

Fedeli, Chris

From: Paul Eskildsen [Paul.Eskildsen@rcn.net]
Sent: Thursday, October 16, 2008 3:07 PM
To: Thompson, Scott
Cc: Dieterich, Elise; Robert Delsman; Tom Steel
Subject: NextG/RCN Conduit Agreement--October 16
Attachments: NextG draft RCN conduit agreement.DOC; NextG RCN October 16.DOC

Scott:

Attached please find RCN's red lined response to the NextG conduit agreement.

This draft should be consistent with the discussion we had last week where RCN outlined our proposed approach in some detail and provided initial comments regarding the NextG structure. We believe it reflects a commercially reasonable, fair approach to your desire to access our conduit.

We did not worry about numbering and formatting of the document--we can clean that up once we get further along in the process.

RCN had very little time to prepare this document and establish a proposed structure to manage this relationship, so in keeping with the spirit of your note below, we reserve the right to make further changes as needed. Obviously, any revisions will be subject to the final mutual agreement of the parties.

Once you have had an opportunity to review the document, I suggest we arrange a time for a call to go through it in greater detail.

Thanks, and feel free to give me a call if you have any questions.

Regards,

Paul

"Thompson, Scott" <ScottThompson@dwt.com>

10/07/2008 04:54 PM

To "Paul Eskildsen" <Paul.Eskildsen@rcn.net>

cc "Robert Delsman" <rdelsman@nextgnetworks.net>, "Dieterich, Elise"
 <edieterich@sandw.com>

Subject NextG/RCN Conduit

Pursuant to our discussions, attached is an initial draft conduit agreement that would govern NextG's access to RCN conduit.

Just a few notes: While the most pressing concern is in Massachusetts, NextG would like to have this be a master agreement that covers access to RCN conduit, if it has any, in other states, thus the open lines regarding geographic coverage. Also, the per foot rate proposed is taken directly from Verizon's Massachusetts conduit rate, and thus likely reflects a reasonable proxy for a regulated rate for a telecommunication provider's conduit.

Due to meetings, not all necessary decision makers at NextG have had a chance to make a final review of this draft, so I provide it to you with a reservation that it, and obviously any revisions, are subject to final agreement by NextG.

I look forward to discuss these matters with you.

Regarding the meeting we discussed, it appears that 2pm on Friday works best. Does that work for you?

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AGREEMENT FOR ACCESS

TO CONDUITS,

BETWEEN RCN TELECOM SERVICES, INC.

AND NEXT G NETWORKS, INC.,

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INC.'S STRUCTURE

{

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**AGREEMENT FOR ACCESS
TO CONDUITS**

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This Agreement dated October __, 2008, is made by and between the “Parties,” identified as RCN Telecom Services, Inc. (“RCN”) and NextG Networks, Inc. (“NextG”) a Delaware corporation herein after referred to as “Attaching Party”.

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1. INTRODUCTIONDeleted: ¶
¶

Deleted: This Agreement shall apply to the state(s) of :Massachusetts, _____, and _____.

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1.1 This Agreement sets forth the terms and conditions pursuant to which Attaching Party shall obtain a license to and have access to certain specified Conduits owned by RCN in Massachusetts.

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1.2 Pursuant to this Agreement, Attaching Party shall license and have access to the specific Conduit segments listed in Exhibit 1 under terms set forth in this Agreement. Except as otherwise provided in this Agreement or in subsequent written amendments to this Agreement, Attaching Party shall obtain access through innerduct which will attach to and be included in RCN’s Conduit. In addition to the segments specifically listed in Exhibit 1, Attaching Party may request, and RCN shall consider in good faith, providing access to other wholly-owned RCN Conduits in Massachusetts under the provisions of this Agreement; provided that RCN shall have the right to provide or decline access in its reasonable discretion, subject to capacity or other good cause shown.

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1.3 The access provided in this Agreement shall apply to wholly-owned RCN Conduit in Massachusetts, and shall not provide or permit Attaching Party to have access or any other rights to any third party conduit or rights of way, including but not limited to those conduits and rights of way that RCN obtains from utilities and other third parties for its own network and customer use.

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1.4 Core Business. Consistent with applicable law, nothing herein shall obligate RCN to take any action, or refrain from taking any action, which would, in RCN’s reasonable determination, adversely affect the operation of RCN’s network or adversely affect RCN’s business or customers.

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2. DEFINITIONSDeleted: <#>As used herein, RCN means _____.¶
¶

2.1 Definitions in general. As used in this Agreement, the terms defined in this article shall have the meanings set forth below in Sections 2.1 to 2.12 except as the context otherwise requires.

- 2.2 Conduit. The term “conduit” refers to RCN-owned tubes or structures, usually underground or on bridges, containing one or more ducts used to enclose cables, wires, and associated transmission equipment. As used in this Agreement, the term “conduit” refers only to RCN-owned conduit structures (including ducts, manholes and handholes) and space within those structures and does not include (a) cables and other telecommunications equipment located within conduit structures or (b) central office vaults, controlled environment vaults, or other RCN structures (such as huts and cabinets) which branch off from or are connected to RCN’s conduit.
- 2.3 Conduit system. The term “conduit system” refers to any combination of wholly owned RCN ducts, conduits, manholes, and handholes joined to form an integrated whole. As used in this Agreement, the term “conduit system” does not include (a) cables and other telecommunications equipment located within conduit structures or (b) central office vaults, controlled environment vaults, or other RCN structures (such as huts and cabinets) which branch off from or are connected to RCN’s conduit, or (c) conduits or rights of way owned or controlled by third party utilities or entities other than RCN.
- 2.4 Duct. The term “duct” refers to a single enclosed tube, pipe, or channel for enclosing and carrying cables, wires, and other equipment. As used in this Agreement, the term “duct” includes “inner ducts” created by subdividing a duct into smaller channels, but does not include cables and other telecommunications equipment located within such ducts.
- 2.5 Handhole. The term “handhole” refers to a structure similar in function to a manhole, but which is too small for personnel to enter. As used in this Agreement, the term “handhole” refers only to handholes which are part of RCN’s conduit system and does not refer to handholes which provide access to buried cables not housed within RCN ducts or conduits. As used in this Agreement, the term “handhole” refers only to handhole structures owned or controlled by RCN and does not include cables and other telecommunications equipment located within handhole structures.
- 2.6 Occupancy Permit. The term “occupancy permit” refers to a written instrument confirming that RCN has granted the structure access request of Attaching Party for access to duct or conduit.
- 2.7 Maintenance Duct. The term “maintenance duct” generally refers to a full-sized duct for use, on a short-term basis, for maintenance, repair, or emergency restoration activities. The term “maintenance duct” does not include ducts and conduits extending from an RCN manhole to

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customer premises. When only one usable full-sized duct remains in a conduit section, that duct shall be deemed to be the maintenance duct.

- 2.8 Make-ready work. The term “make-ready work” refers to all work performed or to be performed to prepare **RCN**’s ducts, conduits, rights-of-way, and related facilities for the requested occupancy or attachment of Attaching Party’s facilities.
- 2.9 Manhole. The term “manhole” refers to an enclosure, usually below ground level and entered through a hole on the surface, which personnel may enter and use for the purpose of installing, operating, and maintaining facilities in ducts or conduits which are parts of **RCN**’s Conduit system. As used in this Agreement, the term “manhole” does not include cables and other telecommunications equipment located within manhole structures.
- 2.10 Other User. The term “Other User” refers to entities, other than the Attaching Party, with facilities on or in an **RCN** duct, conduit or right-of-way to which the Attaching Party has obtained access. Other Users may include **RCN**, other attaching parties, municipalities or other governmental entities, and electric utilities (which may own interests in **RCN**’s ducts, conduits or rights-of-ways).
- 2.11 Rights-of-way. The term “rights-of-way” refers to **RCN** owned or controlled legal rights to pass over or through property of another party and used by **RCN** for its telecommunications distribution system. For purposes of this Agreement, “rights-of-way” includes property owned by **RCN** and used by **RCN** for its telecommunications distribution facilities. Rights-of-way does not include:
- 2.11.1 cables and other telecommunications equipment buried or located on such rights-of-way, or
- 2.11.2 public rights of way (which are owned by and subject to the control of governmental entities) or third party rights of way.
- 2.12 Structure. The term “Structure” refers collectively to ducts, conduits and rights-of-way.

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3. SCOPE OF AGREEMENT

- 3.1 This Agreement establishes the rates, terms, conditions, and procedures by which **RCN** shall provide access to **RCN**’s Conduits, listed in Exhibit 1, and as may be supplemented by the parties through additional Occupancy Permits or by written amendment.

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- 3.2 No Transfer of Property Rights to Attaching Party. Nothing contained in this Agreement, or any occupancy permit subject to this Agreement, shall create or vest (or be construed as creating or vesting) in Attaching Party any right, title, or interest in or to any real or personal property owned or controlled by RCN.

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- 3.3 No Effect on RCN's Right to Abandon, Convey or Transfer Conduit. Nothing contained in this Agreement, or any occupancy permit subject to this Agreement, shall in any way affect RCN's right to abandon, convey, or transfer to any other person or entity RCN'S interest in any of RCN'S Conduit. RCN shall give Attaching Party at least 60 days written notice prior to abandoning, conveying, or transferring any Conduit to which Attaching Party has already attached its facilities, or any Conduit on which Attaching Party has already been assigned space.

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4. **EFFECTIVE DATE, TERM, AND ELECTIVE TERMINATION**

- 4.1 Effective Date. This Agreement shall be effective as of the day of October, 2008.

- 4.2 Initial Term. Unless sooner terminated as herein provided, the initial term of this Agreement shall run for five, (5) years from the effective date.

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- 4.3 Automatic Renewal. Unless sooner terminated as herein provided, this Agreement shall be automatically renewed for successive one-year terms, unless one party provides the other party with no less than ninety (90) days notice of an intention to terminate the agreement.

- 4.4 Elective Termination. Attaching Party may terminate this Agreement by giving RCN at least ninety (90) days prior written notice as provided in this section, subject to the prompt payment of the early termination fees set forth in Section 4.6.

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- 4.5 Effect of Elective Termination. Elective termination of this Agreement by Attaching Party, as permitted under Section 4 of this Agreement, shall not affect Attaching Party's liabilities and obligations incurred under this Agreement prior to the effective date of termination and shall not entitle Attaching Party to the refund of any advance payment or expense reimbursements made to RCN under this Agreement.

- 4.6 Early Termination Fee. If Attaching Party terminates this Agreement or any individual Service Order during the Initial Term for reasons other than Cause, or RCN terminates this Agreement or any individual Service Order for Cause, then Attaching Party will pay RCN, within thirty (30) days after such termination, (i) all past due but unpaid

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charges and interest incurred through the date of termination, plus (ii) the sum of: (A) one hundred percent (100%) of any unpaid fees that would have been incurred for the ordered Service for the remaining months of the ordered term; plus (B) any additional amounts incurred by RCN in connection with Attaching Party's removal of its fiber, equipment or facilities from RCN Conduit. The parties agree that the precise damages resulting from an early termination by Attaching Party are difficult to ascertain, and the early termination fees are a reasonable estimate of anticipated actual damages and not a penalty.

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5. GENERAL PROVISIONS

- 5.1 Entire Agreement. This Agreement sets forth the entire understanding and agreement of the parties.
- 5.2 Prior Agreements Superseded. This Agreement supersedes all prior agreements and understandings, whether written or oral, between Attaching Party and **RCN** relating to the placement and maintenance of Attaching Party's facilities on and within **RCN's** ducts, and conduits within this State.
- 5.3 Amendments Shall Be in Writing. Except as otherwise specifically provided to the contrary by other provisions of this Agreement, the terms and conditions of this Agreement shall not be amended, changed or altered except in writing and with approval by authorized representatives of both parties.
- 5.4 Survival of Obligations. Any liabilities or obligations of either party for acts or omissions prior to the termination of this Agreement, any obligations of either party under provisions of this Agreement relating to confidential and proprietary information, indemnification, limitations of liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or be performed after) termination of this Agreement, will survive the termination of this Agreement.
- 5.5 Multiple Counterparts. This Agreement may be executed in multiple counterparts.
- 5.6 Force Majeure. Except as otherwise specifically provided in this Agreement, neither party will be liable for any delay or failure in performance of any part of this Agreement caused by a Force Majeure condition, including acts of the United States of America or any state, territory, or political subdivision thereof, acts of God or a public enemy, fires, floods, disputes, strikes, work stoppages, freight embargoes, earthquakes, volcanic actions, wars, civil disturbances, cable cuts, or other causes beyond the reasonable control of the party

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claiming excusable delay or other failure to perform. If any Force Majeure condition occurs, the party whose performance fails or is delayed because of such Force Majeure condition will give prompt notice to the other party, and, upon cessation of such Force Majeure condition, will give like notice and commence performance hereunder as promptly as reasonably practicable.

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- 5.7 Severability. If any article, section, subsection, or other provision or portion of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement as to either party, the invalidity of such provision shall not render this entire Agreement unenforceable and this Agreement shall be administered as if it did not contain the invalid provision.
- 5.8 Choice of Law. Except to the extent that federal law controls any aspect of this Agreement, the validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the parties will be governed by the laws of Massachusetts, applied without regard to the provisions of its laws relating to conflicts-of-laws.
- 5.9 Changes in the Law. The parties agree to negotiate in good faith changes to this Agreement to conform to changes applicable law pertaining to access to ducts, conduits and rights-of-way, including the Massachusetts Pole Attachment Act.
- 5.10 Compliance with Law. The parties shall at all times observe and comply with, and the provisions of this Agreement are subject to, all applicable federal, state, and local laws, ordinances, and regulations which in any manner affect the rights and obligations of the parties.

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6. **DISCLAIMER OF WARRANTIES**

RCN MAKES NO REPRESENTATIONS AND DISCLAIMS ANY WARRANTIES, EXPRESSED OR IMPLIED, THAT **RCN**'S DUCTS, CONDUITS AND RIGHTS OF WAY ARE SUITABLE FOR THE ATTACHING PARTY'S INTENDED USES OR ARE FREE FROM DEFECTS. THE ATTACHING PARTY SHALL IN EVERY INSTANCE BE RESPONSIBLE TO DETERMINE THE ADEQUACY OF **RCN**'S DUCTS, CONDUITS AND RIGHTS-OF-WAY FOR THE ATTACHING PARTY'S INTENDED USE. THERE ARE NO AGREEMENTS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.

7. INDEMNIFICATION

7.1. Indemnification by Attaching Party. Attaching Party shall indemnify, defend and hold harmless RCN, its Affiliates, and all officers, directors, employees, shareholders, and agents of RCN, from and against any and all claims, demands, liabilities (including reasonable attorneys' fees), and judgments, fines, settlements and other amounts ("Damages") arising from:

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- (i) Any and all civil, criminal, administrative or investigative proceedings ("Claims") relating to or arising out of any failure of Attaching Party to materially observe or perform any term or provision of this Agreement;
- (ii) Any Claim of any third party resulting from the negligence or willful misconduct of Attaching Party or any of its agents, employees or contractors;
- (iii) Any Claim arising from Attaching Party's physical access to, or use of, the Conduits or RCN's Structure, including the Rights of Way, except to the extent such Damages are caused or contributed to by RCN or its Affiliates;
- (iv) Any Claim by any customer of Attaching Party relating to the provision by Attaching Party of its services to such customer.
- (v) Any Claim relating to any death of person or injury, loss or damage to any person or property, or to the environment, arising out of or in connection with access to or use of RCN's Conduit, RCN's Structure by Attaching Party, its employees, agents, contractors or invitees.
- (vi) Any Claim relating to taxes, municipal fees, franchise fees, right to use fees, or other charges assessed to RCN due to the placement or presence of Attaching Party's facilities on or within RCN Conduit, ducts or rights of way;
- (vii) Any claims based upon the violation by Attaching Party, its employees, agents or contractors, of any third party's intellectual property rights, including but not limited to copyright, trademark or servicemark infringement, patent infringement, or other intellectual property right infringement.

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7.2. Indemnification by RCN. RCN shall indemnify, defend and hold harmless Attaching Party, its Affiliates, and all officers, directors, employees, stockholders, and agents of Attaching Party from and against any and all Damages arising from:

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- (i) Any and all Claims relating to or arising out of any failure of RCN to materially observe or perform any term or provision of this Agreement;
- (ii) Any Claim of any third party resulting from the negligence or willful misconduct of RCN or any of its agents, employees or contractors;

8. LIABILITIES AND LIMITATIONS OF LIABILITY

8.1 EXCLUSION OF LIABILITY FOR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF ANTICIPATED PROFITS OR REVENUE OR OTHER ECONOMIC LOSS IN CONNECTION WITH OR ARISING FROM ANY ACT OR FAILURE TO ACT PURSUANT TO THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS ADVISED SUCH PARTY OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION LIMITS EACH PARTY'S LIABILITY FOR INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH NEGLIGENT ACTS OR OMISSIONS OF SUCH PARTY BUT DOES NOT LIMIT EITHER PARTY'S LIABILITY FOR INTENTIONAL MISCONDUCT.

8.2 Limitation of Liability. RCN'S ENTIRE LIABILITY FOR ANY CLAIM, LOSS EXPENSE, OR DAMAGE UNDER THIS AGREEMENT OR ANY SERVICE ORDER SHALL IN NO EVENT EXCEED THE SUM ACTUALLY PAID BY ATTACHING PARTY TO RCN PURSUANT TO THIS AGREEMENT FOR THE TWELVE (12) MONTH PERIOD PRIOR TO THE EVENT OR INCIDENT WHICH GIVES RISE TO THE CLAIM; PROVIDED THAT THE FOREGOING LIMITATION SHALL NOT APPLY IN THE EVENT OF DAMAGE CAUSED BY THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF RCN OR ITS EMPLOYEES OR AGENTS.

8.3 No Limitations of Liability in Contravention of Federal or State Law. Nothing contained in this article shall be construed as exempting either party from any liability, or limiting such party's liability, in contravention of federal law or in contravention of the laws of this State.

Deleted: Definitions. The term "Claims" as used in Section 7 shall mean any suit, claim, demand, loss, damage, liability, fee, fine, penalty, or expense, of every kind and character.¶

¶ **Indemnities Excluded.** Except as otherwise specifically provided in this article, neither party (as an "indemnifying party") shall be required to indemnify or defend the other party (as an "indemnified party") against, or hold the indemnified party harmless from, any Claims arising out of:¶

¶ any breach by the indemnified party of any provision of this Agreement;¶

¶ the violation of any law by any employee of the indemnified party or other person acting on the indemnified party's behalf;¶

¶ willful or intentional misconduct or gross negligence committed by any employee of the indemnified party or by any other person acting on the indemnified party's behalf; or¶

¶ any negligent act or acts committed by any employee of the indemnified party or other person acting on the indemnified party's behalf, if such negligent act or acts are the sole producing cause of the injury, loss, or damage giving rise to the Claim for which indemnity is required. ... [1]

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¶ **RCN's General Indemnity Obligation** ... [2]

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9. INSURANCE

9.1 At all times in which the Attaching Party is occupying RCN Conduit, Attaching Party shall keep and maintain in force, at its own expense, the minimum insurance coverage and limits set for below. Such insurance and coverage shall not only cover the Attaching Party, but it must cover all contractors, subcontractors and/or any other person acting on Attaching Party's behalf, that are providing services under or related to the subject matter of this Agreement.

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9.1.1 Workers' Compensation insurance with benefits afforded under the laws of each state covered by this Agreement and Employers Liability insurance with minimum limits of \$1,000,000 for Bodily Injury-each accident, \$500,000 for Bodily Injury by disease-policy limits and \$1,000,000 for Bodily Injury by disease-each employee.

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9.1.2 Commercial General Liability insurance with minimum limits of: \$10,000,000 General Aggregate limit; \$5,000,000 each occurrence sub-limit for all bodily injury or property damage incurred in any one occurrence; \$1,000,000 each occurrence sub-limit for Personal Injury and Advertising; \$10,000,000 Products/Completed Operations Aggregate limit, with a \$5,000,000 each occurrence sub-limit for Products/Completed Operations.

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9.1.3 Automobile Liability insurance with minimum limits of \$1,000,000 combined single limits per occurrence for bodily injury and property damage, with coverage extending to all owned, hired and non-owned vehicles.

9.1.4 Attaching Party agrees to name RCN as an Additional Insured on the Commercial General Liability policy and Commercial Automobile Liability Policy.

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9.3. RCN agrees to accept the Attaching Party's program of self-insurance in lieu of insurance coverage if certain requirements are met. These requirements are as follows: ¶

¶ Workers' Compensation and Employers Liability: Attaching Party submit to RCN its Certificate of Authority to Self-Insure its Workers' Compensation obligations issued by each state covered by this Agreement or the employer's state of hire; and¶

¶ Automobile liability: Attaching Party shall submit to RCN a copy of the state-issued letter approving self-insurance for automobile liability issued by each state covered by this Agreement; and¶

¶ General liability: Attaching Party must provide evidence acceptable to RCN that it maintains at least an investment grade (e.g., B+ or higher) debt or credit rating as determined by a nationally recognized debt or credit rating agency such as Moody's, Standard and Poor's or Duff and Phelps.¶

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9.2 All insurance required in accordance with this section must be in effect before RCN will issue conduit occupancy permits under this Agreement.

9.3 Attaching Party agrees to provide RCN with at least thirty (30) calendar days advance written notice of cancellation, material reduction or non-renewal of any of the insurance policies required herein.

10. ASSIGNMENT OF RIGHTS

10.1 Assignment Permitted. Neither party may assign or otherwise transfer its rights or obligations under this Agreement except as provided in this section.

10.1.1 RCN may assign its rights, delegate its benefits, and delegate its duties and obligations under this Agreement, without Attaching Party's consent, to any entity controlling, controlled by, or under common control with RCN or which acquires or succeeds to ownership of substantially all of RCN's assets.

10.1.2 Attaching Party may not assign its rights under this Agreement without the prior written consent of RCN, which shall not be unreasonably withheld.

10.2 Assignment Shall Not Relieve Attaching Party of Prior Obligations.

Except as otherwise expressly agreed by RCN in writing, no assignment permitted by RCN under this Agreement shall relieve Attaching Party of any obligations arising under or in connection with this Agreement, including but not limited to indemnity obligations under Section 8 of this Agreement or the interconnection agreement, if any.

10.3 Satisfaction of Existing Obligations and Assumption of Contingent Liabilities. RCN may condition its approval of any requested assignment or transfer on the assignee's or successor's payment or satisfaction of all outstanding obligations of Attaching Party under this Agreement and the assignee's or successor's assumption of any liabilities, or contingent liabilities, of Attaching Party arising out of or in connection with this Agreement.

10.4 Sub-Permits Prohibited. Nothing contained in this Agreement shall be construed as granting Attaching Party the right to sublease, sublicense, or otherwise transfer any rights under this Agreement or occupancy permits subject to this Agreement to any third party. Except as otherwise expressly permitted in this Agreement, Attaching Party shall not allow any third party to attach or place facilities to or in conduit space occupied by or assigned to Attaching Party or to utilize such space.

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Deleted: <#>Attaching Party may, ancillary to a bona fide loan transaction between Attaching Party and any lender, and without RCN's consent, grant security interests or make collateral assignments in substantially all of Attaching Party's assets, including Attaching Party's rights under this Agreement, subject to the express terms of this Agreement. In the event Attaching Party's lender, in the bona fide exercise of its rights as a secured lender, forecloses on its security interest or arranges for a third party to acquire Attaching Party's assets through public or private sale or through an Agreement with Attaching Party, Attaching Party's lender or the third party acquiring Attaching Party's rights under this Agreement shall assume all outstanding obligations of Attaching Party under the agreement and provide proof satisfactory to RCN that such lender or third party has complied or will comply with all requirements established under this Agreement. Notwithstanding any provisions of this Agreement to the contrary, such foreclosure by Attaching Party's lender or acquisition of assets by such third party shall not constitute a breach of this Agreement and, upon such foreclosure or acquisition, Attaching Party's lender or such third party shall succeed to all rights and remedies of Attaching Party under this Agreement (other than those rights and remedies, if any, which have not been transferred and, if Attaching Party is a debtor under the Federal Bankruptcy Code, those rights, if any, which remain a part of the debtor's estate notwithstanding an attempted foreclosure or transfer) and to all c ... [4]

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11. TERMINATION OF AGREEMENT OR OCCUPANCY PERMITS; REMEDIES FOR BREACHES

11.1 Termination Due to Non-Use of Facilities or Loss of Required Authority. RCN may terminate this Agreement if Attaching Party ceases to do business in this State, ceases to provide telecommunications services in this State, or ceases to make active use of RCN's ducts, conduits, and rights-of-way; provided, that any such termination shall not relieve Attaching Party of any early termination fee obligations as described in Section 4.6.

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11.2 Individual occupancy permits subject to this Agreement shall terminate if (a) Attaching Party ceases to utilize the conduit or right of way space subject to such occupancy permit or (b) Attaching Party's permission to use or have access to particular ducts, conduits, or rights-of-way has been revoked, denied, or terminated.

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11.3 Limitation, Termination, or Refusal of Access for Certain Material Breaches. Attaching Party's access to RCN's Conduit or Structure shall not interfere with or impair service over any facilities of RCN or any Other User, cause material damage to RCN's plant or the plant of any Other User, impair the privacy of communications carried over the facilities of RCN or any Other User, or create serious hazards to the health or safety of any persons working on, within, or in the vicinity of RCN's ducts, rights-of-way or to the public. Upon reasonable notice and opportunity to cure, RCN may limit, terminate or refuse access if Attaching Party violates this provision.

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11.4 Notice of Breach. In the event of any claimed breach of this Agreement by either party, the aggrieved party may give written notice of such claimed breach.

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11.5 Opportunity to Cure. The complaining party shall not be entitled to pursue any remedies available under this Agreement or relevant law unless the notice required by Section 11.4 is given, and the breaching party fails to cure the breach within 30 days of such notice.

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¶ the breaching party fails to commence promptly and pursue diligently a cure of the breach, if the required cure is such that more than 30 days will be required to effect such cure.

11.6 Remedies for Breach. Subject to the provisions of this article, either party may terminate this Agreement in the event of a material breach by the other party or exercise any other legal or equitable right which such party may have to enforce the provisions of this Agreement.

12. FAILURE TO ENFORCE

12.1 No Waiver. The failure by either party to take action to enforce compliance with any of the terms or conditions of this Agreement, to

give notice of any breach, or to terminate this Agreement or any occupancy permit or authorization subject to this Agreement shall not constitute a waiver or relinquishment of any term or condition of this Agreement, a waiver or relinquishment of the right to give notice of breach, or waiver or relinquishment of any right to terminate this Agreement.

13. CONFIDENTIALITY OF INFORMATION

13.1 Commencing on the Effective Date and continuing until the date which is three (3) years after the termination of this Agreement, each Party shall protect as confidential and shall not disclose to any third party, any confidential or proprietary information ("Confidential Information") received from the disclosing Party or otherwise discovered or received by the receiving Party during the term of this Agreement. Confidential Information shall include any documents or material marked or verbally identified as Confidential, or reasonably understood to be confidential from the nature of the information, and shall additionally include but not be limited to the pricing and terms of this Agreement, and any other non-public information relating to the disclosing Party's technology, network architecture, network topology, network infrastructure, business affairs, and marketing or sales plans. Confidential Information does not include information that (i) is or becomes public domain through no fault or breach on the part of receiving party; (ii) as demonstrated by the written records of receiving party, is already lawfully known to them prior to the information being disclosed; (iii) is rightfully received by receiving party from a third party without a duty of confidentiality; (iv) has been independently developed by or for the receiving party without reference to the Confidential Information. The Parties shall use Confidential Information only for the purpose of this Agreement. If a receiving Party is required by any governmental authority or by applicable law to disclose any Confidential Information, then such receiving Party shall provide the disclosing Party with written notice of such requirement as soon as possible and prior to such disclosure. Upon receipt of written notice of the requirement to disclose Confidential Information, the disclosing Party, at its expense, may then either seek appropriate protective relief in advance of such requirement to prevent all or part of such disclosure or waive the receiving Party's compliance with the requirements of this section with respect to all or part of such Confidential Information.

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13.2 For avoidance of doubt, RCN Network Maps, Conduit Records, design plans and other information relating to RCN's Network, Conduits, Rights of Way and Equipment Sites, as well as all information and/or documents relating to RCN's services, customers, or business ("RCN Confidential Information"), shall be treated by Attaching Party as RCN confidential and proprietary documents to the greatest extent permitted by law. Attaching Party shall keep RCN Confidential Information confidential, and shall not disseminate it to any third party

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(other than employees or agents with a need to know and who are bound by similar confidentiality obligations) or use it for any other purpose (except with the prior written authorization of RCN).

13.3. For avoidance of doubt, Attaching Party's Records, design plans and other information relating to Attaching Party's Network, as well as all information and/or documents relating to Attaching Party's services, customers, or business ("Attaching Party Confidential Information"), shall be treated by RCN as Attaching Party confidential and proprietary documents to the greatest extent permitted by law. RCN shall keep Attaching Party Confidential Information confidential, and shall not disseminate it to any third party (other than employees or agents with a need to know and who are bound by similar confidentiality obligations) or use it for any other purpose (except with the prior written authorization of Attaching Party).

14. ACCESS TO RCN CONDUITS

14.1 RCN grants Attaching Party a license and a right to use wholly-owned RCN ducts or Conduits as set forth in this Agreement. As set forth in Section , RCN, or Contractors approved by RCN, will construct facilities within RCN's ducts or conduits for Attaching Party's use. Notwithstanding the foregoing, Attaching Party shall be responsible for determining the necessity of and obtaining from private and/or public authority any necessary consent, easement, right of way, license, permit, permission, certification or franchise to construct, operate and/or maintain its facilities on private and public property at the location of the RCN duct or conduit to which Attaching Party seeks to attach its facilities. Attaching Party shall furnish proof of any such easement, right of way, license, permit, permission, certification, or franchise within thirty (30) days of request by RCN. RCN does not warrant the validity or apportionability of any rights it may hold to place facilities on private property.

14.2 Private Rights-of-Way Not Owned or Controlled by Either Party. Neither party shall restrict or interfere with the other party's access to or right to occupy property owned by third-parties which is not subject to the other party's control, including property as to which either party has access subject to non-exclusive rights-of-way. Each party shall make its own, independent legal assessment of its right to enter upon or use the property of third-party property owners and shall bear all expenses, including legal expenses, involved in making such determinations.

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Information Provided by Attaching Party to RCN. Except as otherwise specifically provided in this Agreement, all company-specific and customer-specific information submitted by Attaching Party to RCN in connection with this Agreement (including but not limited to information submitted in connection with Attaching Party's applications for occupancy permit shall be deemed to be "confidential" or "proprietary" information of Attaching Party and shall be subject to the terms set forth in this article. Confidential or proprietary information specifically includes information or knowledge related to Attaching Party's review of records regarding a particular market area, or relating to assignment of space to Attaching Party in a particular market area, and further includes knowledge or information about the timing of Af(... [7]

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14.3 For avoidance of doubt, this Agreement does not provide Attaching Party with any right of access to conduit, rights or way or other facilities or property that is not listed in Exhibit or a subsequently issued Permit. This Agreement does not provide Attaching Party with any right of access to conduit, shadow conduit, rights of way, manholes, handholes, splice points, equipment, or other facilities or property of any utility, network provider or other third party through which RCN obtains, licenses, leases, or otherwise obtains access to conduit, poles or other aspects used by RCN to extend its network reach or provide services to its customers. Attaching Party shall indemnify and hold RCN harmless from any Claims raised by utilities or other third parties who assert that Attaching Party has improperly, unlawfully, or without authorization used, accessed, entered, damaged or otherwise affected their conduit, shadow conduit, rights of way, manholes, handholes, splice pints, equipment or other facilities or property.

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15. SPECIFICATIONS

15.1 Compliance with Requirements, Specifications, and Standards. Attaching Party's facilities occupying space in RCN's ducts, conduits, and rights-of-way shall be attached, placed, constructed, maintained, repaired, and removed in full compliance with the requirements, specifications, and standards identified in this Agreement. All design, construction, maintenance, repair and removal of Attaching Party's facilities shall proceed only upon RCN's advance written approval.

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Generally. At locations where RCN has obtained an easement or other form of rights-of-way from third-party property owners or otherwise controls the right-of-way, RCN shall, to the extent space is available, and subject to reasonable safety, reliability, and engineering conditions, provide access to Attaching Party on a nondiscriminatory basis, provided that the underlying easement or grant does not prohibit RCN to provide such access.

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15.2 Published Standards. Attaching Party's facilities shall be placed, constructed, maintained, repaired, and removed in accordance with current (as of the date when such work is performed) editions of the following publications:

15.2.1 the Blue Book Manual of Construction Procedures, Special Report SR-TAP-001421, published by Bell Communications Research, Inc. ("Bellcore"), and sometimes referred to as the "Blue Book";

15.2.2 the National Electrical Safety Code ("NESC"), published by the Institute of Electrical and Electronic Engineers, Inc. ("IEEE"); and

15.2.3 the National Electrical Code ("NEC"), published by the National Fire Protection Association ("NFPA").

15.3 Opening of Manholes and Access to Conduit. The following requirements apply to the opening of RCN's manholes and access to RCN's conduit system.

15.3.1 Attaching Party will notify RCN not less than five (5) business days in advance before requesting entrance to RCN's conduit system to perform non-emergency work operations. Such operations shall be conducted during normal business hours except as otherwise agreed by the parties. The notice shall state the general nature of the work to be performed. RCN shall have the right to approve the Attaching Party personnel or contractors who will be permitted to have access to RCN Manholes and Conduit; provided that such approval shall not be unreasonably withheld.

15.3.2 An authorized employee or representative of RCN may be present any time when Attaching Party or personnel acting on Attaching Party's behalf enter or perform work within RCN's conduit system. Attaching Party shall reimburse RCN for costs associated with the presence of RCN's authorized employee or representative.

15.3.3 Each party must obtain any necessary authorization from appropriate authorities to open manholes or otherwise perform work on or in RCN's Structures.

17. APPLICATIONS AND PRE-OCCUPANCY PERMIT SURVEYS

17.1 Occupancy Permits Required. Attaching Party must apply in writing for and receive approval prior to the placement of any facilities within specified RCN ducts or Conduits. For purposes of this Agreement, the Conduit Segments listed in Exhibit 1, shall be deemed approved for access by Attaching Party, subject to the survey, make-ready, construction, maintenance and other provisions of this Agreement.

17.2 Conduit Access Request Form. To apply for an Occupancy Permit under this Agreement, Attaching Party shall submit to RCN a written application.

17.3 Make-Ready Survey. Within thirty days after Attaching Party submits an application for an occupancy permit, a Make-Ready survey must be completed by RCN. Such survey will be completed at Attaching Party's expense, including reimbursement of any costs incurred by

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¶ 16.1 . RCN will, upon request and at the expense of the Attaching Party, provide Attaching Party access to and copies of redacted maps, records and additional information relating to the location, capacity and utilization of RCN's Structure. Upon request, RCN will meet with the Attaching Party to clarify matters relating to maps, records or additional information. RCN does not warrant the accuracy or completeness of information on any maps or records. ¶

¶ Maps, records or information are and remain the proprietary property of RCN, are provided to the Attaching Party solely for the purpose of enabling the Attaching Party to obtain access to RCN's Structure, and may not be resold, reproduced or disseminated by the Attaching Party.¶

¶ RCN will provide information currently available on the RCN's maps and/or records regarding:¶

¶ the location of Structure and street addresses for manholes as shown on RCN's maps;¶

¶ the footage between manholes or lateral ducts lengths, as shown on RCN's maps;¶

¶ the total capacity of the Structure ¶ ... [9]

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RCN during the process. The primary purposes of the make ready survey will be to enable **RCN** to

17.3.1 confirm or determine the modifications, capacity expansion, and make-ready work, if any, necessary to accommodate Attaching Party's attachment of facilities to **RCN Conduit**;

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17.3.2 plan and engineer the facilities modification, capacity expansion, and make-ready work, if any, required to prepare **RCN**'s ducts, conduits, rights-of-way, and associated facilities for Attaching Party's proposed attachments or occupancy; and

17.3.3 estimate the costs associated with such facilities modification, capacity expansion, or make-ready work.

18. DUCT AND CONDUIT SPACE ASSIGNMENTS

18.1 Selection of Space. **RCN** will review, select and approve the configuration of the space Applicant will occupy in **RCN**'s conduit systems at its sole discretion. Where required by law or franchise agreement, ducts reserved for municipal use shall not be considered available for the Attaching Party's use. RCN shall have no obligation to provide access to any Conduit where RCN, in its reasonable discretion, determines that it does not have available capacity due to its own expansion or other needs.

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Deleted: All other ducts, inner ducts, or space in rights-of-ways which are not assigned or occupied shall be deemed available for use by **RCN**, Attaching Party, and other parties entitled to access under applicable law.Deleted: ¶
Duct, and Conduit Space Assignments.

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19. ISSUANCE OF OCCUPANCY PERMITS (INCLUDING MAKE-READY WORK)

19.1 Response Within 30 Days. Within 30 days of Attaching Party's submission of a request for access to **RCN Conduit**, **RCN** shall provide a written response to the application. The response shall state whether the request is being granted or denied, and if the request is denied, provide the reasons why the request is being denied. If denial of access is proposed, **RCN** will meet with the Attaching Party and explore in good faith reasonable alternatives to accommodate the proposed attachment. The Attaching Party must request such meeting within ten (10) business days of receipt of a notice of denial. **RCN** will schedule the meeting within ten (10) business days of receipt of the Attaching Party's written request for a meeting.

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<#>After Attaching Party's application for a conduit occupancy permit has been approved by **RCN**, the duct, and conduit space selected and/or approved by **RCN** in such application will be assigned to Attaching Party for a pre-occupancy period not to exceed twelve (12) months. ¶18.2.2 **RCN** may assign space to itself by making appropriate entries in the same records used to log assignments to Attaching Party and third parties. If **RCN** assigns duct, or conduit space to itself, such assignment will automatically lapse 12 months after the date the assignment has been entered into the appropriate **RCN** record if **RCN** has not occupied such assigned space within such 12 month period.¶¶
<#>Notices and applications including assignment requests will be date-and time-stamped on receipt. ¶

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19.2 If access is granted the response will further advise Attaching Party in writing of:

19.2.1 what modifications, capacity expansions, or make-ready work, if any, will be required to prepare **RCN**'s Conduit or Structure, and

19.2.2 an estimate of charges for such modifications, capacity expansions, or make-ready work, and an estimate of the time that it would take for RCN or its contractor to complete the work.

19.3 Make-ready Work. If it is determined that make ready work will be necessary to accommodate Attaching Party's facilities, Attaching Party shall have 30 days (the "acceptance period") to:

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19.3.1 submit payment for the estimate authorizing **RCN** or its contractor to complete the make-ready work; or

19.3.2 obtain RCN's agreement to permit Attaching Party or its authorized contractors to perform the proposed make-ready work itself if permissible in the application area. RCN may determine whether to perform this work itself, or agree to permit Attaching Party to do so itself, at RCN's sole discretion.

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19.4 Unless otherwise agreed to by the Parties, **RCN** shall complete make-ready work within ninety (90) days of receiving payment from Attaching Party under section 19.3.1; provided that RCN shall have no obligation to perform any make-ready work unless and until it has received payment from Attaching Party for the make ready estimate amount.

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19.5 Upon completion of make-ready work, (i) RCN shall return to Attaching Party the difference between the amount of money paid by Attaching Party for the estimate pursuant to Section 19.3.1 and the actual and reasonable cost incurred by RCN in performing the make-ready along with an invoice itemizing the costs incurred by RCN, or (ii) RCN shall provide Attaching Party with an invoice for the shortfall difference between the amount of money paid by Attaching Party for the estimate pursuant to Section 19.3.1 and the actual and reasonable costs incurred by RCN in performing the make-ready along with an invoice itemizing the costs incurred by RCN.

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19.6 In the event RCN agrees to permit Attaching Party to perform its own make ready work, the make-ready work performed by Attaching Party, or by an authorized contractor selected by Attaching Party, shall be performed in accordance with RCN's specifications and in accordance with the same standards and practices which would be followed if such work were being performed by RCN or RCN's contractors. Neither Attaching Party nor authorized contractors selected by Attaching Party shall conduct such work in

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any manner which degrades the integrity of **RCN**'s Structures or interferes with any existing use of **RCN**'s facilities or the facilities of any Other User.

19.7 Payments to Others for Expenses Incurred in Transferring or Arranging Their Facilities. In the event that Attaching Party's access to the Conduit, or its construction activities materially impact any other RCN customer or Other User within RCN's conduit system, Attaching Party shall reimburse any expenses incurred by these Other Users in transferring or rearranging the Other Users' facilities to accommodate the attachment or placement of Attaching Party's facilities to or in RCN's ducts or Conduits.

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Reimbursement for the Creation or Use of Additional Capacity. If any additional capacity is created as a result of make-ready work performed to accommodate Attaching Party's facilities, Attaching Party shall not have a preferential right to utilize such additional capacity in the future and shall not be entitled to any fees subsequently paid to **RCN** for the use of such additional capacity. If **RCN** utilizes additional space or capacity created at Attaching Party's expense, **RCN** will reimburse Attaching Party on a pro-rata basis for **RCN**'s share, if any, of Attaching Party's capacity expansion costs, to the extent reimbursement is required by applicable rules, regulations, and commission orders. **RCN** will notify the Attaching Party if any entity, including **RCN**, attaches facilities... [11]

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19.8 Occupancy Permit. After all required make-ready work is completed, **RCN** will issue an occupancy permit confirming that Attaching Party may attach specified facilities within RCN Conduit.

19.9 The Attaching Party must occupy the assigned space within a period not to exceed six (6) months from the issuance of the occupancy permit. If the Attaching Party does not occupy the assigned space within the six (6) month period, the Occupancy Permit will lapse and the space will be considered available for use by RCN or Other User.

19.9 The Attaching Party's obligation to pay annual conduit occupancy fees under Section 28 of this Agreement will commence on the date the Occupancy Permit is provided by **RCN** to the Attaching Party.

19.10 **RCN** shall reasonably cooperate with the Attaching Party to meet all necessary municipal permitting and licensing requirements necessary for the Attaching Party to access the **RCN** duct or Conduit.

20. CONSTRUCTION OF ATTACHING PARTY'S FACILITIES

20.1 Responsibility for Attaching and Placing Facilities. The Attaching Party shall be responsible for the actual placement of such facilities in **RCN**'s ducts and conduits, and shall be solely responsible for all costs and expenses incurred by it or on its behalf in connection with such activities. An authorized employee or representative of RCN may be present at any and all times when Attaching Party or personnel acting on Attaching Party's behalf enter or perform construction work within RCN's conduit system. Attaching Party shall reimburse RCN for costs associated with the presence of RCN's authorized employee or representative.

20.2 Construction Schedule. After the issuance of an occupancy permit, Attaching Party shall provide RCN with a construction schedule and

thereafter keep **RCN** informed of anticipated changes in the construction schedule.

21. USE AND ROUTINE MAINTENANCE OF ATTACHING PARTY'S FACILITIES

21.1 Routine Maintenance of Attaching Party's Facilities. Each occupancy permit subject to this Agreement authorizes Attaching Party to engage in routine maintenance of Attaching Party's facilities located on or within **RCN's** ducts, and conduits. Attaching Party shall provide RCN with written notice no less than five (5) business days in advance of any proposed non-emergency maintenance or repair work, and RCN may require rescheduling or postponement of the proposed maintenance or repair at its reasonable discretion.

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21.2 Routine maintenance does not include the replacement or modification of Attaching Party's facilities in any manner which results in Attaching Party's facilities differing substantially in size, weight, or physical characteristics from the facilities described in Attaching Party's occupancy permit, which actions shall be prohibited without RCN's prior written approval.

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<#>Short-term Use of Maintenance Ducts for Repair and Maintenance Activities. Maintenance ducts shall be available, on a nondiscriminatory basis, for short-term (not to exceed 30 days) non-emergency maintenance or repair activities by any entity with facilities in the conduit section in which the maintenance duct is located; provided, however, that use of the maintenance duct for non-emergency maintenance and repair activities must be scheduled by **RCN**. A person or entity using the maintenance duct for non-emergency maintenance or repair activities shall immediately notify **RCN** of such use and must either vacate the maintenance duct within 30 days or, with **RCN's** consent, which consent shall not be unreasonably withheld, rearrange its facilities to ensure that at least one full-sized replacement maintenance duct (or, if the designated maintenance duct was an inner duct, a suitable replacement inner duct) is available for use by all occupants in the conduit section within 30 days after such person or entity occupies the maintenance duct. Cables temporarily placed in the maintenance duct on a non-emergency basis shall be subject to such accommodations as may be necessary to rectify emergencies which may occur while the maintenance duct is occupied. ¶

21.3 An authorized employee or representative of RCN may be present at any and all times when Attaching Party or personnel acting on Attaching Party's behalf enter or perform maintenance work within RCN's conduit system. Attaching Party shall reimburse RCN for costs associated with the presence of RCN's authorized employee or representative.

22. MODIFICATION OF ATTACHING PARTY'S FACILITIES

22.1 Notification of Planned Modifications. Attaching Party shall notify **RCN** in writing at least 10 days before proposing to add, relocate, replace or otherwise modify Attaching Party's facilities already attached to a **RCN Conduit**. The notice shall contain sufficient information to enable **RCN** to determine whether the proposed addition, relocation, replacement, or modification is within the scope of Attaching Party's present occupancy permit or requires a new or amended occupancy permit.

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22.2 Replacement of Facilities. Attaching Party may replace existing facilities with new facilities occupying the same **RCN Conduit**, subject to all the applicable notices, approvals, terms, conditions and cost reimbursements set forth in this Agreement.

23. REQUIRED REARRANGEMENTS OF ATTACHING PARTY'S FACILITIES

23.1 Required Rearrangement of Attaching Party's Facilities. Attaching Party agrees that Attaching Party will cooperate with **RCN** and other **RCN** users in making rearrangements to Attaching Party Facilities in **RCN** Structure and Conduit as required or requested by RCN. Costs incurred by Attaching Party in making rearrangements not requested by Attaching Party or performed for Attaching Party's benefit shall, in the absence of a specific agreement to the contrary, be borne by **RCN**.

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23.2 **RCN** shall give Attaching Party not less than 30 days prior written notice of the need for Attaching Party to rearrange its facilities pursuant to this section. The notice shall state the date by which such rearrangements are to be completed. Attaching Party shall complete such rearrangements within the time prescribed in the notice. If Attaching Party does not rearrange facilities within the noted time, **RCN** will rearrange at Attaching Party's expense.

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24. EMERGENCY REPAIRS

24.1 Responsibility for Emergency Repairs; Access to Maintenance Duct. In general, each party shall be responsible for making emergency repairs to its own facilities and for formulating appropriate plans and practices enabling such party to make such repairs.

24.1.1 Attaching Party shall provide RCN with telephonic notice prior to any proposed emergency maintenance or repair work, and shall use best efforts to permit RCN to have RCN supervisory personnel present during any emergency repair activity.

24.1.2 Nothing contained in this Agreement shall be construed as requiring either party to perform any repair or service restoration work of any kind with respect to the other party's facilities or the facilities of joint users.

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Maintenance ducts shall be available, on a nondiscriminatory basis, for emergency repair activities by any entity with facilities in the conduit section in which the maintenance duct is located; provided, however, that an entity using the maintenance duct for emergency repair activities will notify **RCN** within 12 hours of the current business day (or first business day following a non-business day) that such entity is entering the **RCN** conduit system and using the maintenance duct for emergency restoral purposes. The notice will include a description of the emergency and non-emergency services involved and an estimate of the completion time. Maintenance ducts will be used to restore the highest priority services, as defined in Section 2.7, first. Existing spare ducts may be used for restoration purposes providing the spare ducts are restored after restoration work is complete. Any spare ducts not returned will be included be assigned to the user of the duct and an occupancy permit issued. ¶

¶ The Attaching Party shall either vacate the maintenance duct within 30 days or, with **RCN**'s consent, rearrange its facilities to ensure that at least one full-sized replacement maintenance duct (or, if the designated maintenance duct was an inner-duct, a suitable replacement inner-duct) is available for use by all occupants in the conduit section within 30 days after such person or entity occupies the maintenance ducts. Entities not vacating the maintenance duct must provide an immediate maintenance duct at the entity's cost.

- 24.2 Designation of Emergency Repair Coordinators and Other Information. Attaching Party shall provide **RCN** with the emergency contact number of Attaching Party's designated point of contact for coordinating the handling of emergency repairs of Attaching Party's facilities and shall thereafter notify **RCN** of changes to such information.

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- 24.3 Order of Precedence of Work Operations in Emergency Situations. When notice and coordination are practicable, **RCN**, Attaching Party, and other affected parties shall coordinate repair and other work operations in emergency situations involving service disruptions. Disputes will be immediately resolved at the site by the affected parties present in accordance with the following principles.

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24.3.1 RCN shall maintain sole discretion to support its customers and its operational, technical and other interests within the RCN Conduit and RCN Structure as the highest restoration and emergency repair priority. RCN shall have discretion to perform emergency repair work in the affected Conduits for its customers and its own operation, technical and other interests first, before providing access to Attaching Party. Secondary priority shall be given to restoring services to Attaching Party's facilities and customers; provided that RCN shall exercise good faith in assigning priorities and shall make reasonable efforts to provide Attaching Party with access to perform emergency repairs without undue delay.

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<#>If applicable, rExcept as otherwise agreed upon by the parties, restoration of lines for emergency services providers (e.g., 911, fire, police, national security and hospital lines, etc) shall be given the highest priority and temporary occupancy of the maintenance duct (and, if necessary, other unoccupied ducts) shall be assigned in a manner consistent with this priority. ¶

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Deleted: <#>**RCN** shall determine the order of precedence of work operations and assignment of duct space in the maintenance duct (and other unoccupied ducts) only if the affected parties present are unable to reach prompt agreement; provided, however, that these decisions shall be made by **RCN** on a nondiscriminatory basis in accordance with the principles set forth in this section.¶

25. INSPECTION BY RCN OF ATTACHING PARTY'S FACILITIES

25.1 Post-Construction Inspections. **RCN** will, at the Attaching Party's expense, conduct a post-construction inspection of the Attaching Party's attachment of facilities to **RCN's** Structures for the purpose of determining the conformance of the attachments to the occupancy permit and the requirements of this Agreement. **RCN** will provide the Attaching Party advance written notice of proposed date and time of the post-construction inspection. The Attaching Party may accompany **RCN** on the post-construction inspection.

25.2 Right to Make Periodic or Spot Inspections. **RCN** shall have the right, but not the obligation, to make periodic or spot inspections of all facilities attached to **RCN's** Conduit or Structure at Attaching Party's expense. These inspections will not be made more often than once per calendar year, unless in **RCN's** judgment such inspections are required for reasons involving safety or because of an alleged violation of the terms of this Agreement.

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25.3 If the inspection reflects that Attaching Party's facilities are not in compliance with the terms of this Agreement, Attaching Party shall, at its sole expense, bring its facilities into compliance within 30 days after being notified of such noncompliance. If any make ready or modification work to **RCN's** Conduit or Structures is required to bring Attaching Party's facilities into compliance, the Attaching Party shall provide notice to **RCN** and the make ready work or modification will be treated in the same fashion as make ready work or modifications for a new request for attachment.

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<#>If Attaching Party's facilities are in compliance with this Agreement, there will be no charges incurred by the Attaching Party for the periodic or spot inspection. If Attaching Party's facilities are not in compliance with this Agreement, **RCN** may charge Attaching Party for the inspection. The costs of Periodic Inspections will be paid by those Attaching Parties with 7% or greater of their attachments in violation. The amount paid by the Attaching Party shall be the percentage that their violations bear to the total violations of all Attaching Parties found during the inspection. ¶

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26. TAGGING OF FACILITIES AND UNAUTHORIZED ATTACHMENTS

- 26.1 Facilities to Be Marked. Attaching Party shall tag or otherwise mark all of Attaching Party's facilities placed in RCN's Structure in a manner sufficient to identify the facilities as those belonging to the Attaching Party.
- 26.2 Notice to Attaching Party. If any of Attaching Party's facilities for which no occupancy permit is presently in effect are found within any part of RCN's conduit system, RCN, shall send a written notice to Attaching Party advising Attaching Party that no occupancy permit is presently in effect with respect to the facilities and that Attaching Party must, within 30 days, respond to the notice as provided in Section 26.3 of this Agreement.
- 26.3 Attaching Party's Response. Within 30 days after receiving a notice under Section 26.2 of this Agreement, Attaching Party shall acknowledge receipt of the notice and submit to RCN, in writing, an application for a new or amended occupancy permit with respect to such facilities.
- 26.4 Approval of Request and Retroactive Charges. If RCN approves Attaching Party's application for a new or amended occupancy permit, Attaching Party shall be liable to RCN for all fees associated with the unauthorized attachments as specified in Section 26.5 of this Agreement.
- 26.5 Fees for Unauthorized Attachments. Attachment and occupancy fees and charges shall continue to accrue until the unauthorized facilities are removed from RCN's conduit system or rights of way or until a new or amended occupancy permit is issued and shall include, but not be limited to, all fees and charges which would have been due and payable if Attaching Party had continuously complied with all applicable RCN licensing requirements. Such fees and charges shall be due and payable 30 days after the date of the bill or invoice stating such fees and charges. In addition, the Attaching Party shall be liable for an unauthorized attachment fee in the amount of five (5) times the Annual Fee in effect on the date Attaching Party is notified by RCN of the unauthorized attachment or occupancy.
- 26.6 Removal of Unauthorized Attachments. If Attaching Party does not obtain a new or amended occupancy permit with respect to unauthorized facilities within the specified period of time, RCN shall by written notice advise Attaching Party to remove its unauthorized

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facilities not less than 60 days from the date of notice. ~~Attaching Party~~ shall remove the facilities within the time specified in the notice. If the facilities have not been removed within the time specified in the notice, **RCN** may, at **RCN**'s option, remove Attaching Party's facilities at Attaching Party's expense.

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27. REMOVAL OF ATTACHING PARTY'S FACILITIES

27.1 When ~~Attaching Party~~, no longer intends to occupy space in a **RCN** duct or conduit, Applicant will provide written notification to **RCN** that it wishes to terminate the occupancy permit with respect to such space and will remove its facilities from the space described in the notice. Upon removal of Applicant's facilities, the occupancy permit shall terminate and the space shall be available for reassignment.

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27.1.1 Attaching Party shall be responsible for and shall bear all expenses arising out of or in connection with the removal of its facilities from **RCN**'s Structure.

27.1.2 Except as otherwise agreed upon in writing by the parties, ~~Attaching Party~~ must, after removing its facilities, plug all previously occupied ducts at the entrances to **RCN**'s manholes.

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27.1.3 ~~Attaching Party~~ shall be solely responsible for the removal of its own facilities from **RCN**'s Structure.

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27.1.4 Attaching Party shall be liable for any early termination fees as set forth in Section 4.6.

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27.2 At **RCN**'s request, Attaching Party shall remove from **RCN**'s Structure any of Attaching Party's facilities which are no longer in active use. Upon request, the Attaching Party will provide proof satisfactory to **RCN** that an Attaching Party's facility is in active service. Attaching Party shall not abandon any of its facilities by leaving such facilities on or in **RCN**'s Structure.

27.3 Removal Following Termination of Occupancy permit. Attaching Party shall remove its facilities from **RCN**'s ducts, conduits, or rights-of-way within 60 days after termination of the occupancy permit.

27.4 Removal Following Replacement of Facilities. Attaching Party shall remove facilities no longer in service from **RCN**'s Structures within 60 days after the date Attaching Party replaces existing facilities in a conduit with substitute facilities in the same conduit.

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27.5 **Removal of Facilities by RCN; Notice of Intent to Remove.** If Attaching Party fails to remove its facilities from **RCN's** Structure in accordance with the provisions of this Agreement, **RCN** may remove such facilities, ~~dispose of them at Attaching Party's expense, or retain them as RCN property for its own use~~ without being deemed guilty of trespass or conversion and without becoming liable to Attaching Party for any injury, loss, or damage resulting from such actions. **RCN** shall give Attaching Party not less than ~~30~~ days prior written notice of its intent to remove Attaching Party's facilities pursuant to this section.

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28. RATES, FEES, CHARGES, AND BILLING

28.1 **Annual Fee:** Attaching Party shall pay **RCN** an annual fee (~~"Annual Fee"~~) for occupancy of **RCN** duct or conduit in following amounts:

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During Months 1-12 of the Agreement, Attaching Party shall pay RCN \$1.10 per linear foot per year for all Conduit accessed under the Agreement. The Annual Fee for each subsequent 12 month period of the Agreement shall be increased by applicable increases in the Consumer Price Index measured and applied as follows:

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28.1.1 "CPI" shall mean the United States Bureau of Labor Statistics Consumer Price Index for All Urban Consumers - U.S. City Average (or such successor Index as the U.S. Department of Labor, Bureau of Statistics may develop as and state is a replacement index. For purposes of this Agreement, the parties shall measure the year over year 12 month percent change for the month of September, and the CPI factor will be applied to increase the Annual Fee for the following calendar year.

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Months 25-36:¶
Months 37-48:¶
Months 49-60:¶

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28.1.2 Attaching Party shall pay 1/12th of the most recent applicable Annual Fee during any month to month renewal period.

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28.2 **Maintenance and Overhead Fee:** For overall maintenance of the Conduit, Attaching Party shall pay to RCN a Maintenance and Overhead fee equal to 25% of the applicable Annual Fee payment for each 12 month period of the Agreement. This amount shall include reimbursement by Attaching Party for its appropriate portion of RCN's maintenance of the System and overhead and administrative costs associated with this Agreement.

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28.3 **Changes to Rates, Charges and Fees.** Subject to applicable federal and state laws, rules, regulations and orders, **RCN** shall have the right to change the rates, charges and fees outlined in this Agreement. **RCN**

will provide the Attaching Party 60 days written notice, advising the Attaching Party of the specific changes being made and the effective date of the change. If the changes outlined in the notice are not acceptable to the Attaching Party, Attaching Party may either (1) seek renegotiation of this Agreement or (2) terminate this Agreement.

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28.4 Payments owed by Attaching Party pursuant to this Agreement shall be made within 30 days of the date of the applicable invoice. Invoices for the Section 28.1 Annual Fee and Section 28.2 Maintenance and Overhead Fee charges shall be delivered by RCN to Attaching Party on an annual basis, with the first invoice for applicable charges to be issued to Attaching Party on or before the beginning of Month 1 of the Term. Subsequent Annual Fee and Maintenance and Overhead Fee invoices shall be issued and paid before months 13, 25, 37, and 49, and every 12 month period thereafter. Invoices for other costs to be reimbursed to RCN pursuant to this Agreement shall be issued as those costs are incurred, and shall be paid by Attaching Party within 30 days of the date of the invoice. In the event Attaching Party should fail to make any payment when due, Attaching Party shall be liable to RCN for a late charge on all past due amounts at the compounded rate of one and one-half percent (1.5%) per month (or such lower rate that is then the maximum rate allowed by law). In the event that Attaching Party is overdue on its payment obligations, RCN may, upon no less than five (5) days prior written notice to Attaching Party, suspend the services and/or work being delivered under the Agreement until Attaching Party's account is current. All amounts due to RCN are due and payable without set off.

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29. PERFORMANCE AND PAYMENT BONDS

29.1 Bond May Be Required. **RCN** may require Attaching Party, authorized contractors, and other persons acting on Attaching Party's behalf to execute performance and payment bonds (or provide other forms of security) in amounts and on terms sufficient to guarantee the performance of the Attaching Party's obligations arising out of or in connection with this Agreement.

29.1.1 If a bond or similar form of assurance is required of Attaching Party, an authorized contractor, or other person acting on Attaching Party's behalf, Attaching Party shall promptly submit to **RCN** adequate proof that the bond remains in full force and effect and provide certification from the company issuing the bond that the bond will not be cancelled, changed or materially altered without first providing **RCN** 60 days written notice.

- 29.2 Payment and Performance Bonds in Favor of Contractors and Subcontractors. Attaching Party shall be responsible for paying all employees, contractors, subcontractors, mechanics, materialmen and other persons or entities performing work or providing materials in connection with Attaching Party's performance under this Agreement. In the event any lien, claim or demand is made on **RCN** by any such employee, contractor, subcontractor, mechanic, materialman, or other person or entity providing such materials or performing such work, **RCN** may require, in addition to any security provided under Section 29.1 of this Agreement, that Attaching Party execute payment or performance bonds, or provide such other security, as **RCN** may deem reasonable or necessary to protect **RCN** from any such lien, claim or demand.

30. NOTICES

30.1 Notices to Attaching Party. All written notices required to be given to a party shall be delivered or mailed to the party's duly authorized personnel, as designated in this section. Notices shall be mailed by registered or certified mail, return receipt requested or by express mail service. When notice is given by mail, such notice shall be complete upon receipt of the notice.

Notices to a party shall be sent to the authorized agent or attorney designated below:

If to Attaching Party:

Name: Robert Delsman, Esq.

Title: Senior Director, Government Relations
and Regulatory Affairs

Firm: NextG Networks, Inc.

Address:

If to RCN:

RCN Telecom Services, Inc.
196 Van Buren Street
Herndon, Virginia 20170
Attn: VP/Network

With a copy to:

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Such notice may

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Such notice may be

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RCN Telecom Services, Inc.
196 Van Buren Street
Herndon, Virginia 20170
Attn: General Counsel

- 30.2 Changes in Notice Requirements. Either party may, from time to time, change notice addressees and addresses by giving written notice of such change to the other party. Such notice shall state, at a minimum, the name, title, firm, and full address of the new addressee.

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¶ Firm: ¶

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¶ City/State/Zip:

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CONTAINS A BINDING
ARBITRATION PROVISION WHICH
MAY BE ENFORCED BY THE
PARTIES.¶**Deleted:** COMMUNICATIONS,

By:

Signature of RCN's Authorized Officer/Employee_____
Name of RCN's Authorized Officer/Employee (Printed or Typed)_____
Position/Title of RCN's Authorized Officer/Employee_____
Date_____
City and State of Execution by RCNNextG Networks, Inc.

Attaching Party's Name (Printed or Typed)_____
Signature of Attaching Party's Authorized Officer/EmployeeJohn Georges

Name of Authorized Officer/Employee (Printed or Typed)Chairman and CEO

Position/Title of Authorized Officer/Employee_____
DateSan Jose, California

City and State of Execution by Attaching Party

EXHIBIT 1
LIST OF CONDUIT SEGMENTS

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Definitions. The term “Claims” as used in Section 7 shall mean any suit, claim, demand, loss, damage, liability, fee, fine, penalty, or expense, of every kind and character.

Indemnities Excluded. Except as otherwise specifically provided in this article, neither party (as an “indemnifying party”) shall be required to indemnify or defend the other party (as an “indemnified party”) against, or hold the indemnified party harmless from, any Claims arising out of:

any breach by the indemnified party of any provision of this Agreement;

the violation of any law by any employee of the indemnified party or other person acting on the indemnified party’s behalf;

willful or intentional misconduct or gross negligence committed by any employee of the indemnified party or by any other person acting on the indemnified party’s behalf; or

any negligent act or acts committed by any employee of the indemnified party or other person acting on the indemnified party’s behalf, if such negligent act or acts are the sole producing cause of the injury, loss, or damage giving rise to the Claim for which indemnity is requested.

7.3 Workplace Injuries. Except as expressly provided in this Agreement to the contrary, each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims, on account of or in connection with any injury, loss, or damage suffered by any person, which arises out of or in connection with the personal injury or death of any employee of the indemnifying party (or other person acting on the indemnifying party’s behalf) if such injury or death results, in whole or in part, from any occurrence or condition on, within, or in the vicinity of **RCN**’s Structure.

7.4 Other Claims Brought Against Either Party by Employees and Other Persons Acting on the Other Party’s Behalf. Each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims (other than workplace injury claims subject to Section 7.3 above) made, brought, or sought against the indemnified party by any employee, contractor, or subcontractor of the indemnifying party or by any other person acting on the indemnifying party’s behalf.

7.5 THE INDEMNIFYING PARTY’S INDEMNIFICATION OBLIGATIONS UNDER SECTIONS 7.3-7.4 SHALL ARISE EVEN IF THE INJURY, SICKNESS, DISEASE, OR DEATH WAS ATTRIBUTABLE IN PART TO NEGLIGENT ACTS OR OMISSIONS OF THE INDEMNIFIED PARTY.

Claims Brought Against Either Party by Vendors, Suppliers and Customers of the Other Party. Each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims (other than workplace injury claims subject to Section 7.3, or other claims subject to Section 7.4) made, brought, or sought against the indemnified party by any vendor, supplier, or customer of the indemnifying party.

7.7 Injuries to Third Parties and Third party Property Owners Resulting from the Parties' Conduct. Each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims, on account of or in connection with the personal injury or death of any third party or physical damage to real or personal property owned by a third party, arising, in whole or in part, out of or in connection with the conduct of employees of the indemnifying party or other persons acting on the indemnifying party's behalf.

7.8 Indemnification for Environmental Claims.

7.8.1 Each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims, on account of or in connection with any death of person or injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with the violation or breach, by any employee of the indemnifying party or other person acting on the indemnifying party's behalf, of

any federal, state, or local environmental statute, rule, regulation, ordinance, or other law or

any provision or requirement of this Agreement dealing with hazardous substances or protection of the environment.

Each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims, on account of or in connection with any death of person or injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with the release or discharge, onto any public or private property, of any hazardous substances, regardless of the source of such hazardous substances, by any employee of the indemnifying party, or by any person acting on the indemnifying party's behalf, while present on, within, or in the vicinity of any **RCN** duct, conduit, or right-of-way.

Each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims, on account of or in connection with any death of person or injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with the removal or disposal of any hazardous substances by the indemnifying party or by any person acting on the indemnifying party's behalf, or arising out of or in connection with the subsequent storage, processing

or other handling of such hazardous substances by any person or entity after they have been removed by the indemnifying party or persons acting on the indemnifying party's behalf from the site of any **RCN** duct, conduit, or right-of-way.

Except as otherwise specifically provided in this section, neither party shall be required to indemnify or defend the other party against, or hold the other party harmless from any Claims for which the other party may be liable under any federal, state, or local environmental statute, rule, regulation, ordinance, or other law.

Miscellaneous Claims. Attaching Party shall indemnify, on request defend, and hold **RCN** harmless from any and all Claims, of every kind and character, made, brought, or sought against **RCN** by any person or entity, arising out of or in connection with the subject matter of this Agreement and based on either:

claims for taxes, municipal fees, franchise fees, right-to-use fees, and other special charges assessed on **RCN** due to the placement or presence of Attaching Party's facilities on or within **RCN**'s ducts, conduits, or rights-of-way; or

claims based on the violation by Attaching Party of any third party's intellectual property rights, including but not limited to claims for copyright infringement, patent infringement, or unauthorized use or transmission of television or radio broadcast programs or other program material.

Attaching Party's General Indemnity Obligations to **RCN**. This section applies only in those situations not expressly covered by Sections 7.3-7.10 and does not apply to any Claims resulting from Attaching Party's enforcement of its rights against **RCN** pursuant to this Agreement or other provisions in the parties' interconnection agreement, if any. Except as otherwise expressly provided in this Agreement to the contrary, and subject to the exclusions set forth in Section 8.2, Attaching Party shall indemnify, on request defend, and hold **RCN** harmless from any and all Claims, on account of or in connection with any death of person or injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with Attaching Party's access to or use of **RCN**'s ducts, conduits, or rights-of-way, Attaching Party's performance of any acts authorized under this Agreement, or the presence or activities of Attaching Party's employees or other personnel acting on Attaching Party's behalf on, within, or in the vicinity of **RCN**'s ducts, conduits

or rights-of-way.

RCN's General Indemnity Obligations to Attaching Party. This section applies only in those situations not expressly covered by Sections 7.3-7.9 and does not

apply to any Claims resulting from RCN's enforcement of its rights against Attaching Party pursuant to this Agreement or other provisions in the parties' interconnection agreement, if any. Except as otherwise expressly provided in this Agreement to the contrary, RCN shall indemnify, on request defend, and hold Attaching Party harmless from any and all Claims, on account of or in connection with any death of person or injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with RCN's access to or use of RCN's ducts, conduits, or rights-of-way, RCN's performance of any acts authorized under this Agreement, or the presence or activities of RCN's employees or other personnel acting on RCN's behalf on, within, or in the vicinity of RCN's ducts, conduits, or rights-of-way.

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Damage to Facilities. Each party shall exercise due care to avoid damaging the facilities of the other or of Other Users and hereby assumes all responsibility for any and all loss from damage caused by the party and persons acting on the party's behalf. A party shall make an immediate report to the other of the occurrence of any damage and hereby agrees to reimburse the other party, and/or Other Users for any property damaged caused by the party or persons acting on the party's behalf.

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Attaching Party may, ancillary to a bona fide loan transaction between Attaching Party and any lender, and without RCN's consent, grant security interests or make collateral assignments in substantially all of Attaching Party's assets, including Attaching Party's rights under this Agreement, subject to the express terms of this Agreement. In the event Attaching Party's lender, in the bona fide exercise of its rights as a secured lender, forecloses on its security interest or arranges for a third party to acquire Attaching Party's assets through public or private sale or through an Agreement with Attaching Party, Attaching Party's lender or the third party acquiring Attaching Party's rights under this Agreement shall assume all outstanding obligations of Attaching Party under the agreement and provide proof satisfactory to RCN that such lender or third party has complied or will comply with all requirements established under this Agreement. Notwithstanding any provisions of this Agreement to the contrary, such foreclosure by Attaching Party's lender or acquisition of assets by such third party shall not constitute a breach of this Agreement and, upon such foreclosure or acquisition, Attaching Party's lender or such third party shall succeed to all rights and remedies of Attaching Party under this Agreement (other than those rights and remedies, if any, which have not been transferred and, if Attaching Party is a debtor under the Federal Bankruptcy Code, those rights, if any, which remain a part of the debtor's estate notwithstanding an

attempted foreclosure or transfer) and to all duties and obligations of Attaching Party under the Agreement, including liability to **RCN** for any act, omission, default, or obligation that arose or occurred under the Agreement prior to the date on which such lender or third party succeeds to the rights of Attaching Party under the Agreement, as applicable.

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No assignment or transfer by Attaching Party of rights under this Agreement, occupancy permit subject to this Agreement, or authorizations granted under this Agreement shall be effective until Attaching Party, its successors, and assigns have complied with the provisions of this article, secured **RCN**'s prior written consent to the assignment or transfer, if necessary, and given **RCN** notice of the assignment or transfer pursuant to Section 10.3.

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Incorporations, Mergers, Acquisitions, and Other Changes in Attaching Party's Legal Identity. When the legal identity or status of Attaching Party changes, whether by incorporation, reincorporation, merger, acquisition, or otherwise, such change shall be treated as an assignment subject to the provisions of this article.

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Information Provided by Attaching Party to **RCN**. Except as otherwise specifically provided in this Agreement, all company-specific and customer-specific information submitted by Attaching Party to **RCN** in connection with this Agreement (including but not limited to information submitted in connection with Attaching Party's applications for occupancy permit shall be deemed to be "confidential" or "proprietary" information of Attaching Party and shall be subject to the terms set forth in this article. Confidential or proprietary information specifically includes information or knowledge related to Attaching Party's review of records regarding a particular market area, or relating to assignment of space to Attaching Party in a particular market area, and further includes knowledge or information about the timing of Attaching Party's request for or review of records or its inquiry about **RCN** facilities. This article does not limit the use by **RCN** of aggregate information relating to the occupancy and use of **RCN**'s Structure by firms other than **RCN** (that is, information submitted by Attaching Party and aggregated by **RCN** in a manner that does not directly or indirectly identify Attaching Party).

13.3 Access Limited to Persons with a Need to Know. Confidential or proprietary information provided by Attaching Party to **RCN** in connection with this Agreement shall not be disclosed to, shared with, or accessed by any person or

persons other than those who have a need to know such information for the limited purposes set forth in Section 13.3.

Permitted Uses of Attaching Party's Confidential Information. Notwithstanding the provisions of Sections 13.1 and 13.2 above, RCN and persons acting on RCN's behalf may utilize Attaching Party's confidential or proprietary information for the following purposes:

posting information, as necessary, to RCN's outside plant records;

placing, constructing, installing, operating, utilizing, maintaining, monitoring, inspecting, repairing, relocating, transferring, conveying, removing, or managing RCN's Structure and any RCN facilities located on, within, or in the vicinity of such Structure;

performing RCN's obligations under this Agreement and similar agreements with third parties;

determining which of RCN's Structure are (or may in the future be) available for RCN's own use, and making planning, engineering, construction, and budgeting decisions relating to RCN's Structure;

preparing cost studies;

responding to regulatory requests for information;

maintaining RCN's financial accounting records; and

complying with other legal requirements relating to Structure.

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may attach its facilities for the purposes of constructing, operating and maintaining such Attaching Party's facilities on

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16. ACCESS TO RECORDS

16.1 RCN will, upon request and at the expense of the Attaching Party, provide Attaching Party access to and copies of redacted maps, records and additional information relating to the location, capacity and utilization of RCN's Structure. Upon request, RCN will meet with the Attaching Party to clarify matters relating to maps, records or additional information. RCN does not warrant the accuracy or completeness of information on any maps or records.

Maps, records or information are and remain the proprietary property of RCN, are provided to the Attaching Party solely for the pursue of enabling the Attaching

Party to obtain access to RCN's Structure, and may not be resold, reproduced or disseminated by the Attaching Party.

RCN will provide information currently available on the RCN's maps and/or records regarding:

the location of Structure and street addresses for manholes as shown on RCN's maps;

the footage between manholes or lateral ducts lengths, as shown on RCN's maps;

the total capacity of the Structure

the existing utilization of the Structure.

RCN will not acquire additional information or provide information in formats other than that in which it currently exists and is maintained by RCN.

RCN will expunge any confidential or proprietary information from its maps and records prior to providing access to the same to the Attaching Party.

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Attaching Party shall promptly withdraw or amend its request if, at any time prior to the 45th day, it has determined that it no longer seeks access to specific RCN Structure.

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Reimbursement for the Creation or Use of Additional Capacity. If any additional capacity is created as a result of make-ready work performed to accommodate Attaching Party's facilities, Attaching Party shall not have a preferential right to utilize such additional capacity in the future and shall not be entitled to any fees subsequently paid to RCN for the use of such additional capacity. If RCN utilizes additional space or capacity created at Attaching Party's expense, RCN will reimburse Attaching Party on a pro-rata basis for RCN's share, if any, of Attaching Party's capacity expansion costs, to the extent reimbursement is required by applicable rules, regulations, and commission orders. RCN will notify the Attaching Party if any entity, including RCN, attaches facilities to additional capacity in RCN's Conduit Structure created at the Attaching Party's expense. RCN shall not be required to collect or remit any such amounts to Attaching Party, to resolve or adjudicate disputes over reimbursement between Attaching Party and Other Users.

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Months 13-24:

Months 25-36:

Months 37-48

Months 49-60:

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the amount of \$0.49 per foot of conduit		

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occupied when Attaching Party occupies only one half of the total number of ducts in a conduit ("Half Duct Rate") or \$0.98 per foot of conduit when Attaching Party occupies all ducts in a conduit ("Full Duct Rate"). All rates, charges and fees shall be subject to all applicable federal and state laws, rules, regulations, and commission orders.		

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\$XXX per year, which shall include		