of this Agreement by the stockholders of the Company unless further stockholder approval is obtained with appropriate disclosure.

ARTICLE IX.

TERMINATION

Section 9.1. Termination. This Agreement may be terminated and the Combination abandoned at any time prior to the Effective Time, by action taken or authorized by the Board of Directors of the terminating party or parties, and except as provided below, whether before or after approval of the matters presented in connection with the Merger by the stockholders of the Company or Parent:

(a) By mutual written consent of Parent and the Company, by action of their respective Boards of Directors;

(b) By either the Company or Parent if the Effective Time shall not have occurred on or before March 16, 2015, (the “Termination Date”); provided, however, that if all of the conditions to Closing shall have been satisfied or shall be then capable of being satisfied, other than the conditions set forth in Sections 8.1(d) and (e), the Termination Date may be extended by Parent or the Company, by written notice to the other party, to a date not later than June 15, 2015; provided, further, that if the Termination Date is not extended pursuant to the preceding proviso, and the Marketing Period has commenced fewer than twenty days prior to the original Termination Date, the Termination Date shall be automatically extended to the day following the final day of the Marketing Period; provided, further, that the right to extend or terminate this Agreement under this Section 9.1(b) shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the primary cause of the failure of the Effective Time to occur on or before the Termination Date and such action or failure to perform constitutes a breach of this Agreement;

(c) By either the Company or Parent if any Governmental Entity shall have issued an order, decree or ruling or taken any other action permanently restraining, enjoining or otherwise prohibiting or making illegal the transactions contemplated by this Agreement, and such order, decree, ruling or other action shall have become final and nonappealable; provided that the party hereto seeking to terminate this Agreement pursuant to this Section 9.1(c) shall have used its reasonable best efforts to remove such restraint or prohibition as required by this Agreement; and provided, further, that the right to terminate this Agreement pursuant to this Section 9.1(c) shall

not be available to any party hereto whose breach of any provision of this Agreement results in the imposition of such order, decree or ruling or the failure of such order, decree or ruling to be resisted, resolved or lifted;

(d) By either the Company or Parent if (i) the approval by the stockholders of the Company required for the consummation of the Merger shall not have been obtained by reason of the failure to obtain the Required Company Vote at the Company Stockholders Meeting (or any adjournment or postponement thereof) or (ii) the approval by the stockholders of Parent required for the Parent Share Issuance and the Parent Charter Amendment shall not have been obtained by reason of the failure to obtain the Required Parent Vote at the Parent Stockholders Meeting (or any adjournment or postponement thereof);

(e) By Parent (i) prior to the Company Stockholders Meeting, if there shall have been a Company Change in Recommendation or the Board of Directors of the Company shall have approved or recommended a Company Superior Proposal (or the Board of Directors of the Company resolves to do any of the foregoing), whether or not permitted by Section 7.4, (ii) if the Company shall fail to call or hold the Company Stockholders Meeting in violation of Section 7.1(c); or (iii) if the Company shall have committed an Intentional Breach of any of its material obligations under Section 7.4;

(f) By the Company (i) prior to the Parent Stockholders Meeting, if there shall have been a Parent Change in Recommendation or the Board of Directors of Parent shall have approved or recommended a Parent Acquisition Proposal (or the Board of Directors of Parent resolves to do any of the foregoing), whether or not permitted by Section 7.4, (ii) if Parent shall fail to call or hold the Parent Stockholders Meeting in violation of Section 7.1(d); or (iii) if Parent shall have committed an Intentional Breach of any of its material obligations under Section 7.4;

(g) By the Company, pursuant to Section 7.4(c), subject to compliance with the applicable provisions of Section 7.4(c), Section 7.4(d) and Section 7.4(e);

(h) By Parent, pursuant to Section 7.4(h), subject to compliance with the applicable provisions of Section 7.4(h), Section 7.4(i) and Section 7.4(j);

(i) By the Company if all the conditions set forth in Section 8.1 and 8.2 have been satisfied (other than those conditions that by their nature are to be satisfied at Closing provided that such conditions are reasonably capable of being satisfied at Closing) and Parent has failed to obtain proceeds pursuant to the Commitment Letter (or any Alternative Financing) sufficient to fund the Cash Consideration, the cash payable to holders of Company Equity Awards, the Required Indebtedness and all other fees and expenses as may be necessary to consummate the transactions contemplated hereby by the end of the Marketing Period;

(j) By the Company if there shall have been a breach of any representation, warranty, covenant or agreement on the part of Parent, Merger Sub 1 or Merger Sub 2 contained in this Agreement (other than any breach of Section 4.22 or 7.12 or of Parent's obligation to consummate the transaction on the Closing Date under circumstances pursuant to Section 9.1(i) in which the Company is entitled to terminate this Agreement) such that the conditions set forth in Section 8.3(a) or Section 8.3(b) would not be satisfied and (i) such breach is not reasonably

capable of being cured or (ii) in the case of a breach of a covenant or agreement (other than an Intentional Breach of Parent's obligations under Article I), if such breach is reasonably capable of being cured, such breach shall not have been cured prior to the earlier of (A) 40 days following notice of such breach and (B) the Termination Date; provided that the Company shall not have the right to terminate this Agreement pursuant to this Section 9.1(j) if the Company is then in material breach of any of its representations, warranties, covenants or agreements contained in this Agreement; or

(k) By Parent if there shall have been a breach of any representation, warranty, covenant or agreement on the part of the Company contained in this Agreement such that the conditions set forth in Section 8.2(a) or Section 8.2(b) would not be satisfied and (i) such breach is not reasonably capable of being cured or (ii) in the case of a breach of a covenant or agreement, if such breach is reasonably capable of being cured, such breach shall not have been cured prior to the earlier of (A) 40 days following notice of such breach and (B) the Termination Date; provided that Parent shall not have the right to terminate this Agreement pursuant to this Section 9.1(k) if Parent, Merger Sub 1 or Merger Sub 2 is then in material breach of any of its representations, warranties, covenants or agreements contained in this Agreement.

Section 9.2. Effect of Termination .

(a) In the event of termination of this Agreement by either the Company or Parent as provided in Section 9.1, this Agreement shall forthwith become void and there shall be no liability or obligation on the part of Parent or the Company or their respective officers or directors except with respect to this Section 9.2, Section 7.12(k) and Article X, provided that, except as set forth in the following sentence, termination of this Agreement shall not relieve any party from any liability or damages incurred or suffered by a party to the extent such liability or damages were the result of, fraud or any Intentional Breach of any covenant or agreement in this Agreement occurring prior to termination (in each case, which may be pursued only by the party through actions expressly approved by the party's Board of Directors, as applicable), which liability or damages shall not be limited to reimbursement of the party's expenses or out-of-pocket costs and may include, to the extent proven and recoverable under applicable law, other damages suffered by the party, and the calculation of damages suffered by the party may include, to the extent proven, loss suffered by the party's shareholders (including the benefit of the bargain lost by the party's shareholders, taking into account without limitation the total amount payable to such shareholders under this Agreement), which shall be deemed in such event to be damages only of the party and not of the party's shareholders themselves. Each party agrees that notwithstanding anything in this Agreement to the contrary, including Section 10.4(a), in the event that any Company Termination Fee, Parent Termination Fee or Financing Fee is payable to a party in accordance with this Agreement, other than in the case of a termination of this Agreement by the Company pursuant to Section 9.1(i), the payment of such fee and any applicable expenses shall be the sole and exclusive remedy of such party, its Subsidiaries, stockholders, Affiliates, officers, directors, employees and representatives against the other party or any of its representatives (including, with respect to Parent, Merger Sub 1 and Merger Sub 2, any Financing Source) or Affiliates for, and in no event will such party being paid any such fee and expenses or any other such Person seek to recover any other money damages or seek any other remedy based on a claim in law or equity (including, without limitation, specific performance) with respect to, (i) any loss suffered, directly or indirectly, as a result of the failure of the Merger to be consummated, (ii) the

termination of this Agreement, (iii) any liabilities or obligations arising under this Agreement, or (iv) any claims or actions arising out of or relating to any breach, termination or failure of or under this Agreement, and upon payment of any Company Termination Fee, Parent Termination Fee or Financing Fee, and any applicable expenses, in accordance with this Agreement, neither the party paying such fee and such expenses, nor any representative (including, with respect to Parent, Merger Sub 1 and Merger Sub 2, any Financing Source) or Affiliate of such party shall have any further liability or obligation to the other party relating to or arising out of this Agreement or the transactions contemplated hereby.

(b) If Parent shall terminate this Agreement pursuant to Section 9.1(e), then the Company shall pay to Parent, not later than two (2) Business Days following such termination, an amount in cash equal to Two Hundred Million Dollars (\$200,000,000) (the “Company Termination Fee”) plus the Parent Expenses, within two Business Days after delivery to the Company of Parent’s written notice of the amount of such Parent Expenses.

(c) If (i) the Company or Parent shall terminate this Agreement pursuant to Section 9.1(b) or Section 9.1(d)(i), (ii) at or prior to the time of the Company Stockholders Meeting there shall have been publicly disclosed or announced and not withdrawn prior to the Company Stockholders Meeting a bona fide written Company Acquisition Proposal and (iii) within 9 months following the termination of this Agreement, the Company enters into a definitive agreement with respect to, or consummates, a Company Acquisition Proposal, then the Company shall pay to Parent, not later than two Business Days after the execution of the definitive agreement or consummation of the transaction, as applicable, the Company Termination Fee plus Parent Expenses (except to the extent the Company has previously paid any such Parent Expenses).

(d) If the Company shall terminate this Agreement pursuant to Section 9.1(f), Parent shall pay to the Company, not later than two Business Days after the termination of the Agreement, an amount equal to Three Hundred Fifty Million Dollars (\$350,000,000) (the “Parent Termination Fee”) plus the Company Expenses, within two Business Days after delivery to Parent of written notice of the amount of such Company Expenses.

(e) If (i) the Company or Parent shall terminate this Agreement pursuant to Section 9.1(b) or Section 9.1(d)(ii), (ii) at or prior to the time of the Parent Stockholders Meeting there shall have been publicly disclosed or announced and not withdrawn prior to the Parent Stockholders Meeting a bona fide written Parent Acquisition Proposal and (iii) within 9 months following the termination of this Agreement, Parent enters into a definitive agreement with respect to, or consummates, a Parent Acquisition Proposal, then Parent shall pay to the Company, not later than two Business Days after the execution of the definitive agreement or consummation of the transaction, as applicable, the Parent Termination Fee plus the Company Expenses (except to the extent Parent has previously paid the Company Expenses).

(f) If the Company shall terminate this Agreement pursuant to Section 9.1(g), then the Company shall pay, or cause to be paid, to Parent the Company Termination Fee contemporaneously with such termination, plus the Parent Expenses, within two (2) Business Days after delivery to the Company of Parent’s written notice of the amount of such Parent Expenses.

(g) If Parent shall terminate this Agreement pursuant to Section 9.1(h), then Parent shall pay, or cause to be paid, to the Company the Parent Termination Fee contemporaneously with such termination, plus the Company Expenses, within two (2) Business Days after delivery to the Parent of Company's written notice of the amount of such Company Expenses.

(h) If the Company terminates this Agreement pursuant to Section 9.1(i), then Parent shall pay to the Company, not later than two (2) Business Days after the termination of this Agreement, Four Hundred Fifty Million Dollars (\$450,000,000) (the "Financing Fee").

(i) If the Company or Parent shall terminate this Agreement pursuant to Section 9.1(d)(ii), then Parent shall pay to the Company, not later than two Business Days after the termination of this Agreement, the Company Expenses, within two (2) Business Days after delivery to the Parent of Company's written notice of the amount of such Company Expenses.

(j) If the Company or Parent shall terminate this Agreement pursuant to Section 9.1(d)(i), then the Company shall pay to Parent, not later than two Business Days after notice of the termination of this Agreement, the Parent Expenses.

(k) All payments under this Section 9.2 by (i) the Company shall be made by wire transfer of immediately available funds to an account designated by Parent, and (ii) Parent shall be made by wire transfer of immediately available funds to an account designated by the Company.

(l) For purposes of this Section 9.2, the term "Company Acquisition Proposal" shall have the meaning assigned to such term in Section 7.4(a), except that the reference to "more than 20%" in the definition of "Company Acquisition Proposal" shall be deemed to be a reference to "more than 50%", and the term "Parent Acquisition Proposal" shall have the meaning assigned to such term in Section 7.4 (f), except that the reference to "more than 20%" in the definition of "Parent Acquisition Proposal" shall be deemed to be a reference to "more than 50%".

(m) The Company acknowledges that the agreements contained in this Section 9.2 are an integral part of the transactions contemplated by this Agreement and are not a penalty, and that, without these agreements, Parent would not enter into this Agreement. If the Company fails to pay promptly the amounts due pursuant to this Section 9.2, the Company will also pay to Parent Parent's reasonable costs and expenses (including legal fees and expenses) in connection with any action, including the filing of any lawsuit or other legal action, taken to collect payment, together with interest on the unpaid amount under this Section 9.2, accruing from its due date, at an interest rate per annum equal to two percentage points in excess of the prime commercial lending rate quoted by The Wall Street Journal. Any change in the interest rate hereunder resulting from a change in such prime rate will be effective at the beginning of the date of such change in such prime rate. For the avoidance of doubt, in no event shall the Company be required to pay or cause to be paid under this Section 9.2 the Company Termination Fee more than once.

(n) Parent acknowledges that the agreements contained in this Section 9.2 are an integral part of the transactions contemplated by this Agreement and are not a penalty, and that, without these agreements, the Company would not enter into this Agreement. If Parent fails to pay promptly the amounts due pursuant to this Section 9.2, Parent will also pay to the Company the

Company's reasonable costs and expenses (including legal fees and expenses) in connection with any action, including the filing of any lawsuit or other legal action, taken to collect payment, together with interest on the unpaid amount under this Section 9.2, accruing from its due date, at an interest rate per annum equal to two percentage points in excess of the prime commercial lending rate quoted by The Wall Street Journal. Any change in the interest rate hereunder resulting from a change in such prime rate will be effective at the beginning of the date of such change in such prime rate. For the avoidance of doubt, in no event shall Parent be required to pay or cause to be paid under this Section 9.2 (i) the Parent Termination Fee more than once, (ii) the Financing Fee more than once, or (iii) more than one of the Parent Termination Fee and the Financing Fee.

Section 9.3. Amendment. This Agreement may be amended by the parties hereto, by action taken or authorized by their respective Boards of Directors, at any time before or after approval of the matters presented in connection with the Merger by the stock holders of the Company, but, after any such approval, no amendment shall be made which by law requires further approval by such stockholders or which reduces the Merger Consideration or adversely affects the holders of Company Common Stock, without approval by such holders. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto; provided that, notwithstanding anything to the contrary contained herein, none of Section 9.2(a), 10.3, 10.4 or 10.10 or this Section 9.3 (or any other provision of this Agreement to the extent an amendment of such provision would modify the substance of any of Section 9.2(a), 10.3, 10.4 or 10.10 or this Section 9.3) may be amended in a manner that is adverse in any respect to the Financing Sources and their respective Affiliates without the prior written consent of the Financing Sources.

Section 9.4. Extension; Waiver. At any time prior to the Effective Time, the parties hereto, by action taken or authorized by their respective Boards of Directors, may, to the extent legally allowed, (i) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (ii) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto and (iii) waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of such party. The failure of any party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of those rights.

ARTICLE X.

MISCELLANEOUS

Section 10.1. Non-Survival of Representations, Warranties and Agreements. None of the representations, warranties, covenants and other agreements in this Agreement or in any instrument delivered pursuant to this Agreement, including any rights arising out of any breach of such representations, warranties, covenants and other agreements, shall survive the Effective Time, except for those covenants and agreements contained herein and therein that by their terms apply or are to be performed in whole or in part after the Effective Time and this Article X, including but not limited to covenants and agreements of Parent contained in Sections 6.3 and 7.12(k).

Section 10.2. Disclosure Schedules.

(a) The inclusion of any information in the Disclosure Schedules accompanying this Agreement will not be deemed an admission or acknowledgment, in and of itself, solely by virtue of the inclusion of such information in such Disclosure Schedule, that such information is required to be listed in such Disclosure Schedule or that such information is material to any party or the conduct of the business of any party.

(b) Any item set forth in the Disclosure Schedules with respect to a particular representation, warranty or covenant contained in the Agreement will be deemed to be disclosed with respect to all other applicable representations, warranties and covenants contained in the Agreement to the extent any description of facts regarding the event, item or matter is disclosed in such a way as to make readily apparent from such description or specified in such disclosure that such item is applicable to such other representations, warranties or covenants whether or not such item is so numbered.

Section 10.3. Successors and Assigns. No party hereto shall assign this Agreement or any rights or obligations hereunder without the prior written consent of the other parties hereto and any such attempted assignment without such prior written consent shall be void and of no force and effect; provided, however, that Merger Sub 1 or Merger Sub 2 may assign its rights and obligations under this Agreement to another direct Wholly Owned Subsidiary of Parent without the consent of the Company and Parent, Merger Sub 1 and Merger Sub 2 may assign their rights under this Agreement as collateral security for the Financing and the existing secured term loan credit facility of Parent's financing Subsidiary. This Agreement shall inure to the benefit of and shall be binding upon the successors and permitted assigns of the parties hereto. No assignment or purported assignment of this Agreement by any party hereto shall be valid if and to the extent such assignment affects the treatment of the Combination under Section 368(a) of the Code and the Treasury Regulations promulgated thereunder.

Section 10.4. Governing Law; Jurisdiction; Specific Performance.

(a) This Agreement shall be construed, performed and enforced in accordance with, and governed by, the laws of the State of Delaware. Each of the parties hereto irrevocably agrees that any legal action or proceeding with respect to this Agreement and the rights and obligations arising hereunder, or for recognition and enforcement of any judgment in respect of this Agreement and the rights and obligations arising hereunder brought by the other party(ies) hereto or its successors or assigns shall be brought and determined exclusively in the Delaware Court of Chancery, or in the event (but only in the event) that such court does not have subject matter jurisdiction over such action or proceeding, in the United States District Court for the District of Delaware. Each of the parties to this Agreement agrees that, notwithstanding anything to the contrary contained herein, it will not bring or support any action, cause of action, claim, cross-claim, third-party claim or proceeding of any kind or description, whether in law or in equity, whether in contract or in tort or otherwise, against the Financing Sources in any way relating to this Agreement or any of the transactions contemplated by this Agreement, including but not limited to any dispute arising out of or relating in any way to the Commitment Letter, the Financing (or any commitment letter relating to any Alternative Financing) or the performance thereof, in any forum other than any New York State court or Federal court of the United States of America sitting in the

Borough of Manhattan, and any appellate court from any thereof.

(b) EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ANY OF THE AGREEMENTS DELIVERED IN CONNECTION HERewith OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, INCLUDING, BUT NOT LIMITED TO, ANY DISPUTE ARISING OUT OF, OR RELATING TO, THE COMMITMENT LETTER, THE FINANCING (OR ANY COMMITMENT LETTER RELATING TO ANY ALTERNATIVE FINANCING) OR THE PERFORMANCE THEREOF. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE EITHER OF SUCH WAIVERS, (II) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVERS, (III) IT MAKES SUCH WAIVERS VOLUNTARILY, AND (IV) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.4(b).

(c) The parties agree that irreparable damage would occur and that the parties would not have any adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached and that any defense in any action for specific performance that a remedy at law would be adequate is hereby waived. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches or threatened breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement (in addition to any and all other rights and remedies at law or in equity, and all such rights and remedies shall be cumulative, except, in each case, as may be limited by Section 9.2). Any requirements for the securing or posting of any bond with such remedy are waived. Notwithstanding anything to the contrary in this Agreement, it is explicitly agreed that the Company shall be entitled to seek specific performance of Parent's obligation to consummate the transactions contemplated by this Agreement only if (A) all of the conditions set forth in Section 8.1 and Section 8.2 shall have been satisfied or waived (other than those conditions that by their nature are to be satisfied at Closing provided that such conditions are reasonably capable of being satisfied at Closing) and the Company has irrevocably confirmed to Parent that it is ready to close, (B) the Marketing Period has expired and (C) the proceeds of the Financing are then available in full pursuant to the Commitment Letter (or Alternative Financing) (it being understood that the Company shall, in all events, be entitled to seek specific performance of Parent's obligations in Section 7.12 of this Agreement to seek to obtain the Financing or Alternative Financing in full).

Section 10.5. Expenses. All fees and expenses incurred in connection with the Combination including, without limitation, all legal, accounting, financial advisory, consulting and all other fees and expenses of third parties incurred by a party in connection with the negotiation and effectuation of the terms and conditions of this Agreement and the transactions contemplated hereby and thereby, shall be the obligation of the respective party incurring such fees and expenses, except (a) Parent and the Company shall each bear and pay one-half of the expenses incurred in connection with the filing, printing and mailing of the Registration Statement and Joint Proxy Statement/Prospectus, (b) as provided in Section 7.12(k), and (c) as provided in Section 9.2.

Section 10.6. Certain Transfer Taxes. Except to the extent set forth in Section 2.2(c), any liability arising out of any documentary, sales, use, real property transfer, registration, transfer, stamp, recording and similar Taxes with respect to the transactions contemplated by this Agreement shall be borne by the Surviving Company and expressly shall not be a liability of stockholders of the Company.

Section 10.7. Severability; Construction.

(a) In the event that any part of this Agreement is declared by any court or other judicial or administrative body to be null, void or unenforceable, said provision shall survive to the extent it is not so declared, and all of the other provisions of this Agreement shall remain in full force and effect.

(b) The parties have participated jointly in the negotiation and drafting of this Agreement. If any ambiguity or question of intent arises, this Agreement will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring any party because of the authorship of any provision of this Agreement.

Section 10.8. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of service if served personally or by fax on the party to whom notice is to be given; (ii) on the day after delivery to Federal Express or similar overnight courier or the Express Mail service maintained by the United States Postal Service; or (iii) on the fifth day after mailing, if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid and properly addressed, to the party as follows:

If to the Company:

tw telecom inc.
10475 Park Meadows Drive
Littleton, CO 80124
Telecopy/Facsimile: (303) 566-1777
Attention: Tina Davis, Esq., Senior Vice President and
General Counsel

Copy to (such copy not to constitute notice):

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019
Fax: (212) 403-1000
Attn: Steven A. Rosenblum
Stephanie J. Seligman

If to Parent, Merger Sub 1 or Merger Sub 2:

Level 3 Communications, Inc.

1025 Eldorado Blvd.
Broomfield, CO 80303
Telecopy/Facsimile: 720-888-5127
Attention: John M. Ryan, Executive Vice President,
Chief Legal Officer and Secretary

Copy to (such copy not to constitute notice):

Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019
Fax: (212) 728-8111
Attn: David K. Boston
Laura L. Delanoy

Any party may change its address for the purpose of this Section 10.8 by giving the other party written notice of its new address in the manner set forth above.

Section 10.9. Entire Agreement. This Agreement and the Confidentiality Agreement contain the entire understanding among the parties hereto with respect to the transactions contemplated hereby and supersede and replace all prior and contemporaneous agreements and understandings, oral or written, with regard to such transactions. All Exhibits and Schedules hereto and any documents and instruments delivered pursuant to any provision hereof are expressly made a part of this Agreement as fully as though completely set forth herein.

Section 10.10. Parties in Interest. Except for (i) the rights of the Company stockholders to receive the Merger Consideration (following the Effective Time) and the rights of holders of Company Equity Awards to receive the consideration contemplated by Section 1.8 (following the Effective Time) in accordance with the terms of this Agreement (of which the stockholders and such holders of Company Equity Awards are the intended beneficiaries following the Effective Time), and (ii) the rights to indemnification contemplated by Section 7.12(h) and the rights to continued indemnification and insurance pursuant to Section 6.3 (of which in each case the Persons entitled to indemnification or insurance, as the case may be, are the intended beneficiaries), nothing in this Agreement is intended to confer any rights or remedies under or by reason of this Agreement on any Persons other than the parties hereto and their respective successors and permitted assigns; provided, that, nothing in this Section 10.10 shall limit the right of Parent or the Company to seek damages as contemplated by Section 9.2; provided further that the Financing Sources are intended beneficiaries of, and shall be entitled to enforce, Sections 9.2(a), 9.3, 10.3 and 10.4 and this Section 10.10. Nothing in this Agreement is intended to relieve or discharge the obligations or liability of any third Persons to the Company or Parent. No provision of this Agreement shall give any third parties any right of subrogation or action over or against the Company or Parent.

Section 10.11. Section and Paragraph Headings. The section and paragraph headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

Section 10.12. Counterparts. This Agreement may be executed in counterparts, (including by facsimile or other electronic transmission) each of which shall be deemed an original, but all of which shall constitute the same instrument.

Section 10.13. Definitions. As used in this Agreement:

“Affiliate” shall mean, with respect to any Person, any other Person that directly, or through one or more intermediaries, controls or is controlled by or is under common control with such Person.

“Agreement” shall have the meaning set forth in the Preamble hereto.

“Alternative Financing” shall have the meaning set forth in Section 7.12(c).

“Board of Directors” shall mean the Board of Directors of any specified Person and any committees thereof.

“Business Day” shall mean any day other than (a) Saturday or Sunday or (b) any other day on which banks in the City of New York are permitted or required to be closed.

“Cash Consideration” shall have the meaning set forth in Section 1.7(a)(i).

“Cash Percentage” shall mean the quotient of (i) the Cash Consideration divided by (ii) the Deemed Value of Merger Consideration.

“Certificate” shall have the meaning set forth in Section 1.7(a)(ii).

“Certificate of Merger” shall have the meaning set forth in Section 1.3.

“Closing” shall have the meaning set forth in Section 1.2.

“Closing Date” shall have the meaning set forth in Section 1.2.

“Code” shall have the meaning set forth in the Recitals hereto.

“Combination” shall have the meaning set forth in the Recitals hereto.

“Commitment Letter” means that certain Commitment Letter (together with all annexes, exhibits, schedules, appendices and other attachments thereto), dated the date hereof, by and between Parent and the Financing Sources, pursuant to which and subject to the terms and conditions thereof, the Financing Sources have agreed to provide the loans or other indebtedness identified therein in the amounts set forth therein, for the purpose of (among other things) funding the Cash Consideration, the cash payable to holders of Company Equity Awards, the Required Indebtedness, including premiums and fees incurred in connection therewith, and all other fees and expenses incurred by Parent, Merger Sub 1, Merger Sub 2 and the Company in connection with the Merger and the other transactions contemplated hereby; provided that, after the date of this Agreement, (i) upon any amendment, supplement or modification to, or waiver of, the Commitment Letter in accordance with Section 7.12(b), the term “Commitment Letter” as used in this

Agreement shall mean the Commitment Letter as so amended, supplemented, modified or waived in accordance with Section 7.12(b) from and after the time Parent has delivered to the Company a true, correct and complete copy of such amended, supplemented, modified or waived Commitment Letter and (ii) in the event that Parent obtains Alternative Financing in accordance with Section 7.12(c), the term “Commitment Letter” shall mean the commitment letter or letters (as amended, supplemented or modified in accordance with Section 7.12) related to the Alternative Financing from and after the time Parent has delivered to the Company a true, correct and complete copy of such alternative commitment letter or letters; provided further that, with respect to the representations and warranties of Parent set forth in Section 4.24, references to the Commitment Letter as of the date hereof shall thereafter mean the Commitment Letter as so amended, supplemented, waived, modified or replaced on the date so provided to and approved by the Company.

“Communications Act” shall have the meaning set forth in Section 3.14(b).

“Company” shall have the meaning set forth in the Preamble hereto.

“Company Acquisition Proposal” shall have the meaning set forth in Section 7.4(a).

“Company Alternative Acquisition Agreement” shall have the meaning set forth in Section 7.4(c).

“Company Benefit Plans” shall mean each “employee benefit plan” (within the meaning of Section 3(3) of ERISA) and all other material employee compensation and benefits plans, policies, programs, arrangements or payroll practices, including multiemployer plans (within the meaning of Section 3(37) of ERISA), and each other stock purchase, stock option, restricted stock, severance, retention, employment, consulting, change-of-control, collective bargaining, bonus, incentive, deferred compensation, employee loan, fringe benefit and other benefit plan, agreement, program, policy, commitment or other arrangement, whether or not subject to ERISA (including any related award agreements and any related funding mechanism now in effect or required in the future), in each case sponsored, maintained, contributed or required to be contributed to by the Company or its Subsidiaries or under which the Company or any of its Subsidiaries has any current or potential liability.

“Company Change in Recommendation” shall have the meaning set forth in Section 7.4(c).

“Company Common Stock” shall have the meaning set forth in the Recitals.

“Company Disclosure Schedule” shall mean the disclosure schedule delivered by the Company on the date hereof.

“Company Equity Award” means any Company Option, Company RSU Award or Company Restricted Stock Award.

“Company Expenses” shall mean all of the Company’s actual and reasonably documented out-of-pocket fees and expenses (including reasonable fees and expenses of counsel, accountants and financial advisors) actually incurred by the Company and its Affiliates on or prior

to the termination of this Agreement in connection with the transactions contemplated by this Agreement, which amount shall not be greater than Ten Million Dollars (\$10,000,000).

“ Company Key Employee ” shall have the meaning set forth in Section 3.9(c).

“ Company Insiders ” shall have the meaning set forth in Section 7.9.

“ Company Intellectual Property ” shall mean all Intellectual Property owned, used or held for use by the Company or any Subsidiary.

“ Company Intervening Event ” shall mean a material event, fact, circumstance, development or occurrence that affects the business, assets or operations of the Company that is unknown to or by the Company’s Board of Directors as of the date of this Agreement (and which could not have become known through any further reasonable investigation, discussion, inquiry or negotiation with respect to any event, fact, circumstance, development or occurrence known to or by the Company’s Board of Directors as of the date of this Agreement), which event, fact, circumstance, development or occurrence becomes known to or by the Company’s Board of Directors prior to obtaining the Required Company Vote.

“ Company Leased Real Property ” shall have the meaning set forth in Section 3.12(a).

“ Company Leases ” shall have the meaning set forth in Section 3.12(a).

“ Company Licenses and Permits ” shall have the meaning set forth in Section 3.14(a).

“ Company Material Adverse Effect ” shall mean any event, change, circumstance, effect, development or state of facts that, individually or in the aggregate: (a) is, or is reasonably likely to become, materially adverse to the business, assets, financial condition, properties, liabilities or results of operations of the Company and its Subsidiaries, taken as a whole; provided, however, that Company Material Adverse Effect shall not include the effect of any event, change, circumstance, effect, development or state of facts to the extent it results from or arises out of (i) general economic or political conditions (including results of elections) or securities, credit, financial or other capital markets conditions, in each case in the United States or any foreign jurisdiction, (ii) changes or conditions generally affecting the industries, businesses, or segments thereof, in which the Company and its Subsidiaries operate, (iii) any change in applicable law, regulation or GAAP (or authoritative interpretation of any of the foregoing), (iv) the negotiation, execution, announcement, pendency or performance of this Agreement or the transactions contemplated hereby and thereby or the consummation of the transactions contemplated by this Agreement, (v) acts of war, armed hostilities, sabotage or terrorism, or any escalation or worsening of any such acts of war, armed hostilities, sabotage or terrorism threatened or underway as of the date of this Agreement, (vi) earthquakes, hurricanes, floods, or other natural disasters, (vii) any failure, in and of itself, by Company to meet any internal or published projections, forecasts, estimates or predictions in respect of revenues, earnings or other financial or operating metrics for any period (it being understood that the facts or occurrences giving rise to or contributing to such failure may be taken into account in determining whether there has been or will be, a Company Material Adverse Effect to the extent not otherwise excluded hereunder), or (viii) any change, in

and of itself, in the market price or trading volume of Company's securities (it being understood that the facts or occurrences giving rise to or contributing to such change may be taken into account in determining whether there has been or will be, a Company Material Adverse Effect to the extent not otherwise excluded hereunder), except, in the case of the foregoing clause (ii) to the extent that such event, change, circumstance, effect, development or state of facts affects the Company and its Subsidiaries in a materially disproportionate manner when compared to the effect of such event, change, circumstance, effect, development or state of facts on other Persons in the industries in which the Company and its Subsidiaries operate, provided further, that the exception in the foregoing clause (iv) will not be deemed to apply to references to Company Material Adverse Effect in the representations and warranties set forth in Section 3.3 and Section 3.4, and, to the extent related to Section 3.3 and Section 3.4, the condition set forth in Section 8.2(a); or (b) would prevent or materially impair or materially delay the ability of the Company to perform its obligations under this Agreement or to consummate the transactions contemplated hereby.

“Company Options” shall have the meaning set forth in Section 1.8(a).

“Company Organizational Documents” shall mean the Certificate of Incorporation and Bylaws of the Company, together with all amendments thereto.

“Company Owned Intellectual Property” shall mean all Intellectual Property owned by the Company or any Subsidiary.

“Company Owned Real Property” shall have the meaning set forth in Section 3.12(a).

“Company Preferred Stock” shall have the meaning set forth in Section 3.6(a).

“Company Property” shall have the meaning set forth in Section 3.12(a).

“Company Registered Intellectual Property” shall have the meaning set forth in Section 3.13(b).

“Company Restricted Stock Award” shall have the meaning set forth in Section 1.8(c).

“Company RSU Award” shall have the meaning set forth in Section 1.8(b).

“Company SEC Reports” shall have the meaning set forth in Section 3.8(a).

“Company Section 16 Information” shall have the meaning set forth in Section 7.9.

“Company Stock Plan” shall have the meaning set forth in Section 1.8(a).

“Company Stockholders Meeting” shall have the meaning set forth in Section 3.28.

“Company Superior Proposal” shall have the meaning set forth in Section 7.4(b).

“Company Termination Fee” shall have the meaning set forth in Section 9.2(b).

“Confidentiality Agreement” shall have the meaning set forth in Section 7.2.

“Consent” shall mean any consent, approval, clearance, waiver, permit or order.

“Consent Solicitations” shall have the meaning set forth in Section 7.12(e).

“Continuing Company Employee” shall have the meaning set forth in Section 6.2(a).

“Contract” shall have the meaning set forth in Section 3.17(c).

“Customer” shall have the meaning set forth in Section 3.17(c).

“Customer Contracts” shall have the meaning set forth in Section 3.17(c).

“Debt Tender Offer” shall have the meaning set forth in Section 7.12(e).

“Deemed Value of Merger Consideration” shall mean the sum of (x) the Cash Consideration and (y) the Deemed Value of Stock Consideration.

“Deemed Value of Stock Consideration” shall mean the product of (x) the Exchange Ratio and (y) the Parent Common Stock Price.

“DGCL” shall have the meaning set forth in the Recitals hereto.

“DLLCA” shall have the meaning set forth in the Recitals hereto.

“Disclosure Schedules” shall mean the Parent Disclosure Schedule and the Company Disclosure Schedule, collectively.

“Dissenting Shares” shall have the meaning set forth in Section 1.7(c).

“DOJ” shall have the meaning set forth in Section 7.3(b).

“Effective Time” shall have the meaning set forth in Section 1.3.

“Environmental Laws” shall have the meaning set forth in Section 3.23(a).

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means any entity, trade or business that is, or was at the relevant time, a member of a group described in Section 414(b), (c), (m) or (o) of the Code or Section 4001(b)(1) of ERISA that includes or included any other entity, trade or business, or that is, or was at the relevant time, a member of the same “controlled group” as such other entity, trade or business pursuant to Section 4001(a)(14) of ERISA.

“ESPP” shall have the meaning set forth in Section 1.8(d).

“Exchange Act” shall have the meaning set forth in Section 3.4.

“Exchange Agent” shall have the meaning set forth in Section 2.1.

“Exchange Fund” shall have the meaning set forth in Section 2.1.

“Exchange Ratio” shall have the meaning set forth in Section 1.7(a)(i).

“Existing Credit Agreement” means that certain Second Amended and Restated Credit Agreement, dated as of April 17, 2013, among the Company, two telecom holdings, inc., the lenders party thereto and Wells Fargo Bank, National Association, as administrative agent.

“Existing Indebtedness” shall mean all Indebtedness of the Company and its Subsidiaries (x) in existence on the date hereof or (y) permitted to be incurred in compliance with the terms hereof prior to the Termination Date, as the case may be, until such amounts are repaid.

“FCC” shall mean the Federal Communications Commission.

“Fee Letter” means the fee letter referred to in the Commitment Letter; provided that, after the date of this Agreement, (i) upon any amendment, supplement or modification to, or waiver of, the Fee Letter in accordance with the penultimate sentence of Section 7.12(a), the term “Fee Letter” as used in this Agreement shall mean the Fee Letter as so amended, supplemented, modified or waived in accordance with Section 7.12(a) from and after the time Parent has delivered to the Company a true, correct and complete copy of such amended, supplemented, modified or waived Fee Letter (with only fee amounts, dates and certain other economic terms, including in respect of the “market flex” and “securities demand” provisions, redacted) and (ii) in the event that Parent obtains Alternative Financing in accordance with Section 7.12(c), the term “Fee Letter” shall mean the fee letter or letters (as amended, supplemented or modified in accordance with Section 7.12) related to the Alternative Financing from and after the time Parent has delivered to the Company a true, correct and complete copy of such alternative fee letter or letters (with only fee amounts, dates and certain other economic terms, including in respect of the “market flex” and “securities demand” provisions, redacted).

“Financing” means the debt financing facilities provided for in the Commitment Letter; provided, that after the date of this Agreement, in the event that Parent obtains Alternative Financing, in accordance with Section 7.12(c), the term “Financing” shall mean the Alternative Financing.

“Financing Fee” shall have the meaning set forth in Section 9.2(h).

“Financing Sources” shall mean Bank of America, N.A., Merrill Lynch, Pierce, Fenner & Smith Incorporated, and Citigroup Global Markets Inc., and any of their respective affiliates, each acting pursuant to the Commitment Letter (or any other financing source and its affiliates that may become party to the Commitment Letter as the same may be amended, supplemented, modified, waived or replaced in accordance with the definition thereof), and any other institutions or persons who provide any portion of the Financing.

“Floating Rate Senior Notes due 2018” shall mean the \$300,000,000 in aggregate principal amount of the Parent’s Floating Rate Senior Notes due 2018.

“Fraud and Bribery Laws” shall have the meaning set forth in Section 3.30.

“FTC” shall have the meaning set forth in Section 7.3(b).

“GAAP” shall mean United States generally accepted accounting principles as in effect from time to time, consistently applied.

“Governmental Entity” shall mean any national, federal, state, or local, domestic or foreign, governmental, regulatory or administrative authority, branch, agency or commission or any court, tribunal or judicial body.

“Grant Date” shall have the meaning set forth in Section 3.18(k).

“Hazardous Material” shall have the meaning set forth in Section 3.23(c).

“Hedging Obligations” means, with respect to any specified Person, the obligations of such Person under:

- (1) interest rate swap agreements (whether from fixed to floating or from floating to fixed), interest rate cap agreements and interest rate collar agreements;
- (2) other agreements or arrangements designed to manage interest rates or interest rate risk; and
- (3) other agreements or arrangements designed to protect such Person against fluctuations in currency exchange rates or commodity prices.

“HSR Act” shall have the meaning set forth in Section 3.4.

“Indebtedness” means, with respect to any specified Person, any indebtedness of such Person (excluding accrued expenses and trade payables), whether or not contingent:

- (1) in respect of borrowed money;
- (2) evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof);
- (3) in respect of banker’s acceptances;
- (4) representing capital lease obligations;
- (5) representing the balance deferred and unpaid of the purchase price of any property or services due more than one year after such property is acquired or such services are completed; or
- (6) representing any Hedging Obligations,

if and to the extent any of the preceding items (other than letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet of the specified Person prepared in accordance with GAAP. In addition, the term “Indebtedness” includes all Indebtedness of others secured by a Lien on any asset of the specified Person (whether or not such Indebtedness is assumed by the specified Person) and, to the extent not otherwise included, the guarantee by the specified Person of any Indebtedness of any other Person. Indebtedness shall be calculated without giving effect to the effects of Statement of Financial Accounting Standards No. 133 and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under the indenture as a result of accounting for any embedded derivatives created by the terms of such Indebtedness.

“Indemnified Person” shall have the meaning set forth in Section 6.3(a).

“Indenture Amendments” shall have the meaning set forth in Section 7.12(e).

“Intellectual Property” shall mean all of the following, whether registered or unregistered: (i) trademarks and service marks, trade dress, trade names and other indications of origin, applications or registrations in any jurisdiction pertaining to the foregoing and all goodwill associated therewith; (ii) Patents; (iii) trade secrets, including confidential information and the right in any jurisdiction to limit the use or disclosure thereof; (iv) copyrighted and copyrightable writings, designs, software, mask works, applications or registrations in any jurisdiction for the foregoing; (v) domain names and registrations pertaining thereto and all intellectual property used in connection with or contained in Web sites; and (vi) all similar proprietary rights.

“Intentional Breach” means, with respect to any representation, warranty, agreement or covenant, an action or omission (including a failure to cure circumstances) taken or omitted to be taken that the breaching party intentionally takes (or intentionally fails to take) and knows (or reasonably should have known) would, or would reasonably be expected to, cause a material breach of such representation, warranty, agreement or covenant.

“IRS” shall mean the United States Internal Revenue Service.

“IRU” shall mean any sale, license or lease of any indefeasible rights of use of the Company’s or Parent’s infrastructure, as the case may be.

“Joint Proxy Statement/Prospectus” shall have the meaning set forth in Section 3.28.

“Knowledge” shall mean, (i) with respect to the Company, the actual knowledge of the executives of the Company listed on Schedule 10.13(a) of the Company Disclosure Schedules, or (ii) with respect to Parent, the actual knowledge of the executives of Parent listed on Schedule 10.13 (c).

“Level 3 Financing” means Level 3 Financing, Inc., a Delaware corporation and a direct Wholly Owned Subsidiary of Parent.

“Lien” shall mean any mortgage, pledge, security interest, encumbrance or title defect, lien (statutory or other), conditional sale agreement, claim, charge, limitation or restriction.

“Marketing Period” shall mean the first period of twenty (20) consecutive calendar days throughout which (i) Parent shall have received from the Company all of the Required Financial Information and during which period such information shall remain compliant in all material respects at all times with the applicable provisions of Regulation S-X and S-K under the Securities Act (it being understood that the foregoing shall not require the Required Information to comply at any time with Rule 3-09, Rule 3-10 or Rule 3-16 of Regulation S-X, or to include Compensation Disclosure and Analysis required by Regulation S-K Item 402(b) or other information customarily excluded from a Rule 144A offering memorandum, including subsidiary financial statements) and (ii) the conditions set forth in Section 8.1 shall be satisfied or waived (other than those conditions that by their nature can only be satisfied on the Closing Date) and nothing has occurred and no condition exists that would cause any of the conditions set forth in Section 8.2 (other than those conditions that by their nature can only be satisfied at the Closing Date) to fail to be satisfied, assuming that the Closing Date were to be scheduled for any time during such twenty (20) consecutive calendar day period; provided that such period shall exclude the dates July 3, 2014 and July 4, 2014; end on or prior to August 15, 2014 or begin on or after September 2, 2014; exclude the dates November 24, 2014 through November 28, 2014; and end on or prior to December 19, 2014 or begin on or after January 5, 2015; provided, further, that the Marketing Period will not be deemed to have commenced if prior to the completion of the Marketing Period, (x) the Company’s auditors shall have withdrawn their audit opinion contained in the Required Financial Information in which case the Marketing Period shall not be deemed to commence unless and until a new unqualified audit opinion is issued with respect thereto by the Company’s auditors or another independent public accounting firm reasonably acceptable to the Parent or (y) the Company issues a public statement indicating its intent to restate any historical financial statements of the Company or that any such restatement is under consideration or may be a possibility in which case the Marketing Period shall not be deemed to commence unless and until such restatement has been completed and the relevant SEC report or SEC reports have been amended or the Company has announced that it has concluded that no restatement shall be required in accordance with GAAP; provided, further, that the Marketing Period shall end on any earlier date that is the date on which the Financing is funded in full; provided, further, that whether or not commenced, in no event shall the Marketing Period extend beyond June 15, 2015.

“Merger” shall have the meaning set forth in the Recitals hereto.

“Merger Consideration” shall have the meaning set forth in Section 1.7(a)(i).

“Merger Sub 1” shall have the meaning set forth in the Preamble hereto.

“Merger Sub 2” shall have the meaning set forth in the Preamble hereto.

“New Plans” shall have the meaning set forth in Section 6.2(b).

“Notes” shall mean any of the Senior Notes due 2022 and the Senior Notes due 2023.

“NYSE” shall mean the New York Stock Exchange.

“Offer Documents” shall have the meaning set forth in Section 7.12(e).

“Offers to Purchase” shall have the meaning set forth in Section 7.12(e).

“Parent” shall have the meaning set forth in the Preamble hereto.

“Parent Acquisition Proposal” shall have the meaning set forth in Section 7.4(f).

“Parent Alternative Acquisition Agreement” shall have the meaning set forth in Section 7.4(h).

“Parent Benefit Plan” shall mean each “employee benefit plan” (within the meaning of Section 3(3) of ERISA) and all other material employee compensation and benefits plans, policies, programs, arrangements or payroll practices, including multiemployer plans (within the meaning of Section 3(37) of ERISA), and each other stock purchase, stock option, restricted stock, severance, retention, employment, consulting, change-of-control, collective bargaining, bonus, incentive, deferred compensation, employee loan, fringe benefit and other benefit plan, agreement, program, policy, commitment or other arrangement, whether or not subject to ERISA (including any related award agreements and any related funding mechanism now in effect or required in the future), in each case sponsored, maintained, contributed or required to be contributed to by Parent or its Subsidiaries or under which Parent or any of its Subsidiaries has any current or potential liability.

“Parent Change in Recommendation” shall have the meaning set forth in Section 7.4(h).

“Parent Charter Amendment” shall mean the amendment to Parent’s Restated Certificate of Incorporation, substantially in the form of Exhibit A hereto.

“Parent Closing Price” shall mean the closing price of Parent Common Stock on the NYSE on the Closing Date.

“Parent Common Stock” shall have the meaning set forth in the Recitals hereto.

“Parent Common Stock Price” means the volume-weighted sales price per share taken to four decimal places of Parent Common Stock on the NYSE for the consecutive period beginning at 9:30 a.m. New York time on the thirteenth trading day immediately preceding the Closing Date and concluding at 4:00 p.m. New York time on the third trading day immediately preceding the Closing Date, as calculated by Bloomberg Financial LP under the function “LVLTY Equity AQR”.

“Parent Disclosure Schedule” shall mean the disclosure schedule delivered by Parent, Merger Sub 1 and Merger Sub 2 on the date hereof.

“Parent Equity Award” means any Parent Option, Parent SAR, Parent RSU Award or Parent Restricted Stock Award.

“Parent Existing Credit Agreement” shall mean that certain Amended and Restated Credit Agreement dated as of October 4, 2013, among Parent, Level 3 Financing, the lenders party

thereto and Merrill Lynch Capital Corporation, as administrative agent and collateral agent, as in effect on the date hereof.

“Parent Existing Notes” shall have the meaning set forth in the Parent Existing Credit Agreement.

“Parent Expenses” shall mean all of Parent’s actual and reasonably documented out-of-pocket fees and expenses actually incurred by Parent and its Subsidiaries on or prior to the termination of this Agreement in connection with the transactions contemplated by this Agreement, including the financing thereof, which amount shall not be greater than Ten Million Dollars (\$10,000,000).

“Parent Intellectual Property” shall mean all Intellectual Property owned, used or held for use by Parent or any Subsidiary.

“Parent Intervening Event” shall mean a material event, fact, circumstance, development or occurrence that affects the business, assets or operations of Parent that is unknown to or by Parent’s Board of Directors as of the date of this Agreement (and which could not have become known through any further reasonable investigation, discussion, inquiry or negotiation with respect to any event, fact, circumstance, development or occurrence known to or by Parent’s Board of Directors as of the date of this Agreement), which event, fact, circumstance, development or occurrence becomes known to or by Parent’s Board of Directors prior to obtaining the Required Parent Vote.

“Parent Lease” shall mean all leases, site leases, subleases and occupancy agreements, together with all material amendments thereto, in which either of Parent or its Subsidiaries has a leasehold interest, license or similar occupancy rights, whether as lessor or lessee, and which involve payments by Parent or its Subsidiaries in excess of \$1,000,000 per year.

“Parent Leased Real Property” shall mean the property covered by Parent Leases under which either of Parent or its Subsidiaries is a lessee.

“Parent Licenses and Permits” shall have the meaning set forth in Section 4.13(a).

“Parent Material Adverse Effect” shall mean any event, change, circumstance, effect, development or state of facts that, individually or in the aggregate, (a) is, or is reasonably likely to become, materially adverse to the business, materially adverse to the business, assets, financial condition, properties, liabilities or results of operations of Parent and its Subsidiaries, taken as a whole; provided, however, that Parent Material Adverse Effect shall not include the effect of any event, change, circumstance, effect, development or state of facts to the extent it results from or arises out of (i) general economic or political conditions (including results of elections) or securities, credit, financial or other capital markets conditions, in each case in the United States or any foreign jurisdiction, (ii) changes or conditions generally affecting the industries, businesses, or segments thereof, in which Parent and its Subsidiaries operate, (iii) any change in applicable Law, regulation or GAAP (or authoritative interpretation of any of the foregoing), (iv) the negotiation, execution, announcement, pendency or performance of this Agreement or the transactions contemplated hereby and thereby or the consummation of the transactions contemplated by this Agreement, (v) acts of war, armed hostilities, sabotage or

terrorism, or any escalation or worsening of any such acts of war, armed hostilities, sabotage or terrorism threatened or underway as of the date of this Agreement, and (vi) earthquakes, hurricanes, floods, or other natural disasters, (vii) any failure, in and of itself, by Company to meet any internal or published projections, forecasts, estimates or predictions in respect of revenues, earnings or other financial or operating metrics for any period (it being understood that the facts or occurrences giving rise to or contributing to such failure may be taken into account in determining whether there has been or will be, a Parent Material Adverse Effect to the extent not otherwise excluded hereunder), or (viii) any change, in and of itself, in the market price or trading volume of Parent's securities (it being understood that the facts or occurrences giving rise to or contributing to such change may be taken into account in determining whether there has been or will be, a Parent Material Adverse Effect to the extent not otherwise excluded hereunder), except, in the case of the foregoing clause (ii), to the extent that such event, change, circumstance, effect, development or state of facts affects Parent and its Subsidiaries in a materially disproportionate manner when compared to the effect of such event, change, circumstance, effect, development or state of facts on other Persons in the industry in which Parent and its Subsidiaries operate, provided further, that the exception in the foregoing clause (iv) will not be deemed to apply to references to Parent Material Adverse Effect in the representations and warranties set forth in Section 4.3 and 4.4, and to the extent related to Section 4.3, 4.4 or 4.10(c), the condition set forth in Section 8.3(a); or (b) would prevent or materially impair or materially delay the ability of Parent to perform its obligations under this Agreement or to consummate the transactions contemplated hereby.

“Parent Material Contract” shall have the meaning set forth in Section 4.16.

“Parent Option” means each option to purchase Parent Common Stock outstanding under any Parent Benefit Plan or otherwise.

“Parent Organizational Documents” shall mean the Restated Certificate of Incorporation and the Amended and Restated Bylaws of Parent, together with all amendments thereto.

“Parent Owned Intellectual Property” shall mean all Intellectual Property owned by Parent or any Subsidiary.

“Parent Owned Real Property” shall mean all material real property owned by the Parent and its Subsidiaries.

“Parent Preferred Stock” shall have the meaning set forth in Section 4.6(a).

“Parent Property” shall mean the Parent Leased Real Property and Parent Owned Real Property.

“Parent Registered Intellectual Property” shall mean all material issued Patents, registered trademarks and service marks, registered copyrights, and applications for any of the foregoing, in each case issued by, filed with, or recorded by, any Governmental Entity and constituting Parent Owned Intellectual Property.

“Parent Restricted Stock Award” shall mean any award of restricted Parent Common Stock outstanding under any Parent Benefit Plan or otherwise.

“ Parent RSU Award ” shall mean the restricted stock units denominated with respect to Parent Common Stock outstanding under any Parent Benefit Plan or otherwise.

“ Parent SAR ” means each stock appreciation right with respect to Parent Common Stock outstanding under any Parent Benefit Plan or otherwise.

“ Parent SEC Reports ” shall have the meaning set forth in Section 4.8(a).

“ Parent Share Issuance ” shall have the meaning set forth in Section 3.28.

“ Parent Stock Plan ” means, collectively, the Level 3 Communications, Inc. Stock Plan, as amended and the 2003 Global Crossing Limited Stock Incentive Plan, as amended.

“ Parent Stockholders Meeting ” shall have the meaning set forth in Section 3.28.

“ Parent Superior Proposal ” shall have the meaning set forth in Section 7.4(g).

“ Parent Termination Fee ” shall have the meaning set forth in Section 9.2(d).

“ Patents ” shall mean all patent and patent applications in any jurisdiction, and all re-issues, reexamine applications, continuations, divisionals, continuations-in-part or extensions of any of the foregoing.

“ PBGC ” shall have the meaning set forth in Section 4.17(b).

“ Permitted Liens ” shall mean (a) liens for utilities and current Taxes not yet due and payable or being contested in good faith, (b) mechanics’, carriers’, workers’, repairers’, materialmen’s, warehousemen’s, lessor’s, landlord’s and other similar liens arising or incurred in the ordinary course of business not yet due and payable or being contested in good faith, (c) liens for Taxes, assessments, or governmental charges or levies on a Person’s properties if the same shall not at the time be delinquent or thereafter can be paid without penalty or are being contested in good faith by appropriate proceedings and for which appropriate reserves have been included on the balance sheet of the applicable Person, (d) Liens disclosed on the existing title policies, title commitments and/or surveys which have been previously provided or made available to Parent or the Company, as applicable, none of which materially interfere with the business of Parent or its Subsidiaries or the Company or its Subsidiaries, as applicable, or the operation of the property as presently conducted to which they apply, (e) Liens arising out of pledges or deposits under worker’s compensation laws, unemployment insurance, old age pensions or other social security or retirement benefits or similar legislation, (f) deposits securing liability to insurance carriers under insurance or self-insurance arrangements, (g) deposits to secure the performance of bids, tenders, trade contracts (other than contracts for indebtedness for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business, (h) Liens arising from protective filings, (i) Liens in favor of a banking institution arising as a matter of applicable law encumbering deposits (including the right of set-off) held by such banking institution incurred in the ordinary course of business and which are within the general parameters customary in the banking industry and (j) Liens securing Indebtedness of the Company and its Subsidiaries, provided that such Indebtedness shall be in existence on the date hereof.

“Person” shall mean an individual, corporation, limited liability company, partnership, association, trust, unincorporated organization, other entity or group (as defined in the Exchange Act).

“Proceeding” shall have the meaning set forth in Section 6.3(a).

“Registration Statement” shall have the meaning set forth in Section 7.1(a).

“Regulatory Law” shall have the meaning set forth in Section 7.3(b).

“Required Company Vote” shall have the meaning set forth in Section 3.29.

“Required Financial Information” shall have the meaning set forth in Section 7.12(i).

“Required Parent Vote” shall have the meaning set forth in Section 4.26.

“Required Indebtedness” shall have the meaning set forth in Section 4.22.

“Rights” means the rights issued pursuant to the Rights Agreement.

“Rights Agreement” means that certain rights agreement, dated as of April 10, 2011, as amended, between Parent and Wells Fargo Bank, N.A., as rights agent.

“Sarbanes-Oxley Act” shall have the meaning set forth in Section 3.15(b).

“SEC” shall mean the United States Securities and Exchange Commission.

“Secretary of State” shall have the meaning set forth in Section 1.3.

“Securities Act” shall have the meaning set forth in Section 3.4.

“Senior Notes due 2021” shall mean the \$640,000,000 in aggregate principal amount of the Parent’s 6.125% Senior Notes due 2021.

“Senior Notes due 2022” shall mean the Company’s 5 3/8% Senior Notes due 2022.

“Senior Notes due 2023” shall mean the Company’s 6 3/8% Senior Notes due 2023.

“Specified Material Adverse Effect” shall have the meaning set forth in Section 7.3(b).

“State Regulators” shall mean the state or local public service or public utility commissions or other similar state or local regulatory bodies.

“Stock Consideration” shall have the meaning set forth in Section 1.7.

“Stockholder” shall have the meaning set forth in the Recitals.

“Stock Percentage” shall mean the quotient of (i) the Deemed Value of Stock Consideration divided by (ii) the Deemed Value of Merger Consideration.

“Subsequent Certificate of Merger” shall have the meaning set forth in Section 1.3.

“Subsequent Effective Time” shall have the meaning set forth in Section 1.3.

“Subsequent Merger” shall have the meaning set forth in the Recitals.

“Subsidiary” when used with respect to any Person shall mean (a) any corporation, partnership or other organization, whether incorporated or unincorporated, (i) of which such Person or any other Subsidiary of such Person is a general partner (excluding partnerships, the general partnership interests of which held by such Person or any Subsidiary of such Person do not have a majority of the voting interests in such partnership) or (ii) at least a majority of the securities or other interests of which having by their terms ordinary voting power to elect a majority of the Board of Directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or controlled by such Person or by any one or more of its Subsidiaries, or by such Person and one or more of its Subsidiaries, or (b) any partnership, limited liability company, association, joint venture or other business entity, of which at least 50% of the partnership, joint venture or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof.

“Surviving Company” shall have the meaning set forth in Section 1.1.

“Surviving Corporation” shall have the meaning set forth in Section 1.1.

“Tax Return” shall mean any report, return, information return, filing, claim for refund or other information, including any schedules or attachments thereto, and any amendments to any of the foregoing supplied or required to be supplied to a taxing authority in connection with Taxes.

“Taxes” shall mean all U.S. federal, state, or local or non-U.S. taxes, including, without limitation, income, gross income, gross receipts, production, excise, employment, sales, use, transfer, *ad valorem*, value added, profits, license, capital stock, franchise, severance, stamp, withholding, Social Security, employment, unemployment, disability, worker’s compensation, payroll, utility, windfall profit, custom duties, personal property, real property, taxes required to be collected from customers on the sale of services, registration, alternative or add-on minimum, estimated, and other taxes, governmental and regulatory fees, including universal service fees or like charges of any kind whatsoever, including any interest, penalties or additions thereto; and “Tax” shall mean any one of them.

“Termination Date” shall have the meaning set forth in Section 9.1(b).

“the other party” shall mean, with respect to the Company, Parent and shall mean, with respect to Parent, the Company.

“Title IV Plan” shall have the meaning set forth in Section 4.17(b).

“Treasury Regulations” shall have the meaning set forth in the Recitals hereto.

“Uncertificated Company Stock” shall have the meaning set forth in Section 1.7(a)(ii).

“Vendor” shall have the meaning set forth in Section 3.17(c).

“Vendor Contracts” shall have the meaning set forth in Section 3.17(c).

“WARN” shall have the meaning set forth in Section 3.22(d).

“Wholly Owned Subsidiary” of any specified Person shall mean a Subsidiary of such Person all of the outstanding capital stock or other ownership interests of which (other than directors’ qualifying shares) will at the time be owned by such Person or by one or more Wholly Owned Subsidiaries of such Person.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

LEVEL 3 COMMUNICATIONS, INC.

By: /s/ Jeff K. Storey

Name: Jeff K. Storey

Title: President and Chief Executive Officer

SATURN MERGER SUB 1, LLC

By: /s/ Jeff K. Storey

Name: Jeff K. Storey

Title: Manager

SATURN MERGER SUB 2, LLC

By: /s/ Jeff K. Storey

Name: Jeff K. Storey

Title: Manager

TW TELECOM INC.

By: /s/ Larissa L. Herda

Name: Larissa L. Herda

Title: Chairman and CEO

CERTIFICATE OF AMENDMENT
OF
RESTATED CERTIFICATE OF INCORPORATION
OF
LEVEL 3 COMMUNICATIONS, INC.

Pursuant to Section 242 of the General Corporation Law

The undersigned, being a duly appointed officer of Level 3 Communications, Inc. (the “Corporation”), a corporation organized and existing under and by virtue of the Delaware General Corporation Law (the “DGCL”), for the purpose of amending the Corporation’s Restated Certificate of Incorporation, as amended (the “Restated Certificate of Incorporation”), filed pursuant to Section 102 of the DGCL, hereby certifies, pursuant to Sections 242 and 103 of the DGCL, as follows:

FIRST : That the Board of Directors of the Corporation, at a meeting of the Board of Directors of the Corporation, adopted resolutions setting forth a certain proposed amendment to the Restated Certificate of Incorporation, as amended, declaring said amendment to be advisable, calling for the stockholders of the Corporation to consider the amendment at the next meeting of the stockholders and calling for a special meeting of the stockholders of the corporation for consideration thereof.

SECOND : The amendment effected hereby was duly authorized by the Corporation’s Board of Directors and stockholders in accordance with the provisions of Sections 141, 228 and 242 of the DGCL and shall be executed, acknowledged and filed in accordance with Section 103 of the DGCL.

THIRD : That Article IV of the Restated Certificate of Incorporation, filed with the Secretary of the State of Delaware on May 22, 2008, as amended on May 27, 2009, as amended on May 25, 2010 and as amended on October 3, 2011 is hereby amended in its entirety to read as follows:

ARTICLE IV

AUTHORIZED CAPITAL STOCK

The total number of shares of capital stock which the Corporation shall have the authority to issue is 443,333,333 consisting of 433,333,333 shares of Common Stock, par value \$.01 per share (the “Common Stock”) and 10,000,000 shares of Preferred Stock, par value \$.01 per share (“Preferred Stock”).

IN WITNESS WHEREOF , this Certificate of Amendment has been signed this day of June, 2014 by the undersigned who affirms the statements contained herein as true under penalties of perjury.

LEVEL 3 COMMUNICATIONS, INC.

By: _____

Name:

Title:

VOTING AGREEMENT

This VOTING AGREEMENT (this “Agreement”), dated as of June 15, 2014, is entered into by and between tw telecom inc., a Delaware corporation (the “Company”), the entity listed on Schedule A hereto (the “Stockholder”) and, solely for purposes of Sections 5, 9 and 10 hereof, Level 3 Communications, Inc., a Delaware corporation (“Parent”).

WHEREAS, the Stockholder owns (both beneficially and of record) in the aggregate 55,498,593 shares of the common stock of Parent, par value \$0.01 per share (“Mercury Common Stock”), (such shares of Mercury Common Stock together with any shares of Mercury Common Stock acquired by the Stockholder after the date hereof being collectively referred to herein as the “Shares”);

WHEREAS, the Company, Parent, Saturn Merger Sub 1, LLC, a Delaware limited liability company and a direct wholly owned subsidiary of Parent (“Merger Sub 1”), and Saturn Merger Sub 2, LLC, a Delaware limited liability company and a direct wholly owned subsidiary of Parent (“Merger Sub 2”), have entered into an Agreement and Plan of Merger, dated as of the date hereof (the “Merger Agreement”); and

WHEREAS, the Company has requested the Stockholder to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

SECTION 1. Defined Terms. Capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings assigned to them in the Merger Agreement; provided, that for purposes of this Agreement, none of Parent or any of its Subsidiaries shall be deemed to be an Affiliate of the Stockholder.

SECTION 2. Representations and Warranties of Stockholder. The Stockholder hereby represents and warrants to the Company as follows:

2.1 Title to the Shares. The Stockholder is the record and beneficial owner of, and has good and marketable title to, the number of shares of Mercury Common Stock set forth opposite the name of the Stockholder on Schedule A hereto, which as of the date hereof constitutes all of the shares of Mercury Common Stock, or any other securities convertible into or exercisable for any shares of Mercury Common Stock (all collectively being “Mercury Securities”) owned beneficially and of record by the Stockholder. Except as set forth in the Stockholder Rights Agreement, the Stockholder does not have any rights of any nature to acquire any additional Mercury Securities. Except as set forth in the Stockholder Rights Agreement and the Security Control Agreement, the Stockholder owns all of such shares of Mercury Common Stock free and clear of all security interests, liens, claims, pledges, options, rights of first refusal, agreements, limitations on voting rights, restrictions, charges, proxies and other encumbrances of any nature, and has not appointed or granted any proxy, which appointment or grant is still effective, with respect to any of such shares of Mercury Common Stock owned by it. “Stockholder Rights Agreement” means that certain stockholder rights agreement, dated as of April 10, 2011,

between Parent and Stockholder, as amended by the Amendment to the Stockholder Rights Agreement dated, as of November, 28, 2011. “Security Control Agreement” means that certain security control agreement, dated, as of September 26, 2011 between Parent and the U.S. Department of Defense, Defense Security Service.

2.2 Organization. The Stockholder is duly organized, validly existing, and in good standing or similar concept under the laws of the jurisdiction of its organization.

2.3 Authority Relative to this Agreement. The Stockholder has the power and authority to execute and deliver this Agreement, to perform its obligations hereunder, and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by the Stockholder and the consummation by the Stockholder of the transactions contemplated hereby have been duly and validly authorized by all necessary action on the part of the Stockholder. This Agreement has been duly and validly executed and delivered by the Stockholder and, assuming the due authorization, execution and delivery by the Company and the Parent, constitutes a legal, valid and binding obligation of the Stockholder, enforceable against the Stockholder in accordance with its terms, (i) except as may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting or relating to enforcement of creditors’ rights generally, and (ii) subject to general principles of equity (whether considered in a proceeding in equity or at law).

2.4 No Conflict. Except for any filings as may be required by applicable federal securities laws, the execution and delivery of this Agreement by the Stockholder does not, and the performance of this Agreement by the Stockholder will not, (a) require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Entity or any other Person by the Stockholder; (b) conflict with, or result in any violation of, or default (with or without notice or lapse of time or both) under any provision of, the organizational documents of the Stockholder or any other agreement to which the Stockholder is a party, or (c) conflict with or violate any judgment, order, notice, decree, statute, law, ordinance, rule or regulation (collectively “Laws”) applicable to the Stockholder or to the Stockholder’s property or assets.

SECTION 3. Covenants of the Stockholder. The Stockholder hereby covenants and agrees with the Company as follows:

3.1 Restriction on Transfer. Prior to the termination of this Agreement, the Stockholder shall not sell, transfer, tender, assign, hypothecate or otherwise dispose of, grant any proxy to, deposit any Shares into a voting trust, enter into a voting trust agreement or create or permit to exist any additional security interest, lien, claim, pledge, option, right of first refusal, limitation on voting rights, charge or other encumbrance of any nature with respect to the Shares.

3.2 Additional Shares. Prior to the termination of this Agreement, the Stockholder will promptly notify the Company of the number of any new shares of Mercury Common Stock or any other Mercury Securities acquired directly or beneficially by the Stockholder, if any, after the date of this Agreement. Any such shares of Mercury Common Stock shall become “Shares” within the meaning of this Agreement.

3.3 Nonsolicitation.

(a) None of the Stockholder or any of its Subsidiaries shall (whether directly or indirectly through directors, officers, employees, representatives, advisors or other intermediaries), nor shall (directly or indirectly) the Stockholder authorize or permit any of its officers, directors, representatives, advisors or other intermediaries or Subsidiaries to: (i) solicit, initiate or knowingly encourage the submission of inquiries, proposals or offers from any Person (other than the Company) relating to any Parent Acquisition Proposal, or agree to or endorse any Parent Acquisition Proposal; (ii) enter into any agreement to (x) consummate any Parent Acquisition Proposal, or (y) approve or endorse any Parent Acquisition Proposal; (iii) enter into or participate in any discussions or negotiations in connection with any Parent Acquisition Proposal or inquiry with respect to any Parent Acquisition Proposal, or furnish to any Person any non-public information with respect to its business, properties or assets in connection with any Parent Acquisition Proposal; or (iv) agree to resolve to take or take any of the actions prohibited by clause (i), (ii) or (iii) of this sentence. The Stockholder shall immediately cease, and cause its representatives, advisors and other intermediaries to immediately cease, any and all existing activities, discussions or negotiations with any parties conducted heretofore with respect to any of the foregoing. The Stockholder shall promptly inform its representatives and advisors of the Stockholder's obligations under this Section 3.3. Any violation of this Section 3.3 by any representative of the Stockholder or its Subsidiaries shall be deemed to be a breach of this Section 3.3 by the Stockholder. For purposes of this Section 3.3, the term "Person" means any person, corporation, entity or "group," as defined in Section 13(d) of the Exchange Act, other than, with respect to the Stockholder, Parent or any Subsidiaries of Parent.

(b) Notwithstanding the foregoing, the Stockholder, directly or indirectly through its directors, officers, employees, representatives, advisors or other intermediaries, may, prior to the Parent Stockholders Meeting, engage in negotiations or discussions with any Person (and its representatives, advisors and intermediaries) that has made an unsolicited bona fide written Parent Acquisition Proposal not resulting from or arising out of a breach of Section 3.3(a) of this Agreement to the extent that the Parent, its Subsidiaries and controlled Affiliates, officers, directors, representatives, advisors or other intermediaries are permitted to do so under Section 7.4 of the Merger Agreement.

3.4 Restrictions on Hedging. Prior to the termination of this Agreement, without the Company's prior written consent, the Stockholder shall not directly or indirectly enter into any forward sale, hedging or similar transaction involving any Mercury Securities, including any transaction by which any of the Stockholder's economic risks and/or rewards or ownership of, or voting rights with respect to, any such Mercury Securities or Mercury Common Stock are transferred or affected.

SECTION 4. Voting Agreement.

4.1 Voting Agreement. The Stockholder hereby agrees that, at any meeting of the stockholders of Parent, however called, in any action by written consent of the stockholders of Parent, or in any other circumstances upon which the Stockholder's vote, consent or other approval is sought, the Stockholder shall vote the Shares owned beneficially or of record by the Stockholder as follows:

- (a) in favor of adoption of the Parent Charter Amendment and the approval of the Parent Share Issuance;
- (b) against any action or agreement that has or would be reasonably likely to result in any conditions to Parent's obligations under Article VIII of the Merger Agreement not being fulfilled;
- (c) against any Parent Acquisition Proposal;
- (d) against any amendments to the Parent Organizational Documents if such amendment would reasonably be expected to prevent or delay the consummation of the Closing; and
- (e) against any other action or agreement that is intended, or could reasonably be expected, to impede, interfere with, delay, or postpone the Combination or the transactions contemplated by the Merger Agreement or change in any manner the voting rights of any class of stock of Parent.

Notwithstanding the foregoing, the Stockholder shall have no obligation to vote any of its Mercury Common Stock in accordance with this Section 4.1: (a) if, without the prior written consent of the Stockholder, there is any amendment to the Merger Agreement that (i) alters or changes the Merger Consideration, or (ii) adversely affects the holders of the Mercury Common Stock or (b) if, in connection with the consummation of the transactions contemplated under the Merger Agreement, any of the following would reasonably be expected to occur (i) any of the rights of the Stockholder or its Affiliates in Parent, including with respect to the Stockholder's director designees on the Parent Board, being impaired or limited (other than in de minimis respects), including without limitation those rights under the Stockholder Rights Agreement or (ii) any obligations, duties or limitations being imposed on the Stockholder or its Affiliates (other than in de minimis respects), including with respect to the Stockholder's designees on the Parent Board, other than those such obligations, duties and limitations existing in the Stockholder Rights Agreement, the Security Control Agreement, or in any other agreement between the Stockholder and any other Governmental Entity in the United States of America relating to national security matters, in each case existing as of the date hereof (each an "Adverse Event").

4.2 Other Voting. The Stockholder may vote on all issues that may come before a meeting of the stockholders of the Company in its sole discretion, provided that such vote does not contravene the provisions of this Section 4.

4.3 No Limitation. Nothing in this Agreement shall be deemed to govern, restrict or relate to any actions, omissions to act, or votes taken or not taken by any designee, representative, officer or employee of the Stockholder or any of its Affiliates serving on Parent's Board of Directors in such person's capacity as a director of Parent, and no such action taken by such person in his capacity as a director of Parent shall be deemed to violate any of the Stockholder's duties under this Agreement.

SECTION 5. Representations and Warranties and Covenants of Parent and the Company. Each of Parent and the Company hereby represents and warrants to, and covenants with, the Stockholder, only as to itself and not as to the other, as follows:

5.1 Organization. Each of Parent and the Company is duly organized, validly existing, and in good standing under the laws of the State of Delaware.

5.2 Authority Relative to this Agreement. Each of Parent and the Company has the corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by each of Parent and the Company and the consummation by each of Parent and the Company of the transactions contemplated hereby have been duly and validly authorized by all necessary action on the part of each of Parent and the Company. This Agreement has been duly and validly executed and delivered by each of Parent and the Company and, assuming the due authorization, execution and delivery by the Stockholder, constitutes a legal, valid and binding obligation of each of Parent and the Company, enforceable against each of Parent and the Company in accordance with its terms, (i) except as may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally, and (ii) subject to general principles of equity.

5.3 No Conflict. The execution and delivery of this Agreement by each of Parent and the Company does not, and the performance of this Agreement by each of Parent and the Company will not, (a) require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Entity or any other Person by Parent or the Company, except for filings with the SEC of such reports under the Exchange Act as may be required in connection with this Agreement and the transactions contemplated by this Agreement; (b) conflict with, or result in any violation of, or default (with or without notice or lapse of time or both) under any provision of, the certificate of incorporation or by-laws of the Parent or the Company or any other agreement to which Parent or the Company is a party; or (c) conflict with or violate any judgment, order, notice, decree, statute, law, ordinance, rule or regulation applicable to Parent or the Company or to Parent's or the Company's property or assets.

5.4 Each of Parent and the Company shall, to the extent: (x) any information of, or relating to the Stockholder and/or any of its Affiliates, and/or their relationship with Parent ("Stockholder Information"), is to be used or included in connection with, or in relation to, the satisfaction or waiver of any of the conditions set forth in Article VIII of the Merger Agreement, or (y) any consultations or discussions take place with, or requests for approvals or clearances are made to, any Governmental Entities relating to foreign ownership, control or influence issues arising from or relating to the transactions contemplated by the Merger Agreement that would reasonably be expected to affect the Stockholder (collectively, the activities referred to in clauses (x) and (y) above are referred to as "Significant Actions"): (a) cooperate in all reasonable respects and consult with the Stockholder, its representatives and/or advisors in connection with any filing or submission under any applicable Law, and in connection with any investigation or other inquiry related thereto, including by allowing the Stockholder, its representatives and/or advisors to have a reasonable opportunity to review in advance and comment on drafts of filings and submissions in connection with or relating to any Significant Actions, (b) promptly inform the Stockholder, its representatives and/or advisors of

any substantive communication received by or on behalf of Parent or the Company from, or given by or on behalf of Parent or the Company to, any Governmental Entities under any applicable Law, by promptly providing copies to the Stockholder, its representatives and/or advisors of any such written substantive communications, in connection with or relating to any of the foregoing Significant Actions, and (c) permit the Stockholder, its representatives and/or advisors to review any substantive communication that it gives to, and consult with the Stockholder, its representatives and/or advisors in advance of any substantive meeting, telephone call or conference with, any Governmental Entities under any applicable Law, and provide the Stockholder with a fair and accurate summary of any such meetings, telephone calls or conferences, in each case in connection with or relating to any Significant Actions, and, in all cases, where any Stockholder Information is to be used or included in any of the Significant Actions, the prior written approval of the Stockholder shall be obtained for the form, content and context in which the Stockholder Information appears or be used in any such Significant Action (which approval shall not be unreasonably withheld, conditioned or delayed). For the avoidance of doubt and without prejudice to the foregoing, any application or filing taken in connection with the consummation of the transactions contemplated under the Merger Agreement will not require the approval of the Stockholder.

5.5 Each of Parent and the Company shall use its commercially reasonable efforts to ensure that, after the Parent Stockholders Meeting, no Adverse Event shall occur.

SECTION 6. Further Assurances. The Stockholder shall, without further consideration, from time to time, execute and deliver, or cause to be executed and delivered, such additional or further consents, documents and other instruments as the Company may reasonably request in order to vest, perfect, confirm or record the rights granted to the Company under this Agreement.

SECTION 7. Stop Transfer Order. In furtherance of this Agreement, concurrently herewith the Stockholder shall and hereby does authorize the Company to notify Parent's transfer agent that there is a stop transfer order with respect to all Shares (and that this Agreement places limits on the voting and transfer of the Shares). The Stockholder further agrees to cause Parent not to register the transfer of any certificate representing any of the Shares unless such transfer is made in accordance with the terms of this Agreement.

SECTION 8. Certain Events. The Stockholder agrees that this Agreement and the obligations hereunder shall attach to the Shares and shall be binding on any Person to which legal or beneficial ownership of such Shares shall pass, whether by operation of law or otherwise. In the event of any stock split, stock dividend, merger, amalgamation, reorganization, recapitalization or other change in the capital structure of Parent affecting the Mercury Common Stock or other voting securities of Parent, the number of Shares shall be deemed adjusted appropriately and this Agreement and the obligations hereunder shall attach to any additional shares of Mercury Common Stock or other Mercury Securities issued to or acquired by the Stockholder.

SECTION 9. Termination. Notwithstanding anything to the contrary contained herein, the term of this Agreement and the obligations of the parties hereto shall commence on the date hereof and shall terminate upon the earliest of (i) the mutual agreement of the Company and the Stockholder, (ii) the Effective Time, and (iii) the termination of the Merger Agreement in

accordance with its terms. Notwithstanding the above, the Stockholder shall be entitled to terminate the Agreement on the occurrence of any of the following, (a) any Adverse Event, or (b) if there is a continuing material breach by Parent and the Company of Section 5 of this Agreement.

SECTION 10. Miscellaneous.

10.1 Expenses. All costs and expenses incurred in connection with the transactions contemplated by this Agreement shall be paid by the party incurring such costs and expenses.

10.2 Specific Performance. The parties hereto agree that, in the event any provision of this Agreement is not performed in accordance with the terms hereof, (a) the non-breaching party will sustain irreparable damages for which there is not an adequate remedy at law for money damages and (b) the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy at law or in equity.

10.3 Entire Agreement. This Agreement constitutes the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, both written and oral, among such parties with respect to the subject matter hereof.

10.4 Assignment. Without the prior written consent of the other party to this Agreement, no party may assign any rights or delegate any obligations under this Agreement. Any such purported assignment or delegation made without prior consent of the other party hereto shall be null and void.

10.5 Parties in Interest. This Agreement shall be binding upon, inure solely to the benefit of, and be enforceable by, the parties hereto and their successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to or shall confer upon any other person not a party hereto any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

10.6 Amendment. This Agreement may not be amended except by an instrument in writing signed by the parties hereto.

10.7 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of this Agreement is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the terms of this Agreement remain as originally contemplated to the fullest extent possible.

10.8 Notices.

(a) Any notices, reports or other correspondence (hereinafter collectively referred to as “correspondence”) required or permitted to be given hereunder shall be sent by telecopy/facsimile, postage prepaid first class mail, courier or delivered by hand to the party to whom such correspondence is required or permitted to be given hereunder. Except as specifically set forth below, the date of giving any notice shall be the date of its actual receipt.

(b) All correspondence to the Company shall be addressed as follows:

tw telecom inc.
10475 Park Meadows Drive
Littleton, CO 80124
Telecopy/Facsimile: (303) 566-1777
Attention: Tina Davis, Esq., Senior Vice President and General Counsel

with a copy to (which shall not constitute notice):

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019
Telecopy/Facsimile: (212) 403-1000
Attention: Steven A. Rosenblum
Stephanie J. Seligman

(c) All correspondence to the Stockholder shall be addressed as follows:

c/o Singapore Technologies Telemedia Pte Ltd
1 Temasek Avenue #33-01 Millenia Tower
Singapore 039192
Telecopy/Facsimile: + 65 6720-7220
Attention: Head of Legal & Secretariat

with a copy to (which shall not constitute notice):

Latham & Watkins LLP
9 Raffles Place
#42-02 Republic Plaza
Singapore 048619
Telecopy/Facsimile: 65.6536.1171
Attention: Michael W. Sturrock

(d) All correspondence to Parent shall be addressed as follows:

Level 3 Communications, Inc.
1025 Eldorado Blvd.
Broomfield, CO 80303
Telecopy/Facsimile: 720-888-5127

Attention: John M. Ryan, Executive Vice President, Chief Legal Officer and Secretary

with a copy to (which shall not constitute notice):

Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019
Telecopy/Facsimile: (212) 728-8111
Attention: David K. Boston
Laura L. Delanoy

(e) Any Person may change the address to which correspondence to it is to be addressed by notification as provided for herein.

10.9 Governing Law. This Agreement and any controversies arising with respect hereto shall be construed in accordance with and governed by the laws of the State of Delaware.

10.10 Exclusive Jurisdiction. Each of the parties hereto irrevocably agrees that any legal action or proceeding with respect to this Agreement and the rights and obligations arising hereunder, or for recognition and enforcement of any judgment in respect of this Agreement and the rights and obligations arising hereunder brought by the other party(ies) hereto or its successors or assigns shall be brought and determined exclusively in the Delaware Court of Chancery, or in the event (but only in the event) that such court does not have subject matter jurisdiction over such action or proceeding, in the United States District Court for the District of Delaware. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or outside the State of Delaware. Without limiting the generality of the foregoing, each party hereto agrees that service of process upon such party at the address referred to in Section 10.8 together with written notice of such service to such party, shall be deemed effective service of process upon such party.

10.11 Headings. The descriptive headings contained in this Agreement are included for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

10.12 Counterparts. This Agreement may be executed and delivered (including by facsimile transmission) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

[Rest of page intentionally blank.]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be duly executed and delivered as of the date first written above.

TW TELECOM INC.

By: /s/ Larissa L. Herda

Name: Larissa L. Herda

Title: Chairman and CEO

[Signature Page to the Voting Agreement]

STT CROSSING LTD

By: /s/ Ho Koon Lian Irene

Name: Ho Koon Lian Irene

Title: Director

[Signature Page to the Voting Agreement]

LEVEL 3 COMMUNICATIONS, INC., solely for purposes of Sections
5, 9 and 10 hereof

By: /s/ John M. Ryan

Name: John M. Ryan

Title: Chief Legal Officer

[Signature Page to the Voting Agreement]

SCHEDULE A

<u>Name of Stockholder</u>	<u>Number and Class of Shares Owned</u>	<u>Total Number of Votes</u>
STT Crossing Ltd.	55,498,593 shares of Common Stock	55,498,593

BANK OF AMERICA, N.A.
MERRILL LYNCH, PIERCE, FENNER &
SMITH INCORPORATED
One Bryant Park
New York, New York 10036

CITIGROUP GLOBAL MARKETS INC.
390 Greenwich Street
New York, New York 10013

CONFIDENTIAL

June 15, 2014

Level 3 Communications, Inc.
Level 3 Financing, Inc.
1025 Eldorado Boulevard
Broomfield, Colorado 80021

Project Saturn
\$2,400,000,000 Senior Secured Tranche B 2021 Term Loan Facility
\$600,000,000 Senior Unsecured Bridge Facility
Commitment Letter

Ladies and Gentlemen:

Level 3 Communications, Inc., a Delaware corporation (“Parent”), and Level 3 Financing, Inc., a Delaware corporation (the “Borrower” and, together with Parent, “you”), have advised Bank of America, N.A. (“Bank of America”), Merrill Lynch, Pierce, Fenner & Smith Incorporated (together with its designated affiliates, “MLPFS”), Citi (as defined below and, together with Bank of America, the “Initial Lenders”), Citigroup Global Markets Inc. (“CGMI” and, together with MLPFS, the “Lead Arrangers”; the Initial Lenders and the Lead Arrangers are collectively referred to as the “Commitment Parties”, “we” or “us”) that Parent intends to enter into an agreement and plan of merger (together with all exhibits and schedules thereto, and all definitive documentation relating thereto, the “Acquisition Agreement”) among tw telecom inc., a Delaware corporation (“Saturn”), Saturn Merger Sub 1, LLC, a Delaware limited liability company and a newly formed direct or indirect subsidiary of Parent (“Merger Sub 1”), Saturn Merger Sub 2, LLC, a Delaware limited liability company and a newly formed direct or indirect subsidiary of Parent (“Merger Sub 2”) and Parent. Pursuant to the Acquisition Agreement, Merger Sub 1 will merge with and into Saturn (“Merger 1”), with Saturn surviving as a Delaware corporation and a wholly owned direct or indirect subsidiary of Parent, and the holders of the equity interests in Saturn prior to such merger will receive consideration consisting of a

combination of Parent common stock and cash as set forth in the Acquisition Agreement (the foregoing transactions are referred to herein as the “Acquisition”). Immediately after the consummation of Merger 1, Saturn will merge with and into Merger Sub 2 (“Merger 2”), with Merger Sub 2 surviving as a Delaware limited liability company and wholly owned direct or indirect subsidiary of Parent. Immediately after the consummation of Merger 2, Parent will contribute all of the equity interests of Merger Sub 2 to the Borrower, whereby Merger Sub 2 will remain a wholly owned direct or indirect subsidiary of the Borrower (the “Contribution”). As used herein, “Citi” means Citigroup Global Markets Inc., Citibank, N.A., Citicorp USA, Inc., Citicorp North America, Inc. and/or any of their affiliates as Citi shall determine to be appropriate to provide the services contemplated herein.

You have also advised us that to finance the Existing Saturn Debt Repayment, the cash portion of the Acquisition consideration and the costs and expenses relating thereto and the related transactions, the Borrower intends, in addition to using cash on hand of Parent and its subsidiaries and of Saturn and its subsidiaries, (a) to obtain a senior secured term loan facility in an aggregate principal amount of not more than (i) \$2,400,000,000 less (ii) if any Transaction Securities (as defined below) are issued on or prior to the Closing Date (as defined below), the excess, if any, of (A) the aggregate gross cash proceeds from the issuance of the Transaction Securities over (B) \$600,000,000, and having the terms set forth on Annex I hereto (the “Tranche B 2021 Term Facility”) and (b) either (i) to issue senior unsecured notes in an aggregate principal amount of not more than \$600,000,000 (the “Senior Notes”) in a registered public offering or a Rule 144A offering or other private placement or (ii) if and to the extent that the Borrower does not issue \$600,000,000 in aggregate principal amount of the Senior Notes on or prior to the Closing Date, on such date borrow not more than (A) \$600,000,000 less (B) the aggregate gross cash proceeds from the issuance of the Senior Notes or any other Transaction Securities in aggregate principal amount of loans under a senior unsecured bridge facility having the terms set forth on Annex II hereto (the “Bridge Facility”) and, together with the Tranche B 2021 Term Facility, the “Facilities”). Capitalized terms used but not defined herein have the meanings assigned thereto in the Annexes hereto (such Annexes are collectively referred to as the “Term Sheets”; the Term Sheets and this letter are collectively referred to as the “Commitment Letter”). For purposes of this Commitment Letter, the term “Senior Notes” shall include an offering of debt securities by a subsidiary of Parent that is not the Borrower or a “restricted” subsidiary for purposes of Parent’s or the Borrower’s existing indebtedness, which subsidiary will be merged with and into, or which debt securities will be assumed by, the Borrower on the Closing Date. The term “Transaction Securities” means any Senior Notes or any other debt, convertible debt (or other equity-linked debt securities) and any equity securities of Parent or any of its subsidiaries (including the Borrower), in each case, issued in connection with the Acquisition or the other Transactions, other than shares of Parent common stock issued as part of the merger consideration.

Notwithstanding anything to the contrary contained herein, at the election of the Borrower, the aggregate amount of the commitments in respect of the Bridge Facility hereunder shall be increased, and the aggregate amount of the commitments in respect of the Tranche B 2021 Term Facility shall be decreased on a dollar-for-dollar basis by the same amount, solely to the extent necessary for the Tranche B 2021 Term Loans to be incurred in compliance with the secured indebtedness incurrence covenants in the Existing Credit Agreement, the Existing Notes and the indentures governing the Existing Notes (the “Reallocation Election”); provided that the

Borrower shall have delivered written notice of such Reallocation Election to the Lead Arrangers at least 20 consecutive calendar days (calculated in accordance with, and excluding the dates specified to be excluded by, the penultimate sentence of paragraph 8 of Annex III attached hereto) prior to the Closing Date, which notice shall specify the amount of such required increase in the Bridge Facility commitments and required decrease in the Tranche B 2021 Term Facility commitments and shall be accompanied by a certificate of the chief financial officer of Parent certifying as to the methodology and details of calculation of the incurrence of the Tranche B 2021 Term Loans evidencing the foregoing. To the extent the Borrower shall make a Reallocation Election in accordance with the immediately preceding sentence, all references to “\$600,000,000” herein and in the Fee Letter shall be deemed to be references to the aggregate amount of the commitments in respect of the Bridge Facility as so increased pursuant to the Reallocation Election and all references to “\$2,400,000,000” herein and in the Fee Letter shall be deemed to be references to the aggregate amount of the commitments in respect of the Tranche B 2021 Term Facility as so decreased pursuant to the Reallocation Election.

1. Commitments: Titles and Roles.

In connection with the foregoing, (a) Bank of America is pleased to advise you of its commitment to provide 50% of the entire principal amount of each of the Tranche B 2021 Term Facility and the Bridge Facility and (b) Citi is pleased to advise you of its commitment to provide 50% of the entire principal amount of each of the Tranche B 2021 Term Facility and the Bridge Facility, in each case on the terms and subject to the conditions set forth or referred to in this Commitment Letter. The commitments of the Initial Lenders hereunder are several and not joint and shall be subject only to the conditions set forth in Section 5 below under the heading “Conditions Precedent”.

In addition, each of MLPFS and CGMI is pleased to advise you of its willingness to act, and you hereby appoint each of MLPFS and CGMI, as a joint lead arranger and joint bookrunning manager with respect to the Facilities, in each case on the terms and subject to the conditions set forth or referred to in this Commitment Letter. You agree that no other agents, co-agents, arrangers or bookrunning managers will be appointed, no other titles will be awarded and no compensation (other than compensation expressly contemplated by this Commitment Letter and the Fee Letter referred to below) will be paid, in each case, by Parent or any of its subsidiaries to any Lender (as defined below) in order to obtain its commitment to participate in the Facilities unless you and we shall so agree; provided that no later than seven business days after the date hereof, you may appoint up to five financial institutions (or any relevant affiliate) in consultation with the Lead Arrangers as additional joint lead arrangers and joint bookrunning managers and award such joint lead arrangers and joint bookrunning managers additional agent or co-agent titles in a manner determined by you in consultation with the Lead Arrangers (it being understood that, to the extent you appoint additional agents, co-agents, arrangers or bookrunning managers or confer other titles in respect of any or each of the Facilities, (a) each such appointed entity (or its relevant affiliate) shall provide a commitment with respect to the Facilities that is equal to the proportion that the economics payable to such appointed entity (or its relevant affiliates) in respect of the Facilities bears to the aggregate amount of the economics payable to the Initial Lenders pursuant to the Fee Letter, with the commitment of each such appointed entity (or its relevant affiliate) to be allocated between the Tranche B 2021 Term Facility and the Bridge Facility pro rata in accordance with the principal amounts of such Facilities, and (b) the

commitments of the Initial Lenders in respect of the Facilities will be reduced by the amounts of the commitments of each such appointed entity (or its relevant affiliates), with such reduction allocated to reduce the commitments of the Initial Lenders at such time on a pro rata basis according to the respective amounts of their commitments, in each case pursuant to customary joinder documentation to be executed by such appointed entity (and any relevant affiliate) and, thereafter, each such appointed entity (and any relevant affiliate) shall constitute a “Commitment Party”, “Lead Arranger” and “Initial Lender” hereunder); provided further that (i) in no event will Bank of America’s and Citi’s commitments be less than 70% of the entire principal amount of each of the Tranche B 2021 Term Facility and the Bridge Facility and (ii) no other participating institution shall be entitled to a greater percentage of the aggregate economics than either of Bank of America or Citi.

You agree that only MLPFS and CGMI will have “upper left” designation in any and all marketing materials or other documentation used in connection with the Facilities and MLPFS and CGMI will share management of the physical books for the syndication of the Bridge Facility. You may at any time reduce all or a portion of the commitments for the Bridge Facility upon written notice to the Commitment Parties (with such reduction allocated to reduce the commitments of the Initial Lenders and any other financial institutions appointed as provided in the preceding paragraph on a pro rata basis according to the respective amounts of their commitments).

2. Syndication.

Each of the Initial Lenders intends, and reserves the right, to syndicate all or a portion of its commitment hereunder with respect to any of the Facilities to one or more financial institutions that will become parties to the definitive documentation for such Facility pursuant to syndications to be managed by the Lead Arrangers (the financial institutions becoming parties to such definitive documentation being collectively referred to as the “Lenders”), and the Lead Arrangers intend to commence such syndication promptly after the date hereof; provided that we agree not to syndicate our commitments to certain banks, financial institutions and other institutional lenders or any of your competitors (or Known Affiliates (as defined below) of your competitors) that in each case have been specified by name to us by you in writing prior to the date hereof (collectively, “Disqualified Lenders”); provided further that, upon reasonable notice to us after the date hereof, you shall be permitted to supplement in writing the list of persons that are Disqualified Lenders with the name of any person that is or becomes your competitor or a Known Affiliate of one of your competitors, which supplement shall be in the form of a list of names provided to us and shall become effective upon delivery to us, but which supplement shall not apply retroactively to disqualify any persons that have previously acquired an interest in respect of any of the Facilities. As used herein, “Known Affiliates” of any person means, as to such person, known affiliates readily identifiable as such by name, but excluding any affiliate that is a bona fide debt fund or investment vehicle that is primarily engaged in, or that is primarily engaged in advising funds or other investment vehicles that are engaged in, making, purchasing, holding or otherwise investing in commercial loans, bonds or similar extensions of credit or securities in the ordinary course and with respect to which the Disqualified Lender does not, directly or indirectly, possess the power to direct or cause the direction of the investment policies of such entity.

It is understood and agreed that the Lead Arrangers will, in consultation with you, manage and control all aspects of the syndication of each Facility, including decisions as to the selection of prospective Lenders and any roles or titles offered to proposed Lenders, when commitments will be accepted and the final allocations of the commitments among the Lenders. It is understood that no Lender participating in either Facility will receive compensation from you in order to obtain its commitment, except on the terms contained herein and in the applicable Term Sheet. It is also understood and agreed that the amount and distribution of the fees among the Lenders will be at the sole discretion of the Lead Arrangers.

You agree to actively assist, and to use your commercially reasonable efforts to cause Saturn to actively assist, the Lead Arrangers in achieving a syndication of each Facility that is satisfactory to the Lead Arrangers. Such assistance shall include (a) your providing, and causing your advisors to provide and using your commercially reasonable efforts to cause Saturn and its advisors to provide, the Lead Arrangers upon request with all information reasonably deemed necessary by the Lead Arrangers to complete the syndication, including information and evaluations prepared by or on behalf of you or Saturn relating to the Transactions, (b) your assistance, and causing your advisors to assist and using your commercially reasonable efforts to cause Saturn and its advisors to assist, in the preparation of customary Confidential Information Memoranda and other customary marketing materials to be used in connection with the syndication, (c) your using commercially reasonable efforts to ensure that the syndication benefits materially from your existing relationships with banks and other financial institutions and (d) your otherwise assisting the Lead Arrangers in their syndication efforts by making your officers and advisors, and using your commercially reasonable efforts to make the officers and advisors of Saturn, available from time to time to attend and make presentations regarding the business, operations, assets, liabilities, financial position, results of operations and prospects of you and Saturn, as appropriate, and the Transactions at one or more meetings of prospective Lenders. You agree that, prior to the later of the Closing Date and the Syndication End Date (as defined below), you will not and will not permit any of your subsidiaries to, and will use commercially reasonable efforts not to permit Saturn or any of its subsidiaries to, arrange, syndicate or issue or attempt to arrange, syndicate or issue any debt securities, convertible debt securities (including any other equity-linked debt security) or bank financing by or on behalf of you, Saturn or any of your or its respective subsidiaries (other than the Facilities, the Senior Notes and any indebtedness of Saturn and its subsidiaries permitted by the Acquisition Agreement to be incurred after the date hereof and to remain outstanding on the Closing Date) without the prior written consent of the Lead Arrangers (such consent not to be withheld unless the Lead Arrangers determine that such arrangement, syndication or issuance would be likely to adversely affect the syndication of the Facilities). You further agree (i) to meet after the date hereof with each of Moody's Investor Services, Inc. ("Moody's") and Standard & Poor's Ratings Group, a division of McGraw Hill Financial Inc. ("S&P"), in order to obtain their indications of (A) a public corporate family rating of Parent from Moody's, (B) a public corporate credit rating of Parent from S&P and (C) a public credit rating for the Facilities from each of Moody's and S&P, in each case after giving effect to the Transactions, and (ii) in any event, to use your commercially reasonable efforts to obtain each such rating no later than the earlier of (A) the commencement of the general syndication of any of the Facilities and (B) the date that is 30 days prior to the Closing Date. Your obligations under this paragraph in respect of syndication of the Facilities shall terminate upon the earlier of (a) the date of Successful Syndication (as defined in the Fee Letter) and (b) the date that is 60 days following the Closing Date (such earlier date, the

“Syndication End Date”). Notwithstanding anything to the contrary contained in this Commitment Letter or the Fee Letter or any other letter agreement or undertaking concerning the financing of the Transactions to the contrary, neither completion of syndication of any Facility, nor receipt of ratings, nor the compliance with any of the other provisions set forth in this paragraph shall constitute a condition to the commitments hereunder or to providing the Facilities on the Closing Date. Except as provided in the second paragraph of Section 1 of this Commitment Letter or as you in your sole discretion may otherwise agree in writing, no Initial Lender shall be relieved, released or novated from its obligations hereunder (including its obligation to fund the Facilities on the Closing Date) in connection with any syndication, assignment or participation of the Facilities, including its commitments in respect thereof, until after the initial funding of the Facilities has occurred.

3. Information Requirements.

You hereby represent and warrant that (a) all information, other than the Projections (as defined below), that has been or will be made available to us or any of the Lenders by or on behalf of you, Saturn or any of your or its subsidiaries in connection with the Transactions (the “Information”), when taken as a whole, is or will be, when made available, complete and correct in all material respects and does not or will not, when made available, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading in light of the circumstances under which such statements are made (it being understood that the foregoing representation and warranty, insofar as it relates to Information concerning Saturn, is made to the best of your knowledge) and (b) all financial projections concerning you and Saturn that have been or will be made available to us or any of the Lenders by or on behalf of you or any of your subsidiaries (the “Projections”) have been or will be prepared in good faith based upon assumptions that are believed by you in good faith to be reasonable at the time made and at the time the related Projections are so made available (it being understood that the Projections by their nature are inherently uncertain, no assurances are being given that the results reflected in the Projections will be achieved, and actual results may differ from the Projections and that such differences may be material). You agree that if at any time prior to the later of (i) the Closing Date and (ii) the termination of the syndication of the Facilities as determined by the Lead Arrangers and notified to you, you become aware that the representation and warranty in the immediately preceding sentence would not be true if the Information and Projections were being furnished and such representation and warranty were being made at such time, then you will promptly, as appropriate, supplement the Information and the Projections so that such representation or warranty would be true under those circumstances. You understand that we, in arranging and syndicating the Facilities, will be using and relying on the Information and Projections without independent verification thereof.

You hereby acknowledge that (a) the Commitment Parties or any of them will make available Information and Projections (collectively, the “Borrower Materials”) to the prospective Lenders by posting the Borrower Materials on IntraLinks or another similar electronic system (the “Platform”) and (b) certain of the prospective Lenders may be “public-side” Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to you, Saturn, your or its subsidiaries or the securities of any of the foregoing for purposes of United States federal and state securities laws (“MNPI”)) (each, a “Public Lender”). You hereby agree that (i) you will identify that portion of the Borrower Materials that may be distributed to the Public

Lenders and that all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" (which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof), (ii) by marking any Borrower Materials "PUBLIC," you shall be deemed to have authorized each Commitment Party and the prospective Lenders to treat such Borrower Materials as not containing any MNPI, it being understood that certain of such Borrower Materials may be subject to the confidentiality requirements set forth in the definitive credit documentation, (iii) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor" and (iv) each Commitment Party shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable to be made available only on a portion of the Platform not designated "Public Investor". If the Lead Arrangers shall so request, you agree to assist (and to use commercially reasonable efforts to cause Saturn and its advisors to assist) in the preparation of an additional version of the Confidential Information Memoranda and other marketing materials to be used by Public Lenders that does not contain MNPI. It is understood that, in connection with your assistance described above, at the request of the Lead Arrangers you will provide, and will cause all other applicable persons to provide, authorization letters to the Lead Arrangers authorizing the distribution of the Borrower Materials to prospective Lenders and containing a representation to the Lead Arrangers that any "PUBLIC" version thereof does not include MNPI. You acknowledge and agree that the following documents may be distributed to Public Lenders: (A) drafts and final versions of the definitive documentation with respect to the Facilities, (B) administrative materials prepared by the Lead Arrangers for prospective Lenders (such as a lender meeting invitation, allocations and funding and closing memoranda) and (C) term sheets and notification of changes in the terms of the Facilities.

4. Fees and Indemnities.

As consideration for our commitments and agreements hereunder, you agree to pay the fees set forth in the Fee Letter dated as of the date hereof among the parties hereto (the "Fee Letter").

You also agree to reimburse each initial Commitment Party from time to time on demand for all reasonable out-of-pocket fees and expenses (including due diligence expenses and the reasonable fees, disbursements and other charges of only one counsel (Cravath, Swaine & Moore LLP) to the initial Commitment Parties, and of any local or regulatory counsel retained by the Commitment Parties, but not any internal counsel, and in each case subject to delivery to you of reasonable supporting documentation) incurred in connection with this Commitment Letter, the Fee Letter, the Facilities, the syndication thereof, the preparation of the definitive documentation therefor and the other transactions contemplated hereby.

You also agree to indemnify and hold harmless each Commitment Party, each affiliate thereof, the successors and permitted assigns of the foregoing and the officers, directors, employees, agents, controlling persons, advisors and other representatives of any of the foregoing (each, an "Indemnified Party") from and against (and will reimburse each Indemnified Party as the same are incurred for) any and all claims, damages, losses, liabilities and expenses (including the reasonable fees, disbursements and other charges of counsel) that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of (including in connection with any investigation, litigation or proceeding or preparation

of a defense in connection therewith) (a) any aspect of the Transactions and any of the other transactions contemplated thereby or (b) the Facilities or any use made or proposed to be made with the proceeds thereof, except to the extent such claim, damage, loss, liability or expense (i) is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from (A) such Indemnified Party's gross negligence or willful misconduct or (B) a material breach by such Indemnified Party of its agreements under this Commitment Letter or (ii) arises from a proceeding by an Indemnified Party against an Indemnified Party (other than a proceeding (x) involving any action or failure to act by you or any of your affiliates or (y) against a Commitment Party in its capacity as such or in its capacity as an agent or arranger or any similar capacity under the Facilities). In the case of an investigation, litigation or proceeding to which the indemnity in this paragraph applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by you, your equityholders or creditors or an Indemnified Party, whether or not an Indemnified Party is otherwise a party thereto and whether or not any aspect of the Transactions is consummated. You also agree that no Indemnified Party shall have any liability (whether direct or indirect, in contract or tort or otherwise) to you arising out of, related to or in connection with any aspect of the Transactions, except for any liability of a Commitment Party to the extent of direct (as opposed to special, indirect, consequential or punitive) damages determined in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence, willful misconduct or material breach of its agreements hereunder. You further agree that no Indemnified Party shall have any liability (whether direct or indirect, in contract or tort or otherwise) to Saturn, any of its affiliates, any equityholder or creditor of any of the foregoing or any other person (other than, solely to the extent expressly set forth herein, to you) arising out of, related to or in connection with any aspect of the Transactions and that any such liability of a Commitment Party to you shall only arise to the extent direct damages to you have been caused by breach of such Commitment Party's agreements hereunder to negotiate in good faith definitive documentation for the applicable Facility on the terms set forth herein, as determined in a final, non-appealable judgment by a court of competent jurisdiction. It is understood and agreed that obligations of a Commitment Party hereunder are several, and not joint, with the obligations of any other Commitment Party hereunder or obligations of any other Lender. Notwithstanding any other provision of this Commitment Letter, no Indemnified Party shall be liable for any damages arising from the use by others of information or other materials obtained through electronic telecommunications or other information transmission systems. You shall not, without the prior written consent of each applicable Indemnified Party (which consent shall not be unreasonably withheld), effect any settlement of any pending or threatened investigation, litigation or proceeding against an Indemnified Party in respect of which indemnity could have been sought hereunder by such Indemnified Party unless (i) such settlement includes an unconditional release of such Indemnified Party from all liability or claims that are the subject matter of such investigation, litigation or proceeding and (ii) does not include any statement as to any admission.

5. Conditions Precedent.

Each Commitment Party's commitment hereunder and each Lead Arranger's agreement to perform the services described herein are subject only to the satisfaction of each of the following conditions precedent:

(a) the negotiation, execution and delivery of definitive documentation with respect to the Tranche B 2021 Term Facility and, if applicable, the Bridge Facility by the Loan Parties (the “Facilities Documentation”), which shall be prepared by counsel for the Commitment Parties based upon, and consistent with, the terms set forth in this Commitment Letter (including the Annexes hereto), subject to the “market flex” provisions set forth in the Fee Letter, and otherwise reasonably satisfactory to the Commitment Parties and Parent but shall be subject to the Documentation Principles (as defined below);

(b) except as otherwise expressly disclosed in the Company SEC Reports (as defined in the Acquisition Agreement as in effect on the date hereof) filed prior to the date hereof (other than (A) any information that is contained solely in the “Risk Factors” section of such Company SEC Reports and (B) any forward-looking statements, or other statements that are similarly predictive or forward-looking in nature, contained in such Company SEC Reports) or as set forth in the corresponding sections or subsections of the Company Disclosure Schedule dated the date hereof and heretofore delivered to the Lead Arrangers (or, pursuant to Section 10.2 (b) of the Acquisition Agreement as in effect on the date hereof, as set forth in any section or subsection of such Company Disclosure Schedule to the extent the applicability thereof is readily apparent from the face of such Company Disclosure Schedule), since December 31, 2013, there shall not have been any Company Material Adverse Effect (as defined in the Acquisition Agreement as in effect on the date hereof);

(c) the payment of fees pursuant to the Fee Letter that are due and payable on or prior to the Closing Date and the reimbursement of expenses pursuant to this Commitment Letter for which, if applicable, reasonably detailed invoices have been delivered prior to the Closing Date; and

(d) the other conditions expressly set forth in (i) “Conditions Precedent to Initial Borrowing” in Annex I to this Commitment Letter, (ii) “Conditions Precedent” in Annex II-A to this Commitment Letter and (iii) Annex III to this Commitment Letter.

It is understood that, with respect to guarantees and collateral, paragraph 5 in Annex III to this Commitment Letter is the only condition precedent. The provisions of paragraph 5 in Annex III to this Commitment Letter are referred to herein as the “Funds Certain Provisions”.

In addition, notwithstanding anything in this Commitment Letter, the Facilities Documentation or any other letter agreement or other undertaking concerning the financing of the Acquisition to the contrary, (a) the only representations and warranties relating to Parent, the Borrower or Saturn or their respective businesses or subsidiaries the accuracy of which shall be a condition to the funding of the Facilities on the Closing Date shall be (i) such representations and warranties made by Saturn in the Acquisition Agreement as are material to the interests of the Commitment Parties, but only to the extent that Parent or AcquireCo has the right to terminate its obligations under the Acquisition Agreement as a result of a breach of such representations in the Acquisition Agreement or to the extent the accuracy of such representations or warranties is a condition precedent to the obligations of Parent or AcquireCo under the Acquisition Agreement (to such extent, the “Specified Acquisition Agreement Representations”) and (ii) the Specified

Representations (as defined below) and (b) the terms of the Facilities Documentation shall be such that they do not impair the availability of the proceeds of the Facilities on the Closing Date if the conditions set forth in clauses (a) through (d) above are satisfied or waived. For purposes hereof, “Specified Representations” means the representations and warranties of Parent and the Borrower in the Facilities Documentation relating to corporate existence, power and authority, the due authorization, execution, delivery and enforceability of the Loan Documents, the validity, priority and perfection of liens (subject to the Funds Certain Provisions), solvency, PATRIOT ACT, anti-corruption laws and trade sanctions, no conflicts with organizational documents, no consent from governmental authorities (that has not been obtained) to the advance of the funds under the Facilities Documentation (subject to the Funds Certain Provisions), Federal Reserve margin regulations and the Investment Company Act. The requirements of this paragraph are referred to herein as the “Documentation Principles”.

Each of the parties hereto agrees that each of this Commitment Letter and the Fee Letter is a binding and enforceable agreement (subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization and other similar laws relating to or affecting creditors’ rights generally and general principles of equity (whether considered in a proceeding in equity or law)) with respect to the subject matter contained herein, including an agreement to negotiate in good faith the Facilities Documentation by the parties hereto in a manner consistent with this Commitment Letter and, to the extent applicable, the Fee Letter, it being acknowledged and agreed that the funding of the Facilities is subject only to the conditions precedent as provided in this Commitment Letter (including the Annexes hereto). For clarity, all terms referenced herein to being defined in the Facilities Documentation shall be defined in accordance with the Documentation Principles.

6. Confidentiality and Other Obligations.

This Commitment Letter (including the Annexes hereto) and the Fee Letter and the contents hereof and thereof are confidential and, except for the disclosure hereof or thereof on a confidential basis to your directors, officers and other senior management, accountants, attorneys and other professional advisors retained in connection with the Transactions, may not be disclosed in whole or in part to any person without our prior written consent; provided, however, that you may disclose this Commitment Letter (including the Annexes hereto), but not the Fee Letter or the contents thereof (other than disclosure thereof in mutually agreed redacted form to Saturn pursuant to the following clause (a)), (a) on a confidential basis to the directors, officers and other senior management, attorneys and other professional advisors of Saturn in connection with their consideration of the Acquisition and the other Transactions, (b) after your acceptance of this Commitment Letter and the Fee Letter, in filings with the Securities and Exchange Commission and other applicable regulatory authorities and stock exchanges (which may specify the aggregate amount of fees to the extent required to be disclosed), (c) after written notice to us (to the extent permitted by law) of any legally required disclosure, as otherwise required by law, and (d) to the extent required in connection with any proceeding for the enforcement of this Commitment Letter and related documents.

You acknowledge that the Commitment Parties or their affiliates may be providing financing or other services to persons whose interests may conflict with yours. Consistent with each Commitment Party’s policy to hold in confidence the affairs of its customers, such Commitment

Party agrees not to furnish confidential information obtained from you to any of its other customers and to treat confidential information relating to you, Saturn and your and its respective affiliates with the same degree of care as it treats its own confidential information. You also acknowledge that no Commitment Party will make available to you confidential information that it has obtained or may obtain from any other customer. In connection with the services and transactions contemplated hereby, you agree that the Commitment Parties are permitted to access, use and share with any of their respective bank or non-bank affiliates, agents, advisors (legal or otherwise) or representatives any information concerning you, Saturn or any of your or its respective affiliates that is or may come into the possession of the Commitment Parties or any of such affiliates.

In connection with all aspects of each transaction contemplated hereby, you acknowledge and agree that: (a) the Facilities and any related arranging or other services described in this Commitment Letter are arm's-length commercial transactions between you and your affiliates, on the one hand, and each Commitment Party, on the other hand, and you are capable of evaluating and understanding and understand and accept the terms, risks and conditions of the transactions contemplated by this Commitment Letter; (b) in connection with each transaction contemplated hereby and the process leading to such transaction, each Commitment Party is and has been acting solely as a principal and is not acting as an agent or fiduciary for you or any of your affiliates, equityholders, creditors or employees or any other person; (c) none of the Commitment Parties has assumed or will be deemed to assume an advisory (except as otherwise expressly agreed in writing by the relevant parties) or fiduciary responsibility in favor of you or any of your affiliates, equityholders, creditors or employees or any other person with respect to any of the transactions contemplated hereby or the process leading thereto (irrespective of whether any of the Commitment Parties has advised or is currently advising you or your affiliates on other matters), and none of the Commitment Parties has any obligation to you or your affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth in this Commitment Letter; (d) each Commitment Party and its affiliates may be engaged in a broad range of transactions that involve interests that differ from those of you and your affiliates, and no Commitment Party has any obligation to disclose any of such interests by virtue of any fiduciary or advisory relationship; and (e) none of the Commitment Parties has provided any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby, and you have consulted your own legal, accounting, regulatory and tax advisors to the extent you have deemed appropriate. You hereby waive and release, to the fullest extent permitted by law, any claims that you may have against any of the Commitment Parties with respect to any breach or alleged breach of fiduciary duty. In addition, you acknowledge that you have retained each of Citi and an affiliate of Bank of America as financial advisors (in such capacity, each a "Financial Advisor") in connection with the Acquisition. You agree not to assert any claim you might allege based on any actual or potential conflicts of interest that might be asserted to arise or result from, on the one hand, the engagement of any such Financial Advisor and, on the other hand, our and our affiliates' relationships with you as described and referred to herein.

Each Commitment Party hereby notifies you that pursuant to the requirements of the USA PATRIOT Act, Title III of Pub. L. 107-56 (signed into law October 26, 2001) (the "Act"), such Commitment Party is required to obtain, verify and record information that identifies the Borrower and the Guarantors, which information includes the Borrower's and the Guarantors'

names and addresses and other information that will allow such Commitment Party to identify the Borrower and the Guarantors in accordance with the Act.

7. Survival of Obligations.

The provisions of Sections 2, 3, 4, 6, 8 and this Section 7 shall remain in full force and effect regardless of whether any definitive documentation for the Facilities shall be executed and delivered. The provisions of Sections 4, 6, 8 and this Section 7 shall remain in full force and effect notwithstanding the termination of this Commitment Letter or any commitment or agreement of any of the Commitment Parties hereunder.

8. Miscellaneous.

The Initial Lenders' commitments hereunder and the Lead Arrangers' agreements to perform the services described herein will terminate upon the first to occur of (a) the consummation of the Acquisition, (b) the termination or the public announcement by you of the abandonment of the Acquisition Agreement and (c) March 16, 2015 (provided that such date shall be extended to match the Termination Date (as defined in the Acquisition Agreement as in effect on the date hereof) if such Termination Date is extended to a date not beyond June 15, 2015, in accordance with Section 9.1(b) of the Acquisition Agreement (as in effect on the date hereof)), unless the closing of the applicable Facility, on the terms and subject to the conditions contained herein, shall have occurred on or before such date. In addition, the Initial Lenders' commitments hereunder in respect of any Facility shall be superseded by the commitments in respect of such Facility set forth in the definitive documentation with respect to such Facility, and upon the execution and delivery of such definitive documentation by the parties thereto each Initial Lender shall be released from its commitment hereunder in respect of such Facility. Notwithstanding the foregoing, each Initial Lender shall remain liable to fund its obligations hereunder in the event any assignee of such Initial Lender shall fail to provide its portion of the Facilities. Each Commitment Party shall retain exclusive control over all rights and obligations with respect to its commitments in respect of the Facilities, including all rights with respect to consents, modifications, supplements, waivers and amendments, until the Closing Date has occurred.

This Commitment Letter and the Fee Letter shall be governed by, and construed in accordance with, the laws of the State of New York; provided, however, that (a) the interpretation of the definition of "Company Material Adverse Effect" (and whether or not a Company Material Adverse Effect has occurred), (b) the accuracy of any Specified Acquisition Agreement Representations and whether as a result of any breach thereof Parent or AcquireCo has the right to terminate its obligations under the Acquisition Agreement or any condition precedent to the obligations of Parent or AcquireCo under the Acquisition Agreement has failed to be satisfied and (c) whether the Acquisition has been consummated in accordance with the terms of the Acquisition Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof. Each party hereto irrevocably waives all right to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to this Commitment Letter (including the Annexes hereto) or the Fee Letter, the Transactions and the other transactions contemplated hereby or thereby or the actions of the

Commitment Parties in the negotiation, performance or enforcement hereof or thereof. Each of the parties hereto irrevocably submits to the exclusive jurisdiction of any New York State court or Federal court sitting in the Borough of Manhattan in New York City in respect of any suit, action or proceeding arising out of or relating to the provisions of this Commitment Letter (including the Annexes hereto), the Fee Letter, the Transactions and the other transactions contemplated hereby or thereby and irrevocably agrees that all claims in respect of any such suit, action or proceeding shall be brought, heard and determined exclusively in any such court. The parties hereto agree that service of any process, summons, notice or document by registered mail addressed to any party hereto shall be effective service of process against such party for any suit, action or proceeding relating to any such dispute. Each of the parties hereto waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceedings brought in any such court, and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. A final judgment in any such suit, action or proceeding brought in any such court may be enforced in any other courts whose jurisdiction you are or may be subject by suit upon judgment.

This Commitment Letter (including the Annexes hereto) and the Fee Letter embody the entire agreement and understanding among the Commitment Parties and you with respect to the Facilities and supersede all prior agreements and understandings relating to the subject matter hereof and thereof. Those matters that are not covered by or made clear under the provisions of this Commitment Letter (including the Annexes hereto) or the Fee Letter are subject to the approval and agreement of us and you. No person has been authorized by any Commitment Party to make any oral or written statements that are inconsistent with this Commitment Letter.

This Commitment Letter is not assignable by you without our prior written consent (and any purported assignment without such consent will be null and void) and is intended to be solely for the benefit of the parties hereto and, to the extent expressly set forth herein, the Indemnified Parties, and is not intended to confer any benefits upon, or create any rights in favor of, any person other than the parties hereto and, to the extent expressly set forth herein, the Indemnified Parties. This Commitment Letter may not be amended, and no term or provision hereof may be waived or modified, except by an instrument in writing signed by each of the parties hereto. Any and all obligations of, and services to be provided by, any of us hereunder may be performed, and any and all of our rights hereunder may be exercised, by or through our affiliates, and the indemnification and expense reimbursement provisions contained herein shall apply with equal force and effect to any such affiliates.

This Commitment Letter may be executed in multiple counterparts and by different parties hereto in separate counterparts, all of which, taken together, shall constitute an original. Delivery of an executed counterpart of a signature page to this Commitment Letter by facsimile transmission or other electronic transmission (in .pdf format) shall be effective as delivery of a manually executed counterpart hereof or thereof.

Please confirm that the foregoing is in accordance with your understanding by signing and returning to the Commitment Parties the enclosed copy of this Commitment Letter, together, if not previously executed and delivered, with the Fee Letter on or before 11:59 p.m. (New York time) on June 16, 2014, whereupon this Commitment Letter and the Fee Letter will become

binding agreements between us and you. If the Commitment Letter and Fee Letter have not been signed and returned as described in the preceding sentence by such date, this offer will terminate on such date.

[The remainder of this page intentionally left blank.]

We look forward to working with you on this transaction.

Very truly yours,

BANK OF AMERICA, N.A.,

by

/s/ Russ Bunting

Name: Russ Bunting

Title: Director

MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED,

by

/s/ Russ Bunting

Name: Russ Bunting

Title: Director

[Signature page to the Project Saturn Commitment Letter]

CITYGROUP GLOBAL MARKETS INC.,

by

/s/ Barbara R. Matas

Name: Barbara R. Matas

Title: Managing Director

[Signature page to the Project Saturn Commitment Letter]

Accepted and agreed as of the date first above written:

LEVEL 3 COMMUNICATIONS, INC.,

by

/s/ Sunit Patel

Name: Sunit Patel

Title: Chief Financial Officer

LEVEL 3 FINANCING, INC.,

by

/s/ Rafael Martinez-Chapman

Name: Rafael Martinez-Chapman

Title: Vice President and Treasurer

[Signature page to the Project Saturn Commitment Letter]

Project Saturn
\$2,400,000,000 Senior Secured Tranche B 2021 Term Loan Facility
Summary of Terms and Conditions

The Tranche B 2021 Term Facility described herein will be established as an “Additional Tranche” under (and as defined in) the Amended and Restated Credit Agreement dated as of October 4, 2013, among Level 3 Communications, Inc., Level 3 Financing, Inc., the Lenders party thereto and Merrill Lynch Capital Corporation, as Administrative Agent and Collateral Agent, as in effect on the date hereof (the “Existing Credit Agreement”), effected under Section 9.02(d) of the Existing Credit Agreement, and commitments in respect of and loans under the Tranche B 2021 Term Facility shall constitute a separate “Class” for all purposes of the Existing Credit Agreement. Capitalized terms used but not defined in this Annex I shall have the meanings assigned thereto in the Existing Credit Agreement or in the Commitment Letter to which this Annex I is attached, as applicable. Except as otherwise set forth below, the Tranche B 2021 Term Facility shall have the terms applicable to term loans issued under the Existing Credit Agreement.

<u>Borrower:</u>	Level 3 Financing, Inc., a Delaware corporation (the “ <u>Borrower</u> ”) that is a wholly-owned subsidiary of Level 3 Communications, Inc., a Delaware corporation (“ <u>Parent</u> ”).
<u>Administrative and Collateral Agent:</u>	Bank of America, N.A. will continue to act as the Administrative Agent and Collateral Agent under the Existing Credit Agreement.
<u>Joint Lead Arrangers and Joint Bookrunning Managers:</u>	Merrill Lynch, Pierce, Fenner & Smith Incorporated and Citigroup Global Markets Inc. will act as joint lead arrangers and joint bookrunning managers for the Tranche B 2021 Term Facility (in such capacity, the “ <u>Lead Arrangers</u> ”).
<u>Tranche B 2021 Term Lenders:</u>	A syndicate of financial institutions (the “ <u>Tranche B 2021 Term Lenders</u> ”) arranged by the Lead Arrangers in consultation with Parent and the Borrower.
<u>Tranche B 2021 Term Facility:</u>	A senior secured term loan facility in an aggregate principal amount of not more than (a) \$2,400,000,000 less (b) if any Transaction Securities are issued on or prior to the Closing Date, the excess, if any, of (i) the aggregate gross cash proceeds from the issuance of the Transaction Securities over (ii) \$600,000,000 (the “ <u>Tranche B 2021 Term Facility</u> ”). Loans under the Tranche B 2021 Term Facility (the “ <u>Tranche B 2021 Term Loans</u> ”) will be available in U.S. dollars.
<u>Transactions:</u>	Parent intends to enter into an agreement and plan of merger (together with all exhibits and schedules thereto, and all definitive documentation relating thereto, the “ <u>Acquisition Agreement</u> ”)

among tw telecom inc., a Delaware corporation (“Saturn”), Saturn Merger Sub 1, LLC, a Delaware limited liability company and a newly formed direct or indirect subsidiary of Parent (“Merger Sub 1”), Saturn Merger Sub 2, LLC, a Delaware limited liability company and a newly formed direct or indirect subsidiary of Parent (“Merger Sub 2”) and Parent. Pursuant to the Acquisition Agreement, Merger Sub 1 will merge with and into Saturn (“Merger 1”), with Saturn surviving as a Delaware corporation and a wholly owned direct or indirect subsidiary of Parent, and the holders of the equity interests in Saturn prior to such merger will receive consideration consisting of a combination of Parent common stock and cash as set forth in the Acquisition Agreement (the foregoing transactions are referred to herein as the “Acquisition”). Immediately after the consummation of Merger 1, Saturn will merge with and into Merger Sub 2 (“Merger 2”), with Merger Sub 2 surviving as a Delaware limited liability company and wholly owned direct or indirect subsidiary of Parent. Immediately after the consummation of Merger 2, Parent will contribute all of the equity interests of Merger Sub 2 to the Borrower, whereby Merger Sub 2 will remain a wholly owned direct or indirect subsidiary of the Borrower (the “Contribution”).

In connection with the Acquisition, (a) Saturn and its subsidiaries will repay or prepay all of their indebtedness for borrowed money, indebtedness evidenced by bonds, debentures, notes or other similar instruments and purchase money indebtedness, other than intercompany debt, capital leases, trade payables, indebtedness of Saturn and its subsidiaries permitted by the Acquisition Agreement to be incurred after the date hereof and to remain outstanding on the Closing Date and other limited indebtedness reasonably satisfactory to the Lead Arrangers (the “Existing Saturn Debt Repayment”), (b) the Borrower will obtain the Tranche B 2021 Term Facility, (c) the Borrower will either (i) issue senior unsecured notes in an aggregate principal amount of not more than \$600,000,000 (the “Senior Notes”) in a registered public offering or a Rule 144A offering or other private placement or (ii) if and to the extent that the Borrower does not issue \$600,000,000 in aggregate principal amount of the Senior Notes on or prior to the Closing Date (as defined below), on such date borrow not more than (A) \$600,000,000 less (B) the aggregate gross cash proceeds from the issuance of the Senior Notes or any other Transaction Securities in aggregate principal amount of loans under the Bridge Facility, (d) Parent will issue the common stock portion of the merger consideration and (e) Parent and the Borrower will pay the fees and expenses incurred in connection with the foregoing.

The Acquisition, the Existing Saturn Debt Repayment and the other transactions described under this heading or contemplated hereby are collectively referred to as the “Transactions”.

Availability:

The full amount of the Tranche B 2021 Term Facility may be drawn in a single drawing on the date on which the Acquisition is consummated (the “Closing Date”). Amounts borrowed under the Tranche B 2021 Term Facility that are repaid or prepaid may not be reborrowed.

Loan Proceeds Note; Saturn Loan Proceeds Note; Purpose:

On the Closing Date, (a) the Borrower will make a loan to Level 3 Communications, LLC, a Delaware corporation (“Level 3 LLC”), in an aggregate principal amount equal to the aggregate principal amount of the Tranche B 2021 Term Loans, and the Loan Proceeds Note evidencing certain indebtedness owed by Level 3 LLC to the Borrower will be amended, in the manner reasonably satisfactory to the Lead Arrangers, to increase the principal amount thereof by the amount of such loan, (b) Level 3 LLC will make a loan to Saturn in an aggregate principal amount equal to the amount required to finance the Existing Saturn Debt Repayment and payment of fees and expenses in connection with the foregoing, and Saturn will issue and deliver to Level 3 LLC an intercompany note, in form and substance reasonably satisfactory to the Lead Arrangers, evidencing such loan (the “Saturn Loan Proceeds Note”), (c) a portion of the proceeds of the Tranche B 2021 Term Loans and/or the Senior Notes (or, if applicable, the Bridge Facility) will be used, together with cash on hand of Parent and its subsidiaries and of Saturn and its subsidiaries, to pay the cash portion of the consideration under the Acquisition Agreement and (d) Parent and the Borrower shall pay fees and expenses relating to the Transactions. To finance the payments referred to in clauses (c) and (d) of the foregoing sentence, Level 3 LLC may use a portion of the proceeds of the loan referred to in clause (a) of the foregoing sentence to repay a portion of the Parent Intercompany Note.

Senior Notes Proceeds Note:

Upon the issuance of any Senior Notes or other Transaction Securities of the Borrower (or, with respect to any Senior Notes or other Transaction Securities of the Borrower issued prior to the Closing Date, on the Closing Date), the Borrower will make a loan to Level 3 LLC in an aggregate principal amount equal to the aggregate principal amount of the Senior Notes or such other Transaction Securities so issued in return for an intercompany demand note, in form and substance consistent with past practice,

evidencing such loan (each, a “ Senior Notes Proceeds Note ”).

The Parent Intercompany Note (as defined in the Existing Notes (as defined in the Existing Credit Agreement) of the Borrower) shall be subordinated in right of payment to the right of the Borrower to payment under any Senior Notes Proceeds Note on terms identical to the subordination of the Parent Intercompany Note to the proceeds notes (the “ Offering Proceeds Notes ”) issued in respect of the Existing Notes of the Borrower. Each Senior Notes Proceeds Note shall be subordinated in right of payment to the right of the Borrower to payment under the Loan Proceeds Note on terms identical to the subordination of the Offering Proceeds Notes to the Loan Proceeds Note.

Interest Rates:

The interest rates under the Tranche B 2021 Term Facility will be, at the option of the Borrower, (a) LIBO Rate plus 3.00% or (b) Alternate Base Rate plus 2.00%.

For purposes of the Tranche B 2021 Term Facility, “ Alternate Base Rate ” shall mean, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus 1/2 of 1.00% per annum and (c) the LIBO Rate from time to time for an interest period of one month plus 1.00% per annum.

The LIBO Rate shall be subject to a “floor” of 0.75-1.00%, and the Alternate Base Rate shall be subject to a “floor” of 1.75-2.00%.

The Borrower may select interest periods of one, two, three or six months for LIBO Rate borrowings.

Interest will be payable in arrears (a) in the case of LIBO Rate borrowings, at the end of each interest period and, in the case of any interest period longer than three months, at the end of each three months and (b) in the case of Alternate Base Rate borrowings, on March 31, June 30, September 30 and December 31 of each year and, in each case, upon repayment or prepayment of any Tranche B 2021 Term Loan on the amount repaid or prepaid.

Amounts not paid when due will bear interest (a) in the case of overdue principal, the applicable interest rate plus 2.00% per annum and (b) in the case of any other overdue amount, the interest rate applicable to Alternate Base Rate loans plus 2.00% per annum.

<u>Calculation of Interest:</u>	All interest will be computed on the basis of the actual number of days elapsed in a year of 365 days (or 366 days in a leap year) and shall be payable for the actual number of days elapsed.
<u>Upfront Fees/OID:</u>	0.50%.
<u>Cost and Yield Protection:</u>	As set forth in the Existing Credit Agreement.
<u>Maturity:</u>	Seven years from the Closing Date.
<u>Scheduled Amortization:</u>	None.
<u>Mandatory Prepayments:</u>	<p>As set forth in the Existing Credit Agreement, consisting of: (a) prepayments with 100% of Net Available Proceeds from Asset Dispositions not reinvested or applied to prepay Indebtedness, in each case as permitted under the Existing Credit Agreement, to the extent such Net Available Proceeds exceed \$10,000,000; (b) prepayments with 100% of any payment or prepayment of the Loan Proceeds Note; and (c) prepayments upon the occurrence of a Change of Control Triggering Event.</p> <p>Tranche B 2021 Term Loans will participate in the mandatory prepayments ratably with the other Classes of Loans outstanding under the Existing Credit Agreement.</p> <p>Mandatory prepayments will be made without premium or penalty, subject to reimbursement of the Tranche B 2021 Term Lenders' redeployment costs in the case of prepayment of any LIBOR loan other than on the last day of the interest period applicable thereto. Any Lender will be permitted, on the terms set forth in the Existing Credit Agreement, to decline a portion of any mandatory prepayment otherwise due to it.</p>
<u>Optional Prepayments:</u>	Optional prepayments, in whole or in part, of Tranche B 2021 Term Loans will be permitted at any time, without premium or penalty, in each case, subject to reimbursement of the Tranche B 2021 Term Lenders' redeployment costs in the case of prepayment of any LIBOR loan other than on the last day of the interest period applicable thereto; <u>provided</u> that in the event that all or any portion of the Tranche B 2021 Term Loans are repaid from the incurrence of bank indebtedness or repriced (or effectively refinanced) through any amendment of the Tranche B 2021 Term Facility such that the Weighted Average Yield thereof is less than the Weighted Average Yield applicable to the Tranche B 2021 Term Loans at the time of the initial borrowing thereof, each Tranche B 2021 Term

Lender will be paid a premium in an amount equal to 1.0% of the amount of such Tranche B 2021 Term Loans repaid or repriced (or effectively refinanced), if such repayment or repricing (or effective refinancing) occurs prior to the six-month anniversary of the Closing Date.

“Weighted Average Yield” means, with respect to any Tranche B 2021 Term Loan or other indebtedness, the weighted average yield to stated maturity of such Tranche B 2021 Term Loan or other indebtedness based on the interest rate or rates applicable thereto and giving effect to all upfront or similar fees or original issue discount payable with respect thereto and to any interest rate benchmark floor (with the Weighted Average Yield being deemed increased by the amount by which any such floor exceeds the applicable interest rate benchmark on the date of the determination), but excluding the effect of any arrangement, structuring, syndication or other fees payable in connection therewith that are not shared with all lenders or holders thereof. Determinations of the Weighted Average Yield of any Tranche B 2021 Term Loans or other indebtedness shall be made by the Administrative Agent in a manner determined by it to be consistent with accepted financial practice (but not with an assumed maturity of more than 4 years), and any such determination shall be conclusive.

Optional prepayments will be applied to the Tranche B 2021 Term Loans and any other Classes of Loans outstanding under the Existing Credit Agreement in the manner directed by the Borrower.

Guarantors:

The obligations under the Tranche B 2021 Term Facility will be guaranteed (a) on the Closing Date by (i) Parent, (ii) Broadwing, LLC, (iii) BTE Equipment, LLC, (iv) Level 3 Enhanced Services, LLC and (v) Level 3 International, Inc. and (b) subject to receipt of applicable regulatory approvals, by (i) Level 3 Communications, LLC (“Level 3 LLC”), (ii) TelCove Operations, LLC, (iii) Broadwing Communications, LLC, (iv) WilTel Communications, LLC, (v) Global Crossing Telecommunications, Inc., (vi) Saturn and each material (as determined in accordance with the Existing Credit Agreement) domestic subsidiary of Saturn, (vii) each other material (as determined in accordance with the Existing Credit Agreement) domestic subsidiary of Parent, and (viii) each subsidiary of Parent that guarantees or is required to guarantee the Existing Credit Agreement after the Closing Date. Each of the Guarantors of the Tranche B 2021 Term Facility is herein referred to as a “Tranche B 2021 Term Facility Guarantor”

and its guarantee is referred to herein as a “ Tranche B 2021 Term Facility Guarantee ”.

The Tranche B 2021 Term Facility Guarantee of any Tranche B 2021 Term Facility Guarantor will rank on a pari passu basis with the guarantee of such Guarantor of Loans of any other Class under the Existing Credit Agreement. Subject to receipt of regulatory approval with respect to guarantees by Tranche B 2021 Term Facility Guarantors that are Regulated Guarantor Subsidiaries, on and after the Closing Date, the Tranche B 2021 Term Facility Guarantors shall consist at all times of the same entities as are guarantors under the Existing Credit Agreement.

Security:

The obligations under the Tranche B 2021 Term Facility and the Tranche B 2021 Term Facility Guarantees will be secured (a) on the Closing Date by substantially all assets of (i) the Borrower (including pledges of the Loan Proceeds Note, the Bridge Loan Proceeds Note, the Saturn Loan Proceeds Note and any Senior Notes Proceeds Note) (ii) Parent, (iii) BTE Equipment, LLC, (iv) Level 3 Enhanced Services, LLC and (v) Level 3 International, Inc. and (b) subject to receipt of applicable regulatory approvals, by substantially all assets of (i) Broadwing, LLC, (ii) Level 3 LLC, (iii) TelCove Operations, LLC, (iv) Broadwing Communications, LLC, (v) WilTel Communications, LLC, (vi) Global Crossing Telecommunications, Inc., (vii) Saturn and each material (as determined in accordance with the Existing Credit Agreement) domestic subsidiary of Saturn, (viii) each other material (as determined in accordance with the Existing Credit Agreement) domestic subsidiary of Parent and (ix) each subsidiary of Parent whose assets secure or are required to secure the Existing Credit Agreement after the Closing Date. Notwithstanding the foregoing, the collateral for the Tranche B 2021 Term Facility and the Tranche B 2021 Term Facility Guarantees shall exclude assets of the type excluded by, and otherwise be subject to the limitations in respect of attachment and perfection set forth in, the Existing Credit Agreement and the related collateral documents.

Liens securing the Tranche B 2021 Term Facility and the Tranche B 2021 Term Facility Guarantees will be pari passu with liens securing Loans of any other Class under the Existing Credit Agreement. Subject to receipt of regulatory approval with respect to liens on the assets of Tranche B 2021 Term Facility Guarantors that are Regulated Grantor Subsidiaries, on and after the Closing Date, the Tranche B 2021 Term Facility and the Tranche B 2021 Term Facility Guarantees shall at all times be secured by the same assets as secure the Existing Credit Agreement.

Conditions Precedent to Borrowing:

Subject to the Documentation Principles and the Funds Certain Provisions, the making of the Tranche B 2021 Term Loans will be subject to (a) prior written notice of borrowing, (b) the accuracy of representations and warranties with respect to corporate existence, power and authority, the due authorization, execution, delivery and enforceability of the Loan Documents, the validity, priority and perfection of liens, solvency, PATRIOT ACT, anti-corruption laws and trade sanctions, no conflicts with organizational documents, no consent from governmental authorities (that has not been obtained) to the advance of the funds under the Facilities Documentation, Federal Reserve margin regulations and the Investment Company Act and (c) the conditions precedent set forth in Annex III to the Commitment Letter and the other conditions precedent set forth or referred to in Section 5 of the Commitment Letter.

Representations and Warranties:

Subject to the Documentation Principles and the Funds Certain Provisions, the same (subject to appropriate changes necessary to give effect to the Transactions) as those set forth in the Existing Credit Agreement, consisting of representations and warranties with respect to organization; powers; authorization; enforceability; governmental approvals; no conflicts; financial condition; no material adverse change; properties; litigation and environmental matters; compliance with laws and agreements; investment company status; taxes; ERISA; disclosure; subsidiaries; insurance; labor matters; intellectual property; security interests; FCC compliance; qualified credit facility; senior indebtedness; and solvency, and, in addition, PATRIOT Act, anti-corruption laws and trade sanctions.

Affirmative Covenants:

The same (subject to appropriate changes necessary to give effect to the Transactions) as those set forth to the Existing Credit Agreement, consisting of covenants with respect to financial statements and other information; notices of material events; information regarding collateral; existence; conduct of business; payment of taxes; maintenance of properties; insurance; casualty and condemnation; annual information meeting; compliance with laws; use of proceeds; guarantee and collateral requirement; further assurances; and guarantee permit condition and collateral permit condition.

Negative Covenants:

The same (subject to appropriate changes necessary to give effect to the Transactions) as those set forth in the Existing Credit Agreement, consisting of covenants with respect to limitations on consolidated debt; limitations on indebtedness of the Borrower and Borrower restricted subsidiaries; limitations on restricted

payments; limitations on dividend and other payment restrictions affecting restricted subsidiaries; limitations on liens; limitations on sales and leaseback transactions; limitations on asset dispositions; limitations on issuance and sales of capital stock of restricted subsidiaries; transactions with affiliates; limitations on designations of unrestricted subsidiaries; limitations on actions with respect to existing intercompany obligations and with respect to the Bridge Loan Proceeds Note, the Senior Notes Proceeds Notes and the Saturn Loan Proceeds Note; limitations on consolidation, merger, conveyance transfer or lease; and amendments to permitted first lien indebtedness and permitted first lien refinancing indebtedness.

Financial Covenants:

None.

Events of Default:

As set forth in the Existing Credit Agreement.

Assignments and Participations:

As set forth in the Existing Credit Agreement.

Waivers and Amendments:

As set forth in the Existing Credit Agreement.

Expenses and Indemnification:

As set forth in the Existing Credit Agreement.

Governing Law and Forum:

New York.

Counsel to the Lead Arrangers:

Cravath, Swaine & Moore LLP (and such local or regulatory counsel as may be selected by the Lead Arrangers).

Project Saturn
\$600,000,000 Senior Unsecured Bridge Facility
Summary of Terms and Conditions

Capitalized terms used but not defined in this Annex II-A shall have the meanings assigned thereto in the Commitment Letter to which this Annex II-A is attached.

<u>Borrower:</u>	Level 3 Financing, Inc., a Delaware corporation (the “ <u>Borrower</u> ”) that is a wholly-owned subsidiary of Level 3 Communications, Inc., a Delaware corporation (“ <u>Parent</u> ”).
<u>Administrative Agent:</u>	An affiliate of Citigroup Global Markets Inc. will act as the administrative agent under the Bridge Facility (as defined below) (in such capacity, the “ <u>Administrative Agent</u> ”).
<u>Joint Lead Arrangers and Joint Bookrunning Managers:</u>	Merrill Lynch, Pierce, Fenner & Smith Incorporated and Citigroup Global Markets Inc. will act as joint lead arrangers and joint bookrunning managers for the Bridge Facility (in such capacity, the “ <u>Lead Arrangers</u> ”).
<u>Bridge Lenders:</u>	A syndicate of financial institutions (the “ <u>Bridge Lenders</u> ”) arranged by the Lead Arrangers in consultation with Parent and the Borrower.
<u>Bridge Facility:</u>	A senior unsecured bridge facility in an aggregate principal amount of not more than (a) \$600,000,000 <u>minus</u> (b) the aggregate gross proceeds of (i) any Senior Notes or any other Transaction Securities issued on or prior to the Closing Date and (ii) any gross proceeds of the Tranche B 2021 Term Facility in excess of \$2,400,000,000 (the “ <u>Bridge Facility</u> ”). Loans under the Bridge Facility (the “ <u>Bridge Loans</u> ”) will be available in U.S. dollars.
<u>Availability:</u>	The full amount of the Bridge Facility may be drawn in a single drawing on the Closing Date. Amounts borrowed under the Bridge Facility that are repaid or prepaid may not be reborrowed
<u>Bridge Loan Proceeds Note; Saturn Loan Proceeds Note; Purpose:</u>	On the Closing Date, (a) the Borrower will make a loan to Level 3 LLC in an aggregate principal amount equal to the aggregate principal amount of the Bridge Loans in return for an intercompany demand note, in form and substance consistent with past practice (the “ <u>Bridge Loan Proceeds Note</u> ”), in a principal amount equal to the aggregate principal amount of the Bridge Loans, (b) Level 3 LLC will make a loan to Saturn in an aggregate principal amount equal to the amount required to finance the Existing Saturn Debt Repayment and payment of fees and expenses in connection with the foregoing, and Saturn will issue and deliver to Level 3 LLC the Saturn Loan Proceeds Note, (c) a

portion of the proceeds of the Tranche B 2021 Term Loans and/or the Bridge Facility (or, if applicable, the Senior Notes) will be used, together with cash on hand of Parent and its subsidiaries and of Saturn and its subsidiaries, to pay the cash portion of the consideration under the Acquisition Agreement and (d) Parent and the Borrower shall pay fees and expenses relating to the Transactions (and, to finance such payment and the payments pursuant to clause (c), Level 3 LLC may use a portion of the loan from the Borrower to repay a portion of the Parent Intercompany Note).

The Parent Intercompany Note shall be subordinated in right of payment to the right of the Borrower to payment under the Bridge Loan Proceeds Note on terms identical to the subordination of the Parent Intercompany Note to the Offering Proceeds Notes. The Bridge Loan Proceeds Note shall be subordinated in right of payment to the right of the Borrower to payment under the Loan Proceeds Note on terms identical to the subordination of the Offering Proceeds Notes to the Loan Proceeds Note.

Interest Rate:

Until the earlier of (a) the first anniversary of the Closing Date and (b) a Demand Failure Event (as defined in the Fee Letter) (such earlier date being referred to as the “Conversion Date”), the Bridge Loans will bear interest at a floating rate, reset quarterly (the “Interest Rate”), as follows: (i) for the first 90 days after the Closing Date, the Bridge Loans will bear interest at a rate per annum equal to the LIBO Rate for a three-month interest period (subject to a LIBO Rate “floor” of 1.00% per annum) plus 425 basis points (collectively, the “Applicable Rate”) and (ii) thereafter, interest on the Bridge Loans will be payable at a floating rate per annum equal to the greater of the following, reset at the beginning of each 90-days period: (A) the Applicable Rate as of such reset date and (B) the interest rate (excluding the Spread, if any) applicable during the prior 90-day period, in each case plus the Spread. The “Spread” will initially be 50 basis points and will increase by an additional 50 basis points every 90 days thereafter. Notwithstanding the foregoing, at no time will the Interest Rate on the Bridge Loans exceed the Total Cap (as defined in the Fee Letter) (plus default interest, if any).

From and after the Conversion Date, the Bridge Loans will bear interest at a fixed rate per annum equal to the Total Cap (plus default interest, if any).

Prior to the Conversion Date, interest will be payable at the end of each interest period, on the date of any prepayment or repayment of the Bridge Loans on the amount prepaid or repaid and on the

Conversion Date. From and after the Conversion Date, interest will be payable quarterly in arrears and on the date of any prepayment or repayment of the Bridge Loans on the amount prepaid or repaid.

Any amount not paid when due shall bear interest at a rate equal to the Interest Rate plus 200 basis points. In no event shall the interest rate in effect at any time exceed the highest lawful rate permitted under applicable law.

Calculation of Interest:

All interest will be computed on the basis of the actual number of days elapsed in a year of 365 days (or 366 days in a leap year) and shall be payable for the actual number of days elapsed.

Maturity:

12 months from the Closing Date (the “Bridge Loan Maturity Date”).

Mandatory Prepayments:

The Borrower will prepay the Bridge Loans, without premium or penalty, together with accrued interest to the prepayment date, with any of the following: (a) the net cash proceeds from the issuance of any debt securities of Parent or any of its subsidiaries; (b) the net cash proceeds from any capital contribution or the sale or issuance by Parent or any of its subsidiaries of any capital stock or any securities convertible into or exchangeable for capital stock or any warrants, rights or options to acquire capital stock (other than issuances to employees as compensation); and (c) subject to prepayment requirements under the Existing Credit Agreement, the net cash proceeds from insurance proceeds or asset sales by Parent or any of its subsidiaries. Notwithstanding the foregoing, the Borrower only will be required to apply the portion of any net proceeds described in the immediately preceding sentence to prepay the Bridge Loans that may be so applied in compliance with the Existing Credit Agreement, the Existing Notes and the indentures governing the Existing Notes.

Any proceeds from the sale of Permanent Securities funded or purchased by an Initial Lender or one or more of its affiliates will be applied, first, to refinance the Bridge Loans held at that time by such Initial Lender, and second, in accordance with the pro rata provisions otherwise applicable to prepayments.

Optional Prepayment:

The Bridge Loans may be prepaid, without premium or penalty, in whole or in part, upon written notice at the option of the Borrower, at any time, together with accrued interest to the prepayment date.

Guarantors:

The obligations under the Bridge Loans will be guaranteed (a) on the Closing Date by Parent and (b) subject to receipt of applicable regulatory approvals, by (i) Level 3 Communications, LLC (“Level 3”).

LLC”) and (ii) each other subsidiary of Parent that guarantees any of the Existing Notes of the Borrower. Each of the Guarantors of the Bridge Facility is herein referred to as a “Bridge Facility Guarantor” and its guarantee is referred to herein as a “Bridge Facility Guarantee”.

Parent and Level 3 LLC currently are the only guarantors of the Existing Notes of the Borrower. Level 3 LLC is a Regulated Guarantor Subsidiary and, accordingly, regulatory approvals will be required for Level 3 LLC to guarantee the Bridge Facility.

Ranking:

The Bridge Loans will be unsecured senior obligations of the Borrower, ranking *pari passu* with or senior to all other unsecured obligations of the Borrower, including obligations under the Existing Credit Agreement and the Existing Notes of the Borrower. The Bridge Facility Guarantees will be unsecured senior obligations of each Bridge Facility Guarantor, ranking *pari passu* with or senior to all other unsecured obligations of such Bridge Facility Guarantor, including the guarantee of the obligations under the Existing Credit Agreement and the Existing Notes of the Borrower by such Bridge Facility Guarantor.

Change of Control:

In the event of a Change of Control Triggering Event (as defined in the indenture governing the Borrower’s 6.125% Senior Notes due 2021 (the “2021 Notes”)), each Bridge Lender will have the right to require the Borrower, and the Borrower must offer, to prepay the outstanding principal amount of the Bridge Loans plus accrued and unpaid interest thereon to the date of prepayment plus a prepayment fee equal to 1% of such outstanding principal amount. Prior to making any such offer, the Borrower will, within 30 days of the Change of Control Triggering Event, repay all obligations under the Existing Credit Agreement or obtain any required consent of the Lenders under the Existing Credit Agreement to make such prepayment of the Bridge Loans.

Conversion into Rollover Loans:

If the Bridge Loans have not been previously prepaid in full for cash on or prior to the Bridge Loan Maturity Date, the principal amount of the Bridge Loans outstanding on the Bridge Loan Maturity Date shall, subject to the conditions precedent set forth in Annex II-B to the Commitment Letter, be converted into unsecured senior rollover loans with a maturity of seven years from the Bridge Loan Maturity Date (the “Rollover Loans”) and otherwise having the terms set forth in Annex II-B to the Commitment Letter. On or after the Bridge Loan Maturity Date, each Bridge Lender will have the right to exchange the outstanding Rollover Loans held by it for unsecured senior exchange

notes (the “Exchange Notes”) of the Borrower having the terms set forth in Annex II-C to the Commitment Letter.

The Bridge Loans, the Rollover Loans, the Exchange Notes and the respective guarantees thereof shall be *pari passu* for all purposes.

Conditions Precedent:

Subject to the Documentation Principles and the Funds Certain Provisions, the making of the Bridge Loans will be subject to (a) prior written notice of borrowing, (b) the accuracy of representations and warranties with respect to corporate existence, power and authority, the due authorization, execution, delivery and enforceability of the Loan Documents, the validity, priority and perfection of liens, solvency, PATRIOT ACT, anti-corruption laws and trade sanctions, no conflicts with organizational documents, no consent from governmental authorities (that has not been obtained) to the advance of the funds under the Facilities Documentation, Federal Reserve margin regulations and the Investment Company Act and (c) the conditions precedent set forth in Annex III to the Commitment Letter and the other conditions precedent set forth or referred to in Section 5 of the Commitment Letter.

Bridge Facility
Documentation:

Subject to the Funds Certain Provisions and the Documentation Principles, the Facilities Documentation for the Bridge Facility shall contain those terms and conditions set forth in the Commitment Letter, and shall otherwise contain representations and warranties, covenants, events of default, cost and yield protection and waiver and consent provisions substantially consistent with the Tranche B 2021 Term Facility, in each case, subject to (a) changes to add customary securities demand and cooperation covenants, including a covenant for the Borrower to use its best efforts to refinance the Bridge Facility with the proceeds of the Permanent Securities as promptly as practicable following the Closing Date, and (b) changes (taking into account reasonable business requirements of Parent and its subsidiaries) to make more restrictive the covenants in the Tranche B 2021 Term Facility related to (i) restricted payments, including, to the greatest extent possible under the “Limitation on Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries” covenant set forth in the indentures governing any of the Existing Notes, the ability of the Borrower to pay dividends or otherwise transfer property or assets to Parent prior to the Bridge Loan Maturity Date (other than to pay interest and principal in respect of existing indebtedness as it becomes due and incur related expenses) and (ii) investments.

Assignments and
Participations:

The Bridge Lenders shall have the right to assign their interest in the Bridge Loans in whole or in part in compliance with applicable law to

their affiliates (other than natural persons), approved funds or one or more banks or other financial institutions that are “Eligible Assignees” (to be defined), subject to delivery of notice of such assignment to the Administrative Agent. The Bridge Lenders will be permitted to sell participations with voting rights limited to significant matters such as changes in amount, interest rate and maturity date.

Expenses and Indemnification:

In addition to those out-of-pocket expenses reimbursable under the Commitment Letter, Parent or the Borrower will pay all reasonable costs and expenses of the Lead Arrangers and the Administrative Agent associated with the preparation, due diligence, administration, syndication and enforcement of all loan documentation, including the legal fees and expenses of counsel to the Lead Arrangers, regardless of whether or not the Bridge Facility is closed. Parent or the Borrower will also pay the expenses of each Bridge Lender in connection with the enforcement of any of the loan documentation related to the Bridge Facility.

Parent and the Borrower will jointly and severally indemnify each of the Lead Arrangers, the Administrative Agent and the Bridge Lenders, and each Related Party of any of the foregoing, and hold them harmless from and against all costs, expenses (including reasonable fees, disbursements and other charges of counsel) and liabilities arising out of or relating to any litigation or other proceeding (regardless of whether the Lead Arrangers, the Administrative Agent or any Bridge Lender is a party thereto) that relates to the Transactions or any transactions related thereto, except to the extent determined by a final judgment of a court of competent jurisdiction to have arisen solely from such person’s gross negligence or willful misconduct.

Governing Law and Forum:

New York.

Counsel for the Lead Arrangers:

Cravath, Swaine & Moore LLP (and such local or regulatory counsel as may be selected by the Lead Arrangers).

Fees:

As provided in the Fee Letter.

Project Saturn
\$600,000,000 Senior Unsecured Rollover Facility
Summary of Terms and Conditions

Capitalized terms used but not defined in this Annex II-B shall have the meanings assigned thereto in the Commitment Letter to which this Annex II-B is attached.

<u>Borrower:</u>	Level 3 Financing, Inc., a Delaware corporation (the “ <u>Borrower</u> ”) that is a wholly-owned subsidiary of Level 3 Communications, Inc., a Delaware corporation (“ <u>Parent</u> ”).
<u>Rollover Facility:</u>	A senior unsecured rollover facility in an initial principal amount equal to 100% of the outstanding principal amount of the Bridge Loans on the Bridge Loan Maturity Date (the “ <u>Rollover Facility</u> ”). Loans under the Rollover Facility (the “ <u>Rollover Loans</u> ”) will be available in U.S. dollars. Subject to the conditions precedent set forth below, the Rollover Facility will be available to the Borrower to refinance the Bridge Loans on the Bridge Loan Maturity Date. The Rollover Facility will be governed by the definitive documents for the Bridge Facility and, except as set forth below, shall have the same terms as the Bridge Facility (including with respect to Optional Prepayments).
<u>Interest Rate:</u>	<p>The Rollover Loans shall bear interest at a fixed rate per annum equal to the interest borne by the Bridge Loans on the day immediately preceding the Bridge Loan Maturity Date.</p> <p>Any amount not paid when due shall bear interest at a rate equal to the interest rate referred to above plus 200 basis points. In no event shall the interest rate in effect at any time exceed the highest lawful rate permitted under applicable law.</p>
<u>Calculation of Interest:</u>	All interest will be computed on the basis of the actual number of days elapsed in a year of 365 days (or 366 days in a leap year) and shall be payable for the actual number of days elapsed
<u>Maturity:</u>	Seven years from the Bridge Loan Maturity Date.
<u>Guarantors:</u>	Same as under the Bridge Facility.

<u>Ranking:</u>	Same as the Bridge Loans.
<u>Conditions Precedent to Rollover:</u>	<p>The ability of the Borrower to refinance any Bridge Loans with Rollover Loans is subject to the following conditions being satisfied:</p> <ul style="list-style-type: none"> (a) at the time of any such refinancing, there shall exist no payment or bankruptcy Event of Default; (b) all fees due to the Lead Arrangers and the Initial Bridge Lenders shall have been paid in full; (c) the Bridge Lenders shall have received promissory notes evidencing the Rollover Loans (if requested) and such other documentation as shall be set forth in the loan documents; and (d) no order, decree, injunction or judgment enjoining any such refinancing shall be in effect.
<u>Assignments and Participations:</u>	The Bridge Lenders shall have the right to assign their interest in any Rollover Loans in whole or in part in compliance with applicable law to their affiliates (other than natural persons), approved funds or one or more banks or other financial institutions that are “Eligible Assignees” (to be defined), subject to delivery of notice of such assignment to the Administrative Agent. The Bridge Lenders will be permitted to sell participations with voting rights limited to significant matters such as changes in amount, interest rate and maturity date.
<u>Rollover Covenants:</u>	From and after the Bridge Loan Maturity Date, the covenants applicable to the Rollover Loans will conform to those applicable to the 2021 Notes.
<u>Governing Law and Forum:</u>	New York.
<u>Expenses and Indemnification:</u>	Same as the Bridge Facility.

Fees: As provided in the Fee Letter.

Project Saturn
\$600,000,000 Senior Unsecured Exchange Notes
Summary of Terms and Conditions

Capitalized terms used but not defined in this Annex II-C shall have the meanings assigned thereto in the Commitment Letter to which this Annex II-C is attached.

<u>Issuer:</u>	Level 3 Financing, Inc., a Delaware corporation (in its capacity as issuer, the “ <u>Issuer</u> ”) that is a wholly-owned subsidiary of Level 3 Communications, Inc., a Delaware corporation (“ <u>Parent</u> ”).
<u>Exchange Notes:</u>	At any time on or after the Bridge Loan Maturity Date, the Rollover Loans due to the Bridge Lenders holding not less than \$10,000,000 of the outstanding Rollover Loans may, at the option of such Bridge Lenders, be exchanged for an equal principal amount of Exchange Notes. The Issuer will issue the Exchange Notes under an indenture that complies with the Trust Indenture Act of 1939, as amended (the “ <u>Indenture</u> ”). The Issuer will appoint a trustee reasonably acceptable to the holders of the Exchange Notes. The Exchange Notes and the Indenture will be fully executed and deposited into escrow at the closing of the Bridge Loans. The Indenture will be in substantially the form attached as an exhibit to the definitive agreement for the Bridge Facility. The Indenture will include provisions substantially similar to those in the indenture for the 2021 Notes. Except as expressly set forth in this Annex II-C, the Exchange Notes shall have the same terms as the Rollover Loans.
<u>Maturity:</u>	Seven years from the Bridge Loan Maturity Date.
<u>Interest Rate:</u>	<p>The Exchange Notes shall bear interest at a fixed rate per annum equal to the interest borne by the Bridge Loans on the day immediately preceding the Bridge Loan Maturity Date (plus the Special Interest (as defined below), if any).</p> <p>Any amount not paid when due shall bear interest at a rate equal to the interest rate referred to above plus 200 basis points. In no event shall the interest rate in effect at any time exceed the highest lawful rate permitted under applicable law.</p> <p>Interest on the Exchange Notes will be calculated on the basis of a 360-day year of 12 30-day months, and will be payable semi-annually in arrears.</p>

Optional Redemption:

The Exchange Notes will not be redeemable at the option of the Issuer prior to the third anniversary of the Closing Date (subject to a 35% equity clawback until the third anniversary of the Closing Date and a customary make-whole redemption provision at the treasury rate plus 0.50%) and will be redeemable (a) on or after the third anniversary of the Closing Date but prior to the fourth anniversary of the Closing Date at par plus accrued interest plus a premium equal to 75% of the coupon, (b) on or after the fourth anniversary of the Closing Date but prior to the fifth anniversary of the Closing Date at par plus accrued interest plus a premium equal to 50% of the coupon, (c) on or after the fifth anniversary of the Closing Date but prior to the sixth anniversary of the Closing Date at par plus accrued interest plus a premium equal to 25% of the coupon and (d) on or after the sixth anniversary of the Closing Date at par plus accrued interest.

Mandatory Offer to Repurchase:

Substantially consistent with the indenture for the 2021 Notes.

Guarantors:

Same as under as the Bridge Facility.

Ranking:

Same as the Bridge Loans.

Registration Rights:

The Issuer shall file within 180 days after the date of the first issuance of Exchange Notes (the “Issue Date”) and will use its commercially reasonable efforts to cause to become effective as soon thereafter as practicable, a registration statement (the “Exchange Offer Registration Statement”) relating to an exchange offer (the “Registered Exchange Offer”) whereby Parent, the Issuer and the Bridge Facility Guarantors will offer registered notes having terms identical to the Exchange Notes in exchange for all outstanding Exchange Notes.

In the event that the Exchange Offer Registration Statement is not declared effective within 270 days following the Issue Date, or the Registered Exchange Offer is not consummated within the later of (a) 300 days following the Issue Date and (b) 30 business days following the initial effectiveness date of the Exchange Offer Registration Statement, the Issuer shall (i) as promptly as practicable, file a shelf registration statement (the “Shelf Registration Statement”) covering resales of the Exchange Notes, (ii) use commercially reasonable efforts to cause the Shelf

Registration Statement to be declared effective under the Securities Act and (iii) use commercially reasonable efforts to keep the Shelf Registration Statement effective until two years after its effective date.

If (a) on or prior to 180 days after the Issue Date, neither the Exchange Offer Registration Statement nor the Shelf Registration Statement has been filed with the Securities and Exchange Commission, (b) on or prior to 270 days after the Issue Date, neither the Exchange Offer Registration Statement nor the Shelf Registration Statement has been declared effective, (c) on or prior to the later of (i) 300 days after the Issue Date and (ii) 30 business days after the initial effectiveness date of the Exchange Offer Registration Statement, neither the Registered Exchange Offer has been consummated nor the Shelf Registration Statement has been declared effective, or (d) after either the Exchange Offer Registration Statement or the Shelf Registration Statement has been declared effective, such Registration Statement thereafter ceases to be effective or usable (subject to certain expectations) in connection with resales of the Exchange Notes in accordance with and during the periods specified in the Registration Agreement (each such event referred to in clauses (a) through (d), a “Registration Default”), interest (“Special Interest”) will accrue on the principal amount of the Exchange Notes (in addition to the stated interest on the Exchange Notes) from and including the date on which any such Registration Default shall occur to but excluding the date on which all Registration Defaults have been cured. Special Interest will accrue at a rate of 0.50% per annum during the 90-day period immediately following the occurrence of such Registration Default and shall increase by 0.25% per annum at the end of each subsequent 90-day period, but in no event shall such rate exceed 1.00% per annum.

Governing Law and Forum:

New York.

Annex II-C-3

Project Saturn
\$2,400,000,000 Senior Secured Tranche B 2021 Term Loan Facility
\$600,000,000 Senior Unsecured Bridge Facility
Summary of Additional Conditions Precedent

The availability of the Facilities shall be subject to the satisfaction or waiver of the following additional conditions precedent. Capitalized terms used but not defined in this Annex III shall have the meanings assigned thereto in the Commitment Letter to which this Annex III is attached.

1. Acquisition. The Acquisition shall have been consummated, or substantially concurrently with the borrowing under the Facilities shall be consummated, in accordance with the Acquisition Agreement; provided that, without the prior consent of the Lead Arrangers, no provision of the Acquisition Agreement shall have been amended, supplemented or otherwise modified, and no consent thereunder shall have been given by Parent, and no provision thereof shall have been waived by Parent, in each case in a manner that is material and adverse to the interests of the Lenders. The Specified Acquisition Agreement Representations shall be true and correct in all material respects. Merger 2 and the Contribution shall have been consummated, or substantially concurrently with the borrowing under the Facilities shall be consummated.
 2. Existing Saturn Debt Repayment. Saturn and its subsidiaries shall have consummated, or substantially concurrently with the borrowing under the Facilities shall consummate (or arrangements therefor reasonably satisfactory to the Lead Arrangers shall have been made, including defeasance of any bond debt or other satisfaction and discharge of bond debt that has been irrevocably called for redemption, but not yet redeemed, so long as cash in an amount sufficient to effect such defeasance or satisfaction and discharge shall have been irrevocably deposited with the trustee for such bond debt and Saturn's and its subsidiaries' obligations under the indentures governing such bond debt shall be deemed to be discharged on the Closing Date pursuant to the terms of the applicable indentures), the Existing Saturn Debt Repayment, and all commitments and all liens and guarantees relating thereto shall have been, or substantially concurrently with the borrowing under the Facilities shall be, discharged, terminated or released. After giving effect to the Transactions, Saturn and its subsidiaries shall have no indebtedness for borrowed money, indebtedness evidenced by bonds, debentures, notes or other similar instruments or purchase money indebtedness, other than intercompany debt, capital leases, trade payables, indebtedness of Saturn and its subsidiaries permitted by the Acquisition Agreement to be incurred after the date hereof and to remain outstanding on the Closing Date and other limited indebtedness reasonably agreed upon by Parent and the Lead Arrangers.
 3. No Conflicts. The incurrence of indebtedness under the Facilities, including the liens and guarantees provided in connection therewith as set forth in the Commitment Letter, and the consummation of the other Transactions, will not result in a default or event of default under the Existing Credit Agreement, the Existing Notes and the indentures governing the Existing Notes and the Lead Arrangers shall have received a usual and customary no conflicts opinion (consistent with the form delivered in connection with the Existing Credit Agreement) in respect of the Existing Credit Agreement, the Existing Notes and the indentures governing the Existing
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Notes and a certificate of the chief financial officer of Parent certifying as to the methodology and details of calculation of such incurrence as evidence of the foregoing showing compliance.

4. Financial Statements. Parent and Saturn shall have made all annual and quarterly filings required to be made by them pursuant to the Securities and Exchange Act of 1934, as amended, and the Lead Arrangers shall have received (a) audited consolidated balance sheets and related consolidated statements of operations, stockholders' equity and cash flows of each of Parent and Saturn for each of the three fiscal years most recently ended at least 90 days prior to the Closing Date, which shall be prepared in accordance with U.S. GAAP, (b) unaudited consolidated balance sheets and related consolidated statements of operations, stockholders' equity and cash flows of each of Parent and Saturn for each subsequent fiscal quarter ended at least 45 days prior to the Closing Date, which shall be prepared in accordance with U.S. GAAP, and (c) a pro forma consolidated balance sheet and related pro forma consolidated statement of operations of Parent as of the end of the most recently ended fiscal quarter for which financial statements have been delivered pursuant to clause (a) and (b) above and for the four consecutive fiscal quarters then ended, prepared after giving effect to the Transactions and the other transactions contemplated hereby as if they had occurred as of the last day thereof (in each case of such balance sheet) or at the beginning of the four consecutive fiscal quarter period then ended (in the case of such statement of operations), in each case meeting the requirements of Regulation S-X for Form S-1 registration statements (but excluding information required by Rule 3-10 under Regulation S-X).

5. Guarantee and Collateral Matters. Subject to the Documentation Principles, the Lead Arrangers shall have received UCC, tax and judgment lien searches with respect to the Borrower, Parent and each Tranche B 2021 Term Facility Guarantor and each Bridge Facility Guarantor. Within fifteen business days of the date of the Acquisition Agreement (provided that, in the case of Saturn, to the extent that the information necessary to complete such filings is not then reasonably available, Saturn shall make such filings as soon as reasonably practicable thereafter upon such information becoming available), Parent and Saturn shall have made all filings required with respect to any regulatory approvals necessary to consummate borrowings under the Tranche B 2021 Term Loan Facility and the Bridge Facility, in each case in the amounts contemplated by the Commitment Letter, including to provide a Tranche B 2021 Term Facility Guarantee by each Tranche B 2021 Term Facility Guarantor, a Bridge Facility Guarantee by each Bridge Facility Guarantor and collateral with respect to the Tranche B 2021 Term Loan Facility by each Tranche B 2021 Term Facility Guarantor. The Tranche B 2021 Term Facility Guarantees (in the case of the Tranche B 2021 Term Facility) and the Bridge Facility Guarantees (in the case of the Bridge Facility) shall have been executed and be in full force and effect (and all material governmental authorizations and consents required in order for any regulated subsidiary of Parent or Saturn that is required to provide a Tranche B 2021 Term Facility Guarantee or a Bridge Facility Guarantee, as the case may be, shall have been obtained and shall be in full force and effect); provided that, with respect to any Tranche B 2021 Term Facility Guarantee or any Bridge Facility Guarantee, in each case, by any entity that is a Regulated Guarantor Subsidiary as defined in the Existing Credit Agreement (a “Regulated Entity”), if Parent and the Borrower shall have endeavored, and caused each Regulated Entity to have endeavored (or, in the case of Saturn or any subsidiary thereof, used commercially reasonable efforts to cause it to endeavor), in good faith using commercially reasonable efforts to cause such authorizations and consents to be obtained prior to the Closing Date, but such

authorizations and consents for a Regulated Entity have not been obtained, then the guarantees by such entity (and related governmental authorizations and consents) shall not constitute a condition precedent to borrowing under the Facilities but Parent, the Borrower and Saturn shall continue (and the Facilities Documentation shall require Parent, the Borrower and Saturn to so continue) to endeavor, and cause each Regulated Entity to continue to endeavor, in good faith using commercially reasonable efforts to cause such approvals to be obtained by the earliest practicable date. For purposes of the immediately preceding sentence, the requirement that Parent, the Borrower, Saturn or any Regulated Entity use “commercially reasonable efforts” shall not be deemed to require it to make material payments in excess of normal fees and costs to or at the direction of governmental authorities or to change the manner in which it conducts its business in any respect that the management of Parent (or, prior to the Closing Date, of Saturn, as applicable) shall determine in good faith to be adverse or materially burdensome. All documents and instruments required to create and perfect the pledges of, and security interests and mortgages in, the collateral as set forth in Annex I to the Commitment Letter shall have been executed and delivered and, if applicable, be in proper form for filing; provided that, except with respect to the creation and perfection of security interests in the pledged equity interests of the domestic subsidiaries of Parent or Saturn, as the case may be, and other assets a lien on which may be perfected by the filing of a financing statement under the Uniform Commercial Code, to the extent the security interest in any collateral is not provided or perfected on the Closing Date after Parent’s use of commercially reasonable efforts to do so, the delivery or perfection thereof shall not constitute a condition precedent to the borrowing under the Facilities but shall be required to be accomplished as promptly as practicable after the Closing Date (and in any event no later than the date to be mutually agreed upon by Parent and the Lead Arrangers); provided further that, with respect to any pledge, security interest or mortgage of assets of a Regulated Grantor Subsidiary requiring regulatory authorization or consent, if Parent and the Borrower shall have endeavored, and caused each Regulated Grantor Subsidiary to have endeavored (or, in the case of Saturn or any subsidiary thereof, used commercially reasonable efforts to cause it to endeavor), in good faith using commercially reasonable efforts to cause such regulatory authorization or consent to be obtained by the Closing Date, but such authorization or consent has not been obtained, then the pledge of, and security interest and mortgage in, the assets for which the required authorization or consent has not been obtained shall not constitute a condition precedent to borrowing under the Facilities but Parent, the Borrower and Saturn shall continue to endeavor, and cause each Regulated Grantor Subsidiary to continue to endeavor, in good faith using commercially reasonable efforts to cause such authorization or consent to be obtained by the earliest practicable date.

6. Customary Closing Documents. Subject to the Funds Certain Provisions and the Documentation Principles, the Lead Arrangers shall have received, in each case in form and substance reasonably satisfactory to them: (a) customary legal opinions, corporate records, evidence of authority and documents from public officials, (b) customary secretary’s and officer’s certificates, (c) customary perfection certificate, (d) customary evidence of insurance and (e) a solvency certificate from the chief financial officer of Parent in substantially the form attached as Exhibit A to this Annex III. The Lead Arrangers will have received at least 10 days prior to the Closing Date all documentation and other information required by bank regulatory authorities under applicable “know-your-customer” and anti-money laundering rules and regulations, including the Patriot Act, that is requested at least 15 days prior to the Closing Date.

7. Confidential Information Memorandum. The Lead Arrangers shall have received from Parent and the Borrower all information customarily provided by a borrower for inclusion in a Confidential Information Memorandum (including all the financial statements satisfying the requirements of paragraph 4 above) (the “Required Bank Information”) not later than 20 calendar days prior to the Closing Date; and the Lead Arrangers shall have been afforded a period (the “Marketing Period”) of at least 20 consecutive calendar days (ending on the business day immediately preceding the Closing Date) following receipt of the Required Bank Information to syndicate the Facilities; provided that the Marketing Period shall (a) exclude the dates July 3, 2014, and July 4, 2014, (b) end on or prior to August 15, 2014, or begin on or after September 2, 2014, (c) exclude the dates November 24, 2014, through November 28, 2014, and (d) end on or prior to December 19, 2014, or begin on or after January 5, 2015; provided that if the Borrower in good faith reasonably believes that it and Parent have delivered the Required Bank Information, the Borrower may (but shall not be obligated to) deliver to the Lead Arrangers written notice to that effect (stating when it believes such delivery has been completed), in which case the Required Bank Information shall be deemed to have been delivered on the date of such notice, unless the Lead Arrangers in good faith reasonably believe that Parent and the Borrower have not completed such delivery and, within three business days after their receipt of such notice from the Borrower, the Lead Arrangers deliver a written notice to the Borrower to that effect (stating with specificity the portion or portions of the Required Bank Information that the Lead Arrangers believe they have not yet received or are not complete or sufficient), in which case the Required Bank Information shall be deemed to have been delivered immediately upon the delivery by Parent and the Borrower of information and materials reasonably addressing the points contained in the notice.

8. Offering Document. In the case of the Bridge Facility, Parent and the Borrower shall have engaged one or more investment banks satisfactory to the Lead Arrangers (collectively, the “Investment Bank”) to sell or place the Senior Notes and debt securities substantially similar to the Senior Notes that will be used to replace or refinance the Bridge Loans (the “Permanent Securities”) and shall ensure that (a) the Investment Bank shall have received not later than the earlier of (i) 240 days after the date of the Commitment Letter to which this Annex III is attached and (ii) 20 calendar days prior to the Closing Date a complete printed preliminary prospectus or preliminary offering memorandum or preliminary private placement memorandum suitable for use in a customary high-yield road show relating to the issuance of the Senior Notes (including all audited financial statements, all unaudited financial statements (which shall have been reviewed by the independent registered public accounting firm for Parent or Saturn, as the case may be, as provided in Statement on Auditing Standards No. 100) and all appropriate pro forma financial statements prepared in accordance with U.S. GAAP and prepared in accordance with Regulation S-X under the Securities Act of 1933, as amended, and all other data (including selected financial data) that the Securities and Exchange Commission would require in a registered offering of such securities (other than Rule 3-09, Rule 3-10 or Rule 3-16 of Regulation S-X, Rule 4.02(b) of Regulation S-K and other customary exceptions) or that would be necessary for the Investment Bank to receive customary “comfort” (including “negative assurance” comfort) from an independent registered public accounting firm in connection with such offering (the “Required Bond Information”); provided that such preliminary prospectus, preliminary offering memorandum or preliminary private placement memorandum shall not be required to contain a description of notes section or other information customarily provided by the Investment Bank; provided further that if the Borrower in good faith

reasonably believes that it has delivered the Required Bond Information, the Borrower may (but shall not be obligated to) deliver to the Lead Arrangers a written notice to that effect (stating when it believes it completed such delivery), in which case the Required Bond Information shall be deemed to have been delivered on the date of such notice, unless the Lead Arrangers in good faith reasonably believe that the Borrower has not completed such delivery and, within three business days after their receipt of such notice from Borrower, the Lead Arrangers deliver a written notice to the Borrower to that effect (stating with specificity the portion or portions of the Required Bond Information that the Lead Arrangers believe they have not yet received or are not complete or sufficient), in which case the Required Bond Information shall be deemed to have been delivered immediately upon the delivery by the Borrower of information and materials reasonably addressing the points contained in the notice, (b) upon delivery of the material described in clause (a), customary officers of Parent and its subsidiaries shall have made themselves available from time to time to attend and make a reasonable and customary number of presentations regarding the business and prospects of Parent, Saturn and their respective subsidiaries at a meeting or meetings of prospective investors as required by the Investment Bank in its reasonable judgment to market the Senior Notes and (c) the Investment Bank shall have been afforded a period of at least 20 consecutive calendar days following the receipt of the material described in clause (a) above to seek to offer and sell or privately place the Senior Notes or Permanent Securities with qualified purchasers thereof. Each 20-day period referred to above must consist of 20 consecutive calendar days; provided that each such period shall: (i) exclude the dates July 3, 2014, and July 4, 2014, (ii) end on or prior to August 15, 2014, or begin on or after September 2, 2014, (iii) exclude the dates November 24, 2014, through November 28, 2014, and (iv) end on or prior to December 19, 2014, or begin on or after January 5, 2015. Notwithstanding the foregoing, if at any time after the Required Bond Information shall have been delivered, the Borrower shall make a Reallocation Election in accordance with the third paragraph of the Commitment Letter, any previous delivery of the Required Bond Information shall be disregarded for purposes of determining whether the conditions set forth in this paragraph 8 shall have been satisfied.

Form of Solvency Certificate

[•] [•], 20[•]

Reference is hereby made to the [•](1) (the “[•] Amendment Agreement”) to the [•](2) (the “[•] Credit Agreement”). Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the [•] Amendment Agreement or in the Credit Agreement, as applicable. The undersigned, being the duly elected and qualified Chief Financial Officer of Level 3, pursuant to Section [•] of the [•] Amendment Agreement, in his/her capacity as such officer and not in a personal capacity, hereby certifies on behalf of Level 3 that:

(1) with respect to the incurrence of the Tranche B 2021 Term Loans and the [•](3), Level 3 and its Subsidiaries are in compliance with the Existing Credit Agreement, the Existing Notes and the indentures governing the Existing Notes; and

(2) as of the date hereof and immediately following the making of the Tranche B 2021 Term Loans on the date hereof and after giving effect to the application of the proceeds of the Tranche B 2021 Term Loans and the other transactions contemplated by the [•] Amendment Agreement, (A) the fair value of the assets of Level 3 and its Subsidiaries on a consolidated basis, at a fair valuation, exceeds their debts and liabilities, subordinated, contingent or otherwise; (B) the present fair saleable value of the property of Level 3 and its Subsidiaries, on a consolidated basis, is greater than the amount that will be required to pay the probable liability on their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (C) Level 3 and its Subsidiaries, on a consolidated basis, will be able to pay their debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (D) Level 3 and its Subsidiaries, on a consolidated basis, do not have unreasonably small capital with which to conduct the businesses in which they are engaged as such businesses are now conducted and are proposed to be conducted following the date hereof.

For purposes of this Certificate, the amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability.

The undersigned is familiar with the business and financial position of Level 3 and its Subsidiaries. In reaching the conclusions set forth in this Certificate, the undersigned has made such investigations and inquiries as the undersigned has deemed appropriate, having taken into account the nature of the business proposed to be conducted by Level 3 and its Subsidiaries after consummation of the Transactions.

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(1) Describe [•] Amendment Agreement.

(2) Describe Credit Agreement.

(3) Refer to Bridge Loans, Senior Notes or other Transaction Securities, as applicable.

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the date first hereinabove written.

By: _____
Name: [•]
Title: Chief Financial Officer

Exhibit A to Annex III-2
