

CAPTION SHEET

CASE MANAGEMENT SYSTEM

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PARTY/COMPLAINANT: TELCOVE HOLDINGS OF PA, INC

RESPONDENT/APPLICANT: PECO ENERGY COMPANY

COMP/APP COUNTY: UTILITY CODE: 110550

ALLEGATION OR SUBJECT

JOINT APPLICATION OF ADELPHIA BUSINESS SOLUTIONS, INC., D/B/A TELCOVE, ADELPHIA BUSINESS SOLUTIONS OF PA, INC., T/A TELCOVE, PECO TELCOVE, AND PECO ENERGY COMPANY FOR APPROVAL OF CERTAIN TRANSACTION RELATED TO THE TRANSFER OF SALE OF THE OWNERSHIP AND CONTROL OF PECO TELCOVE AND THE TRANSFER BY SALE OF CERTAIN ASSETS AND AMENDMENT OF A RELATED LEASE. SPECIFICALLY, THE TRANSFER OF THE OWNERSHIP INTEREST OF PECO ENERGY COMPANY AND ITS AFFILIATE PHT HOLDINGS, LLC IN PECO TELCOVE TO TELCOVE HOLDINGS OF PENNSYLVANIA, INC. DOCKET NUMBERS: ADELPHIA BUSINESS SOLUTIONS, INC T/A TELCOVE: A-310470F0009; ADELPHIA BUSINESS SOLUTIONS OF PA, INC T/A TELCOVE: A-310923F0007; PECO TELCOVE: A-310378F0006; AND PECO ENERGY COMPANY: A-110550F0159.

DOCUMENT FOLDER

CONFIDENTIAL

CONFIDENTIAL

Exhibit A

A-110550F0347159

SETTLEMENT AND PURCHASE AGREEMENT

Dated as of April 7, 2004

Among

Adelphia Business Solutions, Inc.,

TelCove Holdings of Pennsylvania, Inc.,

Adelphia Business Solutions of Pennsylvania, Inc.,

PHT Holdings, LLC,

Exelon Communications Company, LLC,

PECO Telcove,

Exelon Enterprises Company, LLC

And

PECO Energy Company

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SETTLEMENT AND PURCHASE AGREEMENT

THIS SETTLEMENT AND PURCHASE AGREEMENT (this "Agreement"), dated as of April 7, 2004, is made by and among ADELPHIA BUSINESS SOLUTIONS, INC., a Delaware corporation ("ABIZ"), ADELPHIA BUSINESS SOLUTIONS OF PENNSYLVANIA, INC., a Delaware corporation ("ABIZ-PA"), TELCOVE HOLDINGS OF PENNSYLVANIA, INC., a newly-formed Delaware corporation wholly-owned by ABIZ-PA ("THP"), PHT HOLDINGS, LLC, a Delaware limited liability company ("PHT"), EXELON COMMUNICATIONS COMPANY, LLC, a Delaware limited liability company ("Exelon"), PECO TELCOVE, a Pennsylvania general partnership (the "Partnership"), EXELON ENTERPRISES COMPANY, LLC, a Pennsylvania limited liability company ("Exelon Enterprises") and PECO ENERGY COMPANY, a Pennsylvania corporation ("PECO"). ABIZ, THP, ABIZ-PA, PHT, Exelon, the Partnership, PECO and Exelon Enterprises are collectively referred to herein as the "Parties."

RECITALS

A. The Partnership was formed pursuant to that certain Partnership Agreement dated as of October 9, 1995, as amended, (the "Partnership Agreement") between ABIZ-PA and PECO with each of ABIZ-PA and PECO owning a 50% interest in the Partnership. Pursuant to a Management Agreement dated as of October 9, 1995 between the Manager (as defined therein) and the Partnership, as amended (the "Management Agreement"), ABIZ is the Manager of the Partnership.

B. Out of its 50% interest in the Partnership, PECO has transferred a 49% interest in the Partnership to PHT, and continues to hold a 1% interest in the Partnership (the "PECO Interest"). Immediately prior to the Closing (as defined below), PECO shall transfer the PECO Interest to PHT (the "PECO Interest Transfer").

C. ABIZ-PA, PHT, PECO and the Partnership entered into a Settlement Agreement dated as of December 30, 2002 (the "Settlement Agreement"), which Settlement Agreement was approved on April 25, 2003 by the Bankruptcy Court (as defined below). Pursuant to the terms of the Settlement Agreement, among other things, ABIZ-PA has agreed to pay or cause to be paid, certain Disproportionate Distributions (as defined below) amounts to PHT and PECO in accordance with the terms set forth therein.

D. The parties hereto desire to provide for the satisfaction of all of their rights and obligations under the Settlement Agreement, the Partnership Agreement and the Management Agreement in accordance with the terms of this Agreement.

E. ABIZ-PA formed THP in connection with the transactions contemplated by this Agreement.

F. So as to resolve fully and finally all disputes relating to the rights and obligations arising in connection with the Partnership, including without limitation the Disproportionate Distributions, and in connection with any and all additional disputes

between the Parties, PHT is willing and desires to sell the Interest (as defined below) to THP, and THP is willing and desires to purchase the Interest from PHT, all in accordance with, and subject to, the terms and conditions specified herein.

G. PECO leases certain designated fibers to the Partnership pursuant to that certain Lease Agreement dated as of December 12, 1995 by and between PECO and the Partnership, as amended (the "Lease Agreement").

H. Exelon owns those fibers set forth on Schedule I hereto (collectively, the "Purchase Fibers"). Exelon is willing and desires to sell the Purchase Fibers to the Partnership, and the Partnership is willing and desires to purchase the Purchase Fibers from Exelon, all in accordance with, and subject to, the terms and conditions specified herein.

I. PECO and the Partnership desire to amend and restate the Lease Agreement substantially in the form of Exhibit A attached hereto to provide for the Partnership's exclusive lease of fibers as set forth in such amendment (collectively, the "Leased Fibers" and together with the Purchase Fibers, the "Fiber").

NOW, THEREFORE, in consideration of the premises and the respective agreements hereinafter set forth, and for other good and valuable consideration, the mutual receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1 DEFINED TERMS

Capitalized terms used in this Agreement shall have the meanings set forth below or in the article or section of this Agreement referred to below:

"ABIZ Parties" is defined in Section 5.2(b).

"ABIZ Required Approvals" is defined in Section 4.1(d).

"Additional Payment" is defined in Section 5.20.

"Affiliate" means, as to any Person, any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. The term "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as applied to any Person, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or other ownership interest, by contract or otherwise.

"Amended and Restated Lease Agreement" means the Amended and Restated Lease Agreement, in substantially the form attached hereto as Exhibit A.

"Assigned Agreements" is defined in Section 3.1(k).

“Assessments” is defined in Section 5.18.

“Average Monthly End User Revenue” means the average End User Revenue of the Partnership for any two month successive period between the date of this Agreement and the Closing Date.

“Bankruptcy Court” means the U.S. Bankruptcy Court, Southern District of New York or any Court that succeeds it in adjudicating Chapter 11 Case No. 02-11389 (REG).

“Broker Fees” means any obligation or liability, contingent or otherwise, for brokerage or finders’ fees or agents’ commissions or any other similar payment.

“Cap” means \$39,200,000.

“Closing” is defined in Article 6.

“Closing Date” means the second business day after the date on which the conditions set forth in Articles 7 and 8 have been satisfied or waived by the applicable party.

“Code” is defined in Section 2.2.

“Confidential Information” is defined in Section 12.6(c).

“Disproportionate Distributions” is defined in the Settlement Agreement.

“Dispute” is defined in Section 2.2.

“Duct Agreement” is defined in Section 5.3.

“End User Revenue” means the revenue of the Partnership resulting from Dedicated Access, Inter-City Private Line, Switched Access – End Users, Data, Internet and Long Distance, each as separately identified on the unaudited monthly financial statements of the Partnership.

“Fiber Cash Payment” is defined in Section 2.1.

“Governmental Authority” means any nation or government, any state or other political subdivision thereof or any entity (including, without limitation, a court) exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

“Indemnification Claim” is defined in Section 10.3(b).

“Interest” means 50% of the outstanding legal and equitable ownership interests in the Partnership, all of which will be held by PHT on the Closing Date, including all of

PHT's interest in the aggregate distributions by the Partnership and the aggregate allocations by the Partnership of profits, losses, income, gain, loss, deduction and credit and any similar items or rights to which PHT is entitled, and all of PHT's rights to exercise governance rights with regard to the Partnership.

"Interest Cash Payment" is defined in Section 2.1.

"Legal Proceeding" means any judicial, administrative or arbitral actions, suits, proceedings (public or private) or claims or any proceedings by or before a Governmental Authority.

"Lien" means any mortgage, lease, easement, restriction, transfer restriction, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), option, proxy, voting trust or agreement, charge or other security interest, preemptive right, existing or claimed right of first refusal, right of first offer, right of consent, put right, default or similar right, or right of a third party or other adverse claim of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement), other than any of the foregoing arising out of the Partnership Agreement.

"Losses" is defined in Section 10.2(a)(i).

"Material Adverse Effect" means (i) a material adverse effect on the physical condition of the Fibers or a material impairment on the Partnership's ability to use the Fibers other than any impairment resulting from the action or inaction of the Partnership, (ii) a reduction in the Average Monthly End User Revenue to an amount less than \$1.85 million, (iii) a material adverse effect on the ability of PHT, Exelon or PECO to consummate the transactions contemplated by this Agreement, (iv) any general suspension of trading in, or limitation on prices for, securities on any national securities exchange or in the over-the-counter market for a period in excess of 36 hours, (v) any declaration of a banking moratorium or general suspension of payments in respect of lenders that regularly participate in the U.S. market in loans to large corporations, (vi) any material limitation by any Federal, state or local government or any court, administrative or regulatory agency or commission or other governmental authority or agency in the United States that materially affects the extension of credit generally by lenders that regularly participate in the U.S. market in loans to large corporations, or (vii) any commencement of a war involving the United States or any commencement of armed hostilities or other national or international calamity involving the United States that has a material adverse effect on bank syndication or financial markets in the United States or, in the case of any of the foregoing occurrences existing on the date hereof, a material acceleration or worsening thereof; provided, however, that a "Material Adverse Effect" shall not include any changes resulting from the transactions contemplated by this Agreement or the announcement hereof.

"Parente Randolph Amounts" is defined in Section 5.10.

"Partner" means a partner in the Partnership.

“PECO Amounts” is defined in Section 5.11.

“PECO Pole Attachment Agreement” is defined in Section 5.4.

“Person” means an individual, partnership, corporation, firm, limited liability company, limited liability partnership, association, estate, business trust, joint stock company, trust, incorporated or unincorporated organization, joint venture, Governmental Authority or other entity or enterprise of whatever nature.

“PHT Parties” is defined in Section 5.2(b).

“Protiviti” is defined in Section 5.10.

“Protiviti Amounts” is defined in Section 5.10.

“Purchase Price Allocation” is defined in Section 2.2.

“Purchaser Indemnified Parties” is defined in Section 10.2(a).

“Representatives” is defined in Section 5.14.

“Required Approvals” is defined in Section 3.1(d).

“Seller Indemnified Parties” is defined in Section 10.2(b).

“Settlement Documents” means, collectively (as each document has been amended as of the date of this Agreement), the Settlement Agreement, the Pledge Agreement dated as of December 30, 2002 among ABIZ-PA, PHT and PECO, the Security Agreement dated as of December 30, 2002 among ABIZ-PA, PECO and PHT, the BEAL/PHT Partners Intercreditor Agreement dated as of December 20, 2002 (the “BEAL/PHT Intercreditor Agreement”) among PECO, PHT and Beal Bank, S.S.B., the ADLAC/PHT Partners Intercreditor Agreement dated as of December 30, 2002 (the “ADLAC/PHT Intercreditor Agreement”) among PECO, PHT and Adelphia Communications Corporation, the Guaranty and Make-Whole Agreement dated as of December 30, 2002 among the Partnership, PHT and PECO, the Pledge Amendment dated as of December 30, 2002 of ABIZ-PA, Amendment No. 1 to Secured Debtor In Possession Priming Credit and Security Agreement dated as of December 30, 2002 among ABIZ, each of the Subsidiaries of ABIZ listed on the signature page thereto and Beal Bank, S.S.B. and Amendment No. 1 to Subordination and Intercreditor Agreement dated as of December 30, 2002 among Beal Bank, S.S.B. and Adelphia Communications Corporation.

“Settlement Obligation” is defined in Section 5.8.

“Signing Deposit” is defined in Section 5.20.

“Sunesys Agreement” is defined in Section 5.3.

“Survival Period” is defined in Section 10.1.

“Threshold Amount” is defined in Section 10.2(c).

“Trade Names” is defined in Section 5.6.

“Transaction Documents” means this Agreement and all Exhibits attached hereto, including but not limited to the Amended and Restated Lease Agreement and each other instrument, document, certificate and agreement required or contemplated to be executed, delivered and performed by a party hereto hereunder or thereunder.

“Transfer Taxes” means all sales, use, transfer, intangible, recordation, documentary stamp or similar taxes or charges, of any nature whatsoever.

“Verizon License Agreement” is defined in Section 5.5.

“Verizon License Agreement Assignment” is defined in Section 5.5.

ARTICLE 2
SALE OF INTEREST

Section 2.1. Agreement of Purchase and Sale

(a) PHT hereby agrees to sell, convey, assign, transfer and deliver the Interest to THP at the Closing free and clear of all Liens, and THP hereby agrees to purchase the Interest from PHT at the Closing in exchange for twenty-five million dollars (\$25,000,000) in cash (the “Interest Cash Payment”), the payment of which shall be reduced by the amount of the Signing Deposit.

(b) Exelon hereby agrees to sell, convey, assign, transfer and deliver the Purchase Fibers to the Partnership at the Closing free and clear of all Liens, and the Partnership hereby agrees to purchase the Purchase Fibers from Exelon at the Closing in exchange for seventeen million dollars (\$17,000,000) in cash (the “Fiber Cash Payment”).

Section 2.2. Allocation of Interest Purchase Price

The Parties shall allocate the Interest Cash Payment and any other relevant items among the assets (other than the Purchase Fibers) of the Partnership attributable to the Interest (collectively, the “Purchase Price Allocation”) and shall allocate the Fiber Cash Payment to the Purchase Fiber. PHT shall provide THP with an initial Purchase Price Allocation within sixty (60) days of the Closing Date. In furtherance thereof, PHT shall allow THP thirty (30) days to review and comment on the initial Purchase Price Allocation. Within ten (10) days of receipt of THP’s comments, if any, PHT shall notify THP (a) of any dispute between them relating to the Purchase Price Allocation in accordance with this Section 2.2 (the “Dispute”) or (b) that there is no Dispute at which time PHT shall make such revisions to the initial Purchase Price Allocation prior to the Parties adopting the initial Purchase Price Allocation as the final Purchase Price

Allocation. In the event that PHT and THP have a Dispute, they shall in good faith attempt to reconcile their differences within ten (10) days of PHT's notice of Dispute. If any Dispute remains, either party can immediately submit such Dispute to Parente Randolph, whose costs shall be borne equally by THP and PHT, and whose decision as to the Dispute shall be final, binding and conclusive on the Parties. The Purchase Price Allocation shall be prepared in accordance with the Internal Revenue Code of 1986, as amended (the "Code"), and any applicable Treasury Regulations promulgated thereunder (including, if applicable, Sections 755 and 1060 of the Code and the corresponding Treasury Regulations). The Parties shall file all federal, state and local tax returns consistent with the Purchase Price Allocation, unless otherwise required by applicable law.

Section 2.3. Closing of Books of the Partnership

Upon the sale of the Interest, for purposes of allocating the Partnership's Net Profit and Net Loss (each as defined in the Partnership Agreement) and other items allocable to the taxable period that includes the Closing Date, the Partnership shall use the "interim-closing-of-the-books" method which will in effect separate the Partnership's taxable year during which the Closing takes place into two distinct periods: (i) one with respect to the period prior to and including the Closing Date, and (ii) one with respect to the period following the Closing Date; provided, however, that in the event that the Closing Date does not coincide with a month-end, the "interim-closing-of-the-books" shall take place on the last day of the month ending immediately prior to the Closing Date, and all Net Profit and Net Loss and other items with respect to the period between the end of the prior month and the Closing Date shall be allocated to the Partner on a daily basis, based upon results for that full month and the number of days in that month that each Partner was a Partner of the Partnership. For example, if the Closing Date were March 20, 2004, the Partnership would close its books as of February 29, 2004 and make appropriate allocations to the Partners based on such closing, and the Partnership would allocate to PHT 20/31, and to THP 11/31, of the allocable items for March with respect to the Interest. The books of the Partnership shall be closed in accordance with the terms of this Section 2.3 by the Partnership's independent auditors and the auditor's unaudited report of such closing shall be delivered to PHT, ABIZ, ABIZ-PA and THP within one hundred eighty (180) days after the Closing Date. Notwithstanding anything to the contrary contained in this Section 2.3 or in the Partnership Agreement, neither PHT nor PECO shall be allocated any deduction, loss or credit attributable to the Partnership's purchase of the Purchase Fibers.

Section 2.4. Cooperation on Tax Matters

The Parties shall reasonably cooperate, and shall cause their respective Affiliates, officers, employees, agents, auditors and representatives reasonably to cooperate, in (i) preparing and filing all federal, state and local tax returns (including, without limitation, any forms to be filed in connection with the Purchase Price Allocation), (ii) maintaining and making available to each other records necessary in connection with taxes and (iii) resolving all disputes and audits with respect to all taxable periods.

Section 2.5. Exelon Enterprise Guarantee

Exelon Enterprises hereby guarantees to ABIZ, THP and ABIZ-PA (and their Affiliates) the punctual payment performance and performance when due of all obligations of PHT, Exelon and PECO pursuant to this Agreement and all transactions contemplated hereby, including all obligations under Article 10 hereof. Exelon Enterprises acknowledges and agrees that its obligation under this Section 2.5 is a guarantee of payment and not of collection. The liability of Exelon Enterprises pursuant to this Section 2.5 shall be primary, and in any claim arising pursuant to this Agreement, ABIZ, ABIZ-PA and THP (and their Affiliates) may proceed against Exelon Enterprises without having commenced an action, or having obtained any judgment against PHT, Exelon or PECO.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF PHT, EXELON, EXELON ENTERPRISES AND PECO

Section 3.1. Representations and Warranties

Each of PHT (with respect to matters related to itself only), Exelon (with respect to matters related to itself only), PECO and Exelon Enterprises (with respect to matters related to itself only) represents and warrants to ABIZ and ABIZ-PA as follows:

(a) Organization. PHT is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite limited liability company power and authority to own the Interest and to execute, deliver and perform each Transaction Document to which it is or shall be a party. Exelon is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite limited liability company power and authority to execute, deliver and perform each Transaction Document to which it is or shall be a party. PECO is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania and has all requisite corporate power and authority to execute, deliver and perform each Transaction Document to which it is or shall be a party. Exelon Enterprises is a limited liability company duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania and has all requisite limited liability company power and authority to execute, deliver and perform each Transaction Document to which it is or shall be a party.

(b) Authorization. The execution and delivery by each of PHT, Exelon, PECO and Exelon Enterprises of this Agreement and each other Transaction Document to which it is or shall be a party, and the performance by each of PHT, Exelon, PECO and Exelon Enterprises of its obligations hereunder and thereunder, have been duly authorized by all necessary corporate and limited liability company action and no other proceedings on PHT's, Exelon's, PECO's or Exelon Enterprises' part which have not been taken (including without limitation the approval of its members or managers or stockholders, as the case may be) are necessary to authorize this Agreement or the other

Transaction Documents to which it is or shall be a party or the transactions contemplated hereunder or thereunder.

(c) Enforceability. This Agreement and each of the other Transaction Documents to which PHT, Exelon, PECO or Exelon Enterprises is or shall be a party have been or shall have been as of Closing duly executed and delivered by each of PHT, Exelon, PECO, and Exelon Enterprises as applicable, and, assuming that this Agreement and each of the other Transaction Documents constitute or shall constitute as of the Closing valid and binding agreements of each other party thereto, subject to the expiration of the waiting period or receipt of all approvals under the HSR Act, constitute or shall constitute as of Closing, as the case may be, their legal, valid and binding obligations, enforceable against them in accordance with their terms, except as such enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights or remedies generally and by general equitable principles (regardless of whether enforcement is sought in a proceeding at law or in equity).

(d) No Conflict; Consents. Taking into account Section 5.2(f) hereof and subject to the expiration of the waiting period or receipt of all approvals under the HSR Act, other consents of Governmental Authorities as set forth in Schedule 3.1(d) and the consent of any local Governmental Authorities (collectively, the "Required Approvals"), the execution, delivery and performance and consummation of the transactions contemplated by this Agreement by each of PHT, Exelon, PECO and Exelon Enterprises and of the other Transaction Documents by each of them will not (i) require the consent of any Person or (ii) result in the violation of, or be in conflict with, or constitute a default under, any term of its organizational documents or any law, license, mortgage, indenture, contract, agreement, court or administrative order or ruling or instrument to which it is a party or by which it is bound, which (other than with respect to its organization documents) violation, conflict or default would individually or in the aggregate have a material adverse effect on it or on the transactions contemplated by this Agreement or any other Transaction Document to which it is or shall be a party.

(e) Title to Interest; Title to PECO Interest. PHT and its Affiliates own (and immediately prior to Closing, PHT will own outright) the Interest beneficially and of record and together have good and marketable title thereto, free and clear of all Liens and has the right, power and authority to sell and transfer the Interest in the manner set forth herein. Other than transfers of its interest in the Partnership to Affiliates of PECO of which transfers ABIZ and ABIZ-PA were fully aware during the negotiation of the Settlement Documents and which, to the extent a breach, is hereby forgiven by ABIZ and ABIZ-PA, neither PECO, PHT nor any predecessor-in-interest of PECO or PHT has breached Article 6 of the Partnership Agreement. As of the date hereof and prior to the PECO Interest Transfer, PECO owns (and immediately prior to the PECO Interest Transfer shall own) the PECO Interest beneficially and of record and has (and immediately prior to the PECO Interest Transfer shall have) good and marketable title thereto, free and clear of all Liens and has (and immediately prior to the PECO Interest Transfer shall have) the right, power and authority to sell and transfer the PECO Interest to PHT. PHT and PECO represent and warrant that at the Closing, the Interest will

constitute 50% of the outstanding legal and equitable ownership interests in the Partnership and good and marketable title thereto shall be transferred to ABIZ free and clear of all Liens.

(f) Purchase Fiber and Leased Fiber.

(i) Exelon owns the Purchase Fibers and has good and marketable title thereto, free and clear of all Liens. Exelon represents and warrants that at the Closing, good and marketable title thereto shall be transferred to ABIZ free and clear of all Liens.

(ii) Except as set forth in Schedule 3.1(f), the Purchase Fibers constitute all of the Fiber used by the Partnership or constructed on behalf of or by use by the Partnership by Exelon or its Affiliates.

(iii) The Purchase Fibers have been maintained in accordance with the terms of the Lease Agreement.

(iv) Exelon possesses any and all necessary licenses, permits, easements, consents and other authorizations and approvals, from third parties other than Governmental Authorities, to construct, maintain and lease the Purchase Fibers. Copies of all such licenses, permits, consents and other authorizations and approvals have been provided to the Partnership.

(g) No Litigation. There is no action, proceeding or investigation before any Governmental Authority pending or, to the best of its knowledge, threatened against PHT, Exelon, PECO or Exelon Enterprises or any of their respective Affiliates, associates, officers, directors, stockholders, partners, members or agents that would have a material adverse effect on PHT's, Exelon's, PECO's, Exelon Enterprises' or any such Affiliate's ability to consummate the transactions contemplated by this Agreement or the other Transaction Documents to which it is or shall be a party, or to fulfill its obligations under this Agreement or the other Transaction Documents to which it is or shall be a party, or that seeks material damages in connection with any such transactions.

(h) Regulatory Matters. Except for the receipt of all approvals under the HSR Act and the Required Approvals, no regulatory approvals are required for the consummation by PHT, Exelon, or any of their respective Affiliates of the transactions contemplated by this Agreement or the other Transaction Documents to which any of them is or shall be a party.

(i) No Broker. Except for the Broker Fees of Credit Suisse First Boston, which are the sole responsibility of PHT, and which PHT hereby agrees to pay, none of PHT, Exelon or any of their respective Affiliates has incurred any Broker Fees for which ABIZ, ABIZ-PA or the Partnership or any of their respective Affiliates would be liable.

(j) Solvency. Immediately prior to and immediately after the Closing, the fair market value of Exelon Enterprises' assets will exceed such party's liabilities.

(k) Assigned Agreements. Exelon has satisfied in all material respects, and as of the Closing Date will satisfy in all material respects, all of its obligations arising from and relating to (i) the Sunesys Agreement, (ii) the Duct Agreement, (iii) the PECO Pole Attachment Agreement and (iv) the Verizon Agreement (together with the Verizon Agreement, the Sunesys Agreement, the Duct Agreement and the PECO Pole Attachment Agreement, the "Assigned Agreements"), including but not limited to the payment of all amounts owed (whether billed or not) by Exelon and its Affiliates pursuant to the Assigned Agreements for the period through and including the Closing Date.

(l) Balance Sheet of Exelon Enterprises. The unaudited balance sheet of Exelon Enterprises at December 31, 2003, as adjusted on a pro forma basis for the deletion of Exelon Energy, has been delivered to ABIZ-PA and such balance sheet has been prepared in accordance with generally accepted accounting principles and consistent with past practices and fairly represents in all material respects the financial condition of Exelon Enterprises as of such date subject to the adjustment on a pro forma basis for the deletion of Exelon Energy.

Section 3.2. LIMITATION OF REPRESENTATIONS AND WARRANTIES

THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 3.1, AND IN THE CERTIFICATE CONTEMPLATED BY SECTION 7.5, ARE THE ONLY REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, PROVIDED BY PHT, EXELON AND PECO WITH RESPECT TO THE INTEREST AND THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF ABIZ, ABIZ-PA AND THP

Section 4.1. Representations and Warranties

Each of ABIZ (with respect to matters related to itself only), THP (with respect to matters related to itself only) and ABIZ-PA (with respect to matters related to itself only) represents and warrants to PHT, Exelon and PECO as follows:

(a) Organization. Each of ABIZ, ABIZ-PA and THP is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to execute, deliver and perform each Transaction Document to which it is or shall be a party and to own the Interest.

(b) Authorization. The execution and delivery by each of ABIZ, THP and ABIZ-PA of this Agreement and each other Transaction Document to which it is or shall be a party, and the performance by each of ABIZ, THP and ABIZ-PA of its obligations hereunder and thereunder, have been or shall have been prior to Closing duly authorized by all necessary corporate action and no other proceedings on ABIZ's, THP's or ABIZ-PA's part which have not or, shall not have been taken (including without limitation the approval of its stockholders) are necessary to authorize this Agreement or the other Transaction Documents to which it is or shall be a party or the transactions contemplated

hereunder or thereunder. No approval from the Bankruptcy Court is required to authorize ABIZ to consummate the transactions described in the Transaction Documents due to the fact that the Closing of the transactions contemplated hereby shall occur following the effectiveness of ABIZ's plan of reorganization.

(c) Enforceability. This Agreement and each of the other Transaction Documents to which it is or shall be a party have been or shall have been as of Closing duly executed and delivered by ABIZ, THP and ABIZ-PA, as applicable, and, assuming that this Agreement and each of the other Transaction Documents constitute or shall constitute as of Closing valid and binding agreements of each other party thereto, subject to the expiration of the waiting period or receipt of all approvals under the HSR Act, constitute or shall constitute as of Closing, as the case may be, their legal, valid and binding obligations, enforceable against ABIZ, THP and ABIZ-PA in accordance with their terms, except as such enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights or remedies generally and by general equitable principles (regardless of whether enforcement is sought in a proceeding at law or in equity).

(d) No Conflict; Consents. Taking into account Section 5.2(f) hereof and subject to the expiration of the waiting period or receipt of all approvals under the HSR Act and the approvals set forth on Schedule 4.1(d) (the "ABIZ Required Approvals"), the execution, delivery and performance and consummation of the transactions contemplated by this Agreement by each of ABIZ, THP and ABIZ-PA and of the other Transaction Documents by each of them will not (x) require the consent of any Person or (y) result in the violation of, or be in conflict with, or constitute a default under, any term of its organizational documents or any law, license, mortgage, indenture, contract, agreement, court or administrative order or ruling or instrument to which it is a party or by which it is bound, which (other than with respect to its organization documents) violation, conflict or default would individually or in the aggregate have a material adverse effect on it or on the transactions contemplated by this Agreement or any other Transaction Document to which it is or shall be a party.

(e) No Litigation. There is no action, proceeding or investigation before any Governmental Authority pending or, to the best of its knowledge, threatened against ABIZ, THP and ABIZ-PA or any of their respective Affiliates, associates, officers, directors, partners, members or agents that would have a material adverse effect on ABIZ's, THP's ABIZ-PA's or any such Affiliate's ability to consummate the transactions contemplated by this Agreement or the other Transaction Documents to which it is or shall be a party, or to fulfill its obligations under this Agreement or the other Transaction Documents to which it is or shall be a party, or that seeks material damages in connection with any such transactions.

(f) Regulatory Matters. Except for the receipt of all approvals under the HSR Act and the ABIZ Required Approvals, no regulatory approvals are required for the consummation by ABIZ, THP or ABIZ-PA or any of their respective Affiliates of the

transactions contemplated by this Agreement or the other Transaction Documents to which any of them is or shall be a party.

(g) No Broker. Except for the Broker Fees of Houlihan Lockey Howard & Zukin, which are the sole responsibility of ABIZ, and which ABIZ hereby agrees to pay, none of ABIZ, THP or ABIZ-PA or any of their respective Affiliates have incurred any Broker Fees for which PHT or Exelon or any of their respective Affiliates would be liable.

Section 4.2. LIMITATION OF REPRESENTATIONS AND WARRANTIES

THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 4.1, AND IN THE CERTIFICATE CONTEMPLATED BY SECTION 8.5, ARE THE ONLY REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, PROVIDED BY ABIZ, THP AND ABIZ-PA WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

ARTICLE 5 CERTAIN AGREEMENTS

Section 5.1. HSR Filing

Each of PHT and ABIZ will file, as soon as practicable (but in no event more than ten (10) business days following the date hereof), all filings that are required to be made by such party under the HSR Act in connection with the transactions contemplated by this Agreement, respond as soon as practicable to all inquiries received from the Federal Trade Commission or the Antitrust Division of the Department of Justice for additional information or documentation, respond as soon as practicable to all inquiries received from any other government agency in connection with antitrust matters, and seek early termination of any waiting period under the HSR Act. Each of Exelon and ABIZ shall be responsible for the payment of one-half of all applicable filing fees with respect to the required filings under the HSR Act.

Section 5.2. Waivers and Releases

(a) In addition to the terms of Section 5.2(b), each of the parties agrees that, from and after the Closing Date, (i) PHT shall not be obligated to make any capital contributions to the Partnership, (ii) PHT shall not have any claim against the Partnership or the ABIZ Parties (as defined below) for distributions or the use of any Partnership assets for the benefit of the ABIZ Parties and (iii) neither PHT (or any of its Affiliates) nor ABIZ-PA (or any of its Affiliates) shall have any further obligations or liabilities to one another under the Partnership Agreement, the Settlement Agreement or the Management Agreement; provided, however, that the Partnership or its successor or assigns shall indemnify PHT and its Affiliates with respect to a claim of a third party for any debts, obligations and liabilities of the Partnership arising at any time whatsoever to the fullest extent and in accordance with the procedures of Section 3.8(c) of the Partnership Agreement, which procedures are incorporated herein by reference as though

fully set forth herein. Immediately upon Closing, PHT shall automatically cease to be a Partner of the Partnership and a party to the Partnership Agreement.

(b) Effective as of Closing, except to the extent of the commitment contemplated by the proviso contained in the first sentence of Section 5.2(a), PHT, for itself and on behalf of its Affiliates and its and their predecessors, successors and assigns and for its and their respective past, present and future shareholders, partners, members, directors, officers, employees, agents, representatives, principals, insurers and attorneys (each, a "PHT Party" and, together, the "PHT Parties"), generally releases and forever discharges ABIZ, ABIZ-PA, THP, the Partnership, each of their Affiliates, and their predecessors, successors and assigns, and their respective past, present and future shareholders, partners, members, directors, officers, employees, agents, representatives, principals, insurers and attorneys (each, an "ABIZ Party" and, together, the "ABIZ Parties"), from any and all claims, demands, liabilities, suits, damages, losses, expenses, attorneys' fees and costs, obligations or causes of action, known or unknown, of any kind and every nature whatsoever, fixed or contingent, and whether or not accrued or matured, which any of them ever had, now has, or may have, arising out of or relating to (i) the status of any ABIZ Party as a Partner of the Partnership or as a party to the Partnership Agreement or the management or governance of the Partnership by any ABIZ Party or designee thereof at any time prior to and as of Closing, (ii) the Settlement Agreement, or (iii) the Management Agreement. Effective as of Closing, Exelon, PECO and PHT, on behalf of itself and the PHT Parties, covenants to cease, terminate and forego, and forever not to assert, file, prosecute, maintain, commence, institute or sponsor, join or participate in (or purposely assist any Person in connection with the foregoing), any complaint, arbitration or lawsuit or any legal, equitable or administrative proceeding of any nature, against any of the ABIZ Parties in connection with any matter released hereby; provided, however, that nothing herein shall be deemed to waive or release any rights, claims or defenses of the PHT Parties relating to (A) utility and telephone-related services provided in the ordinary course of business, (B) the Assigned Agreements or (C) a breach of this Agreement.

(c) Effective as of Closing, ABIZ-PA, for itself and on behalf of the other ABIZ Parties, generally releases and forever discharges the PHT Parties from any and all claims, demands, liabilities, suits, damages, losses, expenses, attorneys' fees and costs, obligations or causes of action, known or unknown, of any kind and every nature whatsoever, fixed or contingent, and whether or not accrued or matured, which any of them ever had, now has, or may have, arising out of or relating to (i) the status of any PHT Party as a Partner of the Partnership or as a party to the Partnership Agreement or the management or governance of the Partnership by any PHT Party or designee thereof at any time prior to and as of Closing, (ii) the Settlement Agreement and (iii) the Management Agreement. Effective as of Closing, ABIZ-PA, for itself and on behalf of the other ABIZ Parties, covenants to cease, terminate and forego, and forever not to assert, file, prosecute, maintain, commence, institute or sponsor, join or participate in (or purposely assist any Person in connection with the foregoing), any complaint, arbitration or lawsuit or any legal, equitable or administrative proceeding of any nature, against any of the PHT Parties in connection with any matter released hereby; provided, however, that nothing herein shall be deemed to waive or release any rights, claims or defenses of

the ABIZ Parties (A) relating to utility and telephone-related services provided in the ordinary course of business, (B) against PECO relating to the PECO Pole Attachment Agreement or the Duct Agreement or (C) relating to a breach of this Agreement.

(d) Each of PHT, for itself and on behalf of the other PHT Parties, and ABIZ, for itself and on behalf of the other ABIZ Parties, agree that the releases contemplated by the foregoing Section 5.2(b) and Section 5.2(c) shall not apply to any rights or remedies of a party under this Agreement or the other Transaction Documents.

(e) Nothing herein or in the Settlement Documents shall be deemed to waive or release (i) any rights, claims or defenses of the ABIZ Parties, or (ii) any claims or causes of action that the ABIZ Parties or any of the ABIZ Parties' subsidiaries or Affiliates may have against any of Adelphia Communications Corporation or any of its subsidiaries or Affiliates with respect to this Agreement or the Settlement Documents or any other matter.

(f) In connection with the transfer of the Interest as contemplated herein, each of ABIZ-PA and PHT hereby waives compliance with Article 6 of the Partnership Agreement.

(g) At the Closing, upon delivery of the Interest Cash Payment and the Fiber Cash Payment to PHT and Exelon in accordance with the terms of this Agreement, the obligations of the parties to the Settlement Agreement shall be deemed satisfied, and the Settlement Documents shall be of no further force and effect.

Section 5.3. Amended and Restated Lease Agreement; Sunesys Agreement; PECO Duct Occupancy Agreement

At Closing, (a) the Partnership and PECO shall enter into the Amended and Restated Lease Agreement, (b) Exelon shall assign the Dark Fiber License Agreement dated as of January 1, 2000, as amended (the "Sunesys Agreement") between Sunesys, Inc. and Exelon in the form of Exhibit B hereto to the Partnership and (c) Exelon shall assign the Inner Duct Occupancy Agreement between PECO and Exelon (the "Duct Agreement") in the Form of Exhibit C hereto to the Partnership.

Section 5.4. PECO Pole Attachment Agreement

Prior to the Closing, Exelon shall enter into a Pole Attachment Agreement with PECO in substantially the form attached hereto as Exhibit D (the "PECO Pole Attachment Agreement") related to the Purchase Fibers and the fibers addressed in the Lease Agreement that provides for a rental rate of \$31.58 per pole per annum. At the Closing, Exelon shall assign to the Partnership such PECO Pole Attachment Agreement. The terms of the PECO Pole Attachment Agreement shall not prohibit the Partnership's rights, as Exelon's assignee thereunder, under applicable statutes, regulations, orders of Governmental Authorities and other laws, to determine whether a rental rate of \$31.58 per pole per annum, and any and all rates associated with the Partnership's post-Closing use of any conduit of PECO or PHT, are legally just and reasonable rates, and to pursue all applicable remedies, including but not limited to rental rate reductions and refunds,

provided however that (i) neither Exelon nor any of its Affiliates shall be responsible for any rental rate reductions or refunds relating to the period prior to the Closing and (ii) neither PHT nor Exelon shall be responsible for any rental rate reductions or refunds relating to the period after the Closing except that the Partnership and its Affiliates may seek reimbursement from the owner or manager of the pole. Nothing contained in this Section 5.4 shall limit the responsibility of PECO relating to the period after the Closing for any such rental rate reductions or refunds.

Section 5.5. Verizon License Agreement

Prior to the date of this Agreement, Exelon entered into a License Agreement with Verizon (the "Verizon License Agreement") related to the Fibers in the form attached hereto as Exhibit E. At the Closing, Exelon shall assign to the Partnership the Verizon License Agreement and the Partnership shall assume all obligations relating thereto (a copy of the assignment is attached hereto as Exhibit F (the "Verizon License Agreement Assignment")).

Section 5.6. PECO and Exelon Names

Following the Closing, none of ABIZ, ABIZ-PA, the Partnership nor any of their respective Affiliates will be entitled to use the names "PECO" or "Exelon" or any variations or derivations thereof (including any logo, trademark or design containing such name) (the "Trade Names"). As soon as practicable but in any event within sixty (60) days after the Closing Date, the Partnership shall cease the use of the Trade Names on all bills, invoices and letterhead. As soon as reasonably practicable, but in any event within sixty (60) days after the Closing Date, the Partnership shall remove from or paint over, as appropriate, any Trade Names on any signs and fixed assets, and shall make any necessary filings with Governmental Authorities relating to the prohibition of the use of the Trade Names.

Section 5.7. Transfer of PECO Partnership Interest

Prior to the Closing, PECO agrees to transfer the PECO Interest to PHT.

Section 5.8. Settlement Agreement

The Parties acknowledge and agree that, for purposes of this Agreement and provided the Closing occurs, the total amount owed to PHT and its Affiliates pursuant to the Settlement Agreement is seven million dollars (\$7,000,000) (the "Settlement Obligation"). Prior to the Closing, ABIZ-PA shall continue to make, or ABIZ and ABIZ-PA shall cause the Partnership to make, all payments required under the Settlement Agreement. Subject to the following sentence, at the Closing, ABIZ-PA shall pay to PHT all outstanding amounts of the Settlement Obligation. All Priority Distributions (as defined in the Settlement Agreement) made between the date of this Agreement and the Closing pursuant to the terms of the Settlement Agreement shall reduce the amount of the Settlement Obligation payable at Closing, which reduction shall be dollar for dollar for any payments made by ABIZ-PA or in an amount equal to one half of any payments paid by the Partnership. Nothing contained in this Section 5.8 or in this Agreement shall

affect the rights of the PHT Parties under the Settlement Documents if this Agreement is terminated for any reason.

Section 5.9. Release of Settlement Agreement Liens

At Closing, or as soon as practical thereafter, PHT, Exelon and PECO shall use commercially reasonable efforts to cause the release of all Liens of PHT, Exelon, PECO or their Affiliates arising under the Settlement Documents including, without limitation, those referenced in the BEAL/PHT Partners Intercreditor Agreement and the ADLAC/PHT Partners Intercreditor Agreement.

Section 5.10. Payment of Protiviti and Parente Randolph

At or before Closing, ABIZ shall cause the Partnership to pay in full any and all (a) outstanding fees and expenses of Protiviti Inc. ("Protiviti") related to services provided pursuant to the Settlement Agreement (collectively, the "Protiviti Amounts"); provided, that following the execution of this Agreement PHT will suspend and not invoice the Partnership for any such services performed by Protiviti between the date of the execution of this Agreement and the earlier to occur of (i) the Closing Date or (ii) the date this Agreement is validly terminated pursuant to Section 9.1 hereof, and (b) outstanding amounts owed to Parente Randolph (collectively, the "Parente Randolph Amounts") related to services provided to the Partnership.

Section 5.11. Payment of PECO Invoices

All amounts due from the Partnership, and the ABIZ Parties as of the date hereof to PECO or any Affiliate thereof (other than utility bills arising in the ordinary course of business) (collectively, the "PECO Amounts") are set forth in Schedule 5.11. ABIZ shall cause the Partnership to pay the PECO Amounts, and invoices for similar charges that become due between the date hereof and Closing, no later than (a) thirty (30) days after the submission of such invoices by PECO or such Affiliate and acceptance of such invoices by the Partnership's manager, which acceptance shall not be unreasonably withheld or delayed and (b) the Closing Date.

Section 5.12. Operation of the Partnership

From the date of this Agreement until the Closing (a) ABIZ shall cause the Partnership to be operated in the ordinary course of business, and in compliance with the Partnership Agreement, the Settlement Agreement, the Management Agreement and in all material respects with all laws, and (b) no Partner shall be required to make any capital contribution to the Partnership under the Partnership Agreement or otherwise.

Section 5.13. Non-Solicitation

(a) Each of PHT and Exelon agrees that for a period of one year from the Closing Date, it shall not employ or solicit or offer or induce or receive or accept the performance of services by any senior or management employee of the Partnership while such Persons are employed by the Partnership.

(b) Each of PHT and Exelon acknowledges that each of ABIZ, ABIZ-PA, THP and the Partnership would be irreparably harmed by any breach of this Section 5.13 and that there would be no adequate remedy at law or in damages to compensate such parties for any such breach. Each of PHT and Exelon agree that ABIZ, ABIZ-PA, THP and the Partnership shall each be entitled to injunctive relief requiring specific performance by each of PHT and Exelon and their respective Affiliates of this Section 5.13 without the necessity of proving actual damages or the posting of a bond, and each consents to the entry thereof.

Section 5.14. No Negotiation

Prior to the earlier of the Closing or the termination of this Agreement, none of PHT, PECO, Exelon or any of their Affiliates (and their respective officers, directors, employees, accountants, consultants, legal counsel, financial advisors, agents and other representatives) (collectively, "Representatives") shall directly or indirectly solicit, initiate, encourage or entertain any inquiries or proposals or offer (including, without limitation, any proposal or offer to its stockholders) from any Person, discuss or negotiate with, provide any nonpublic information to or consider the merits of any inquiries or proposals from any Person (other than ABIZ and ABIZ-PA) relating to the sale of the Interest or the Fibers or the other transactions contemplated by this Agreement and the Transaction Documents; enter into or maintain or continue discussions or negotiate with any Person in furtherance of such inquiries; enter into any agreement with respect to any such transaction; or authorize or knowingly permit any of PHT's, PECO's, Exelon's or their respective Affiliates' Representatives, to take any such action. PHT, PECO or Exelon, as applicable, shall notify ABIZ of any such inquiry or proposal within twenty four (24) hours of receipt of awareness of the same by PHT, PECO or Exelon and shall promptly furnish a copy of any such written proposal or a detailed description of any such oral proposal to ABIZ and ABIZ-PA.

Section 5.15. Drawings/Authorizations

At or prior to the Closing, Exelon shall assign, transfer, convey and deliver to the Partnership copies of all "as built" drawings for Purchase Fibers and any authorizations in the possession of Exelon relating thereto.

Section 5.16. Payment of Transfer Taxes

ABIZ and ABIZ-PA, on the one hand, and PHT, Exelon and PECO, on the other hand, shall pay or cause to be paid, and shall indemnify, defend and hold harmless the other party for, 50% of any and all Transfer Taxes attributable to the transactions contemplated by this Agreement, except that all Transfer Taxes attributable to the transfer by PECO of its 1% interest in the Partnership shall be borne exclusively by PHT and/or PECO. The Parties shall use commercially reasonable efforts to mitigate, reduce or eliminate Transfer Taxes that could arise from, or be due as a result of, the transactions contemplated in this Agreement.

Section 5.17. COPA Revenues

The Parties hereby agree that if the Closing does not occur, the rights of any party hereto to receive any amounts from the Commonwealth of Pennsylvania relating to the Telecommunications Services Contract dated May 3, 2003 between the Commonwealth of Pennsylvania and ABIZ shall not be affected in any manner whatsoever.

Section 5.18. Assessments

Each of Exelon on the one hand and ABIZ on the other hand shall be responsible for one-half of all local taxes and other governmental charges and/or assessments, if any, imposed on or with respect to the Fiber (the amount of such charges and/or assessments, the "Assessments") for all periods prior to the Closing Date; provided however that Exelon's responsibility under this Section 5.18 shall in no event exceed three million dollars (\$3,000,000) in the aggregate; and provided further that ABIZ shall be responsible for the payment of all Assessments attributable to all periods after the Closing Date. Notwithstanding anything contained in this Section 5.18, if the rate imposed in connection with any Assessment with respect to a particular jurisdiction for the period prior to the Closing is greater than the rate imposed with respect to the period after the Closing, Exelon shall not be responsible for the payment of the amount of any Assessments relating to the excess rate imposed with respect to the period after the Closing. Each of ABIZ, ABIZ-PA, THP and the Partnership hereby acknowledges and agrees that, notwithstanding anything contained in this Agreement or any Transaction Document, such parties shall have no right to initiate any challenge with respect to any Assessments relating to the Leased Fibers.

Section 5.19. Further Assurances

Subject to the terms and conditions of this Agreement, the Parties will use their commercially reasonable efforts to (i) take all actions necessary or appropriate to consummate the transactions contemplated by this Agreement, (ii) execute and deliver such other documents, certificates, agreements and other writings and to take such other actions as may be necessary in order to consummate the transactions contemplated by this Agreement and (iii) cause the fulfillment at the earliest practicable date of all of the conditions to their respective obligations to consummate the transactions contemplated by this Agreement.

Section 5.20. Signing Deposit and Additional Payment

On the date of this Agreement, ABIZ and ABIZ-PA shall pay to Exelon and PHT a non-refundable deposit in an amount equal to \$250,000 in cash by wire transfer of immediately available funds (the "Signing Deposit"). Neither Exelon nor PHT shall have any obligation with respect to the Signing Deposit if the transactions contemplated by this Agreement are not consummated for any reason, including without limitation, any right to a credit towards the payment of any Disproportionate Distribution. ABIZ and ABIZ-PA may, at their option, pay to Exelon and PHT an additional payment of \$250,000 in cash by wire transfer of immediately available funds (the "Additional

Payment”) to extend the termination date set forth in Section 9.1(d); provided, however, that this extension is only available if all required approvals from the Pennsylvania Public Utility Commission have not yet been obtained. Neither Exelon nor PHT shall have any obligation with respect to the Additional Payment, whether or not the transactions contemplated by this Agreement are consummated.

ARTICLE 6
CLOSING

Section 6.1. Closing

Subject to satisfaction or waiver of all of the conditions to Closing set forth in Articles 7 and 8 hereof, the closing of the transactions contemplated by this Agreement (the “Closing”) will be held at 10:00 a.m. local time on the Closing Date at the offices of Morgan, Lewis & Bockius LLP, 1701 Market Street, Philadelphia, Pennsylvania 19103-2921 (or at such other time and location as are agreed to by ABIZ and PHT). Upon the satisfaction or waiver of all conditions specified in Articles 7 and 8 to be satisfied or waived at the Closing, all such conditions and all acts to be taken at Closing will be deemed to occur contemporaneously and simultaneously on the occurrence of the last act, delivery, satisfaction or waiver, and none of such acts or deliveries will be effective until the last of the same shall have occurred. The purchase and sale of the Interest and the Purchase Fibers (together with the rights under the Assigned Agreements) contemplated by this Agreement shall be effective as of 12:01 am and 12:02 am (Philadelphia time), respectively, on the Closing Date.

Section 6.2. Deliveries by ABIZ, THP, ABIZ-PA and the Partnership

At the Closing:

(a) THP shall deliver to PHT the Interest Cash Payment plus the amount of the Settlement Obligation (as such amount is reduced on the Closing Date pursuant to Section 5.8) minus the Signing Deposit by a wire transfer of immediately available funds to an account designated by PHT at least two business days prior to the Closing Date.

(b) The Partnership shall deliver to Exelon the Fiber Cash Payment by a wire transfer of immediately available funds to an account designated by Exelon at least two business days prior to the Closing Date;

(c) ABIZ, THP and ABIZ-PA shall each deliver the officer’s certificate referred to in Section 8.5;

(d) the Partnership shall deliver to PECO a duly executed Amended and Restated Lease Agreement;

(e) ABIZ, THP, ABIZ-PA and the Partnership shall each deliver duly executed Transaction Documents to which it is a party; and

(f) ABIZ, THP, ABIZ-PA and the Partnership shall each deliver to PHT, Exelon and PECO such other documents, in form and substance reasonably acceptable to PHT, Exelon and PECO, as may be necessary to consummate the transactions contemplated hereby.

Section 6.3. Deliveries by PHT, Exelon and PECO

At the Closing:

(a) PHT shall deliver to THP duly executed copies of such instruments of assignment, conveyance and transfer, in form and substance reasonably acceptable to THP, as may be necessary to assign, convey and transfer the Interest to THP and the Purchase Fibers to the Partnership;

(b) Exelon shall deliver to the Partnership a duly executed bill of sale with respect to the Purchase Fibers in the form of Exhibit G hereto;

(c) PHT, Exelon and PECO shall each deliver to ABIZ, THP and ABIZ-PA the officer's certificate referred to in Section 7.5;

(d) PECO shall deliver to the Partnership a duly executed Amended and Restated Lease Agreement;

(e) PHT shall deliver to THP written evidence of the transfer of the PECO Interest from PECO to PHT;

(f) Exelon shall deliver to the Partnership copies of all "as built" drawings for Purchase Fibers and any authorizations in the possession of Exelon relating thereto.

(g) Exelon shall deliver to the Partnership a duly executed assignment of Exelon's rights under the Verizon License Agreement, the PECO Pole Attachment Agreement, the Suncsys Agreement and the Duct Agreement;

(h) PHT and Exelon shall each deliver to ABIZ, THP, the Partnership and ABIZ-PA the certificates of non-foreign status described in Section 7.14; and

(i) Exelon Enterprises shall deliver to the Partnership the certificate described in Section 7.16.

(j) PHT, Exelon and PECO shall each deliver to ABIZ, THP, ABIZ-PA and the Partnership duly executed copies of (i) such other instruments of conveyance and transfer, in form and substance reasonably acceptable to THP, as may be necessary to convey the Interest and Purchase Fibers to THP and to consummate the transactions contemplated hereby, and (ii) such Transaction Documents to which they are a party.

ARTICLE 7
CONDITIONS TO OBLIGATIONS OF ABIZ

The obligation of ABIZ, THP and ABIZ-PA to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction, on or before the Closing Date as appropriate, of each of the following conditions, any of which may be waived by each of ABIZ, THP and ABIZ-PA in writing:

Section 7.1. Representations and Warranties

The representations and warranties of PHT, Exelon and PECO contained herein shall be accurate in all material respects (except such representations and warranties which are qualified as to materiality which shall be true and correct in all respects) as of the Closing Date, as though such representations and warranties were made at and as of such date.

Section 7.2. Performance of Covenants

Each of PHT, Exelon and PECO shall have performed and complied in all material respects with all obligations, covenants and agreements required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

Section 7.3. No Injunction; Legality

No preliminary or permanent injunction or other order or decree of any Governmental Authority that prohibits the consummation of the transactions contemplated hereby shall have been issued and remain in effect. No statute, rule, regulation or executive order shall have been promulgated or enacted by any U.S. federal or state Governmental Authority that prohibits in any material respect the transactions contemplated hereby.

Section 7.4. Governmental Approvals

(a) Any waiting period under the HSR Act applicable to the consummation of the transactions contemplated hereby shall have expired or been terminated.

(b) All Required Approvals and ABIZ Required Approvals shall have been received.

Section 7.5. Certificate

ABIZ shall have received from each of PHT, Exelon and PECO a certificate, dated the Closing Date and signed by its President or any other authorized officer, in such person's capacity as an officer of PHT, Exelon or PECO, as the case may be, to the effect that the conditions specified in Section 7.1 and Section 7.2 have been satisfied.

Section 7.6. Instrument of Assignment

PHT shall have delivered to THP a duly executed instrument of assignment, in form and substance reasonably acceptable to THP, assigning and conveying the Interest to THP in accordance with the terms hereof. Exelon shall have delivered to the Partnership a duly executed instrument of assignment, in form and substance reasonably acceptable to the Partnership, assigning and conveying the Purchase Fibers to the Partnership in accordance with the terms hereof.

Section 7.7. Amended and Restated Lease Agreement

PECO shall have duly executed and delivered to the Partnership the Amended and Restated Lease Agreement.

Section 7.8. Transfer of PECO Interest

PECO shall have transferred the PECO Interest to PHT, and PHT shall have delivered written evidence of such transfer to THP.

Section 7.9. Delivery of Sunesys Agreement Assignment

Exelon shall have delivered to the Partnership an assignment of Exelon's rights under the Sunesys Agreement substantially in the form attached hereto as Exhibit H, which assignment shall be duly executed by Exelon.

Section 7.10. Delivery of Duct Agreement Assignment

Exelon shall have delivered to the Partnership an assignment of Exelon's rights under the Duct Agreement substantially in the form attached hereto as Exhibit I, which assignment shall be duly executed by Exelon.

Section 7.11. Delivery of PECO Pole Attachment Agreement Assignment

Exelon shall have delivered to the Partnership an assignment of Exelon's rights under the PECO Pole Attachment Agreement substantially in the form attached hereto as Exhibit J, which assignment shall be duly executed by Exelon.

Section 7.12. Delivery of Verizon License Agreement Assignment

Exelon shall have delivered to the Partnership the Verizon License Agreement Assignment, which assignment shall be duly executed by Exelon.

Section 7.13. No Material Adverse Effect

There shall not have been or occurred any event, change, occurrence or circumstance that has had or which could reasonably be expected to have a Material Adverse Effect.

Section 7.14. Certificate of Non-Foreign Status

At the Closing, PHT and Exelon shall each provide to ABIZ, THP, the Partnership and ABIZ-PA a certificate of non-foreign status that complies with Section 1445 of the Code (and applicable Treasury Regulations promulgated thereunder) and is duly executed by each of them or, in the event that PHT or Exelon is treated as an entity disregarded for federal income tax purposes, by a Person treated as owning the assets of such entity for federal income tax purposes.

Section 7.15. Plan Effectiveness

Either (i) the plan of reorganization of ABIZ and certain of its subsidiaries has become effective, or (ii) the Bankruptcy Court has approved this Agreement and the transactions contemplated hereby.

Section 7.16. Exelon Enterprises Certificate

At the Closing, Exelon Enterprises shall provide to the Partnership a certificate, dated the Closing Date and signed by an authorized representative of Exelon Enterprises, certifying on behalf of Exelon Enterprises that except for cash and intercompany items, Exelon Enterprises will be transferring substantially all of the assets of Exelon as contemplated by this Agreement.

ARTICLE 8

CONDITIONS TO OBLIGATIONS OF PHT, EXELON AND PECO

The obligation of PHT, Exelon and PECO to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction, on or before the Closing Date as appropriate, of each of the following conditions, any of which may be waived in writing by PHT, Exelon and PECO:

Section 8.1. Representations and Warranties

The representations and warranties of ABIZ, THP and ABIZ-PA contained herein shall be accurate in all material respects (except such representations and warranties which are qualified as to materiality, which shall be true and correct in all respects) as of the Closing Date, as though such representations and warranties were made at and as of such date.

Section 8.2. Performance of Covenants

Each of ABIZ, THP, ABIZ-PA and the Partnership shall have performed and complied in all material respects with all obligations, covenants and agreements required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

Section 8.3. No Injunction; Legality

No preliminary or permanent injunction or other order or decree of any Governmental Authority that prohibits the consummation of the transactions contemplated hereby shall have been issued and remain in effect. No statute, rule, regulation or executive order shall have been promulgated or enacted by any U.S. federal or state Governmental Authority that prohibits in any material respect the transactions contemplated hereby.

Section 8.4. Governmental Approvals

(a) Any waiting period under the HSR Act applicable to the consummation of the transactions contemplated hereby shall have expired or been terminated.

(b) All Required Approvals and ABIZ Required Approvals shall have been received.

Section 8.5. Certificate

PHT shall have received from each of ABIZ, THP and ABIZ-PA a certificate, dated the Closing Date and signed by its President or any other authorized officer, in such person's capacity as an authorized officer of ABIZ, THP and ABIZ-PA, as the case may be, to the effect that the conditions specified in Section 8.1 and Section 8.2 have been satisfied.

Section 8.6. ABIZ Payment of Costs

ABIZ shall have delivered to PHT written evidence of (A) payment by the Partnership of the Protiviti Amounts, or (B) payment to PHT of the Protiviti Amounts by wire transfer of immediately available funds to an account designated by PHT at least two (2) days prior to Closing.

Section 8.7. Partnership Payment of Costs

The Partnership shall have paid the Parente Randolph Amounts and the PECO Amounts.

Section 8.8. Amended and Restated Lease Agreement

The Partnership shall have executed and delivered to PECO the Amended and Restated Lease Agreement.

Section 8.9. Severance Agreement

Linda Watts and the Partnership shall have entered into an agreement in form and substance reasonably satisfactory to Ms. Watts and the Partnership, which agreement provides for a payment of severance in the amount of six months of Ms. Watts' annual base salary in the event she is no longer employed with the Partnership.

ARTICLE 9
TERMINATION AND ABANDONMENT

Section 9.1. Termination

This Agreement may be terminated at any time prior to the Closing Date:

(a) By mutual written consent of ABIZ and PHT;

(b) By ABIZ, if there has been a material violation or breach by PHT, Exclon or PECO of any agreement, representation or warranty contained in this Agreement, and such violation or breach has rendered the satisfaction of any condition to the obligations of ABIZ, THP, ABIZ-PA or the Partnership impossible and has not been waived by such party;

(c) By PHT, if there has been a material violation or breach by ABIZ, THP, ABIZ-PA of any agreement, representation or warranty contained in this Agreement, and such violation or breach has rendered the satisfaction of any condition to the obligations of PHT or Exclon impossible and has not been waived by such party; or

(d) By PHT if the Closing shall not have occurred on or before the date that is ninety (90) days after the date hereof, provided, that PHT is not in breach of its obligations under this Agreement, and provided further that such ninety (90) day period may be extended an additional thirty (30) days in accordance with the provisions of Section 5.20.

Section 9.2. Procedure and Effect of Termination

In the event of a termination of this Agreement pursuant to Section 9.1, notice thereof shall be given immediately to the other parties hereto, and this Agreement shall terminate and the transactions contemplated hereby shall be abandoned without further action by any of the parties hereto; provided, however, that no such termination shall relieve any party of liability for any breach prior to termination.

ARTICLE 10
INDEMNIFICATION

Section 10.1. Survival of Representations and Warranties

The representations and warranties of the Parties contained in this Agreement shall survive the Closing through and including the first anniversary of the Closing Date; provided, however, that the representations and warranties set forth in Sections 3.1(a), 3.1(b), 3.1(e), 3.1(f) and 3.1(i) and the representations and warranties set forth in Sections 4.1(a), 4.1(b) and 4.1(g) shall survive the Closing until ninety (90) days following the expiration of the applicable statute of limitations with respect to the particular matter that is the subject matter thereof (in each case, the "Survival Period"); provided, however, that any obligations to indemnify and hold harmless shall not terminate with respect to any Losses as to which the Person to be indemnified shall have given notice (stating in

reasonable detail the basis of the claim for indemnification) to the indemnifying party in accordance with Section 10.3(a) before the termination of the applicable Survival Period. This Section 10.1 shall not limit any covenant or agreement of the Parties.

Section 10.2. Indemnification

(a) Subject to the limitations set forth in Section 10.1, Section 10.2(c) and in accordance with the procedures set forth in Section 10.3, from and after the Closing, PHT and Exelon, jointly and severally, hereby agree to indemnify and hold each of ABIZ, ABIZ-PA, THP, the Partnership and their respective directors, officers, employees, Affiliates, stockholders, agents, attorneys, representatives, successors and assigns (collectively, the "Purchaser Indemnified Parties") harmless from and against:

(i) any and all losses, liabilities, obligations, damages, judgments, notices, actions, suits, proceedings, claims, demands, assessments, costs, penalties or expenses (including attorneys fees and expenses) (individually, a "Loss" and, collectively, "Losses") caused by or resulting from the failure of any representation or warranty of PHT or Exelon set forth in this Agreement or in any bills of sale or assignment and assumption agreements delivered in connection herewith to be true and correct in all respects at the date hereof and on the Closing Date; and

(ii) any and all Losses caused by or resulting from the breach of any covenant or other agreement on the part of PHT or Exelon under this Agreement or any bills of sale or assignment and assumption agreements delivered in connection herewith.

(b) Subject to the limitations set forth in Section 10.1, Section 10.2(c) and in accordance with the procedures set forth in Section 10.3, from and after the Closing, ABIZ, ABIZ-PA, THP and the Partnership, jointly and severally, hereby agree to indemnify and hold PHT, Exelon and their respective Affiliates, stockholders, agents, attorneys, representatives, successors and permitted assigns (collectively, the "Seller Indemnified Parties") harmless from and against:

(i) any and all Losses caused by or resulting from the failure of any representation or warranty of ABIZ or ABIZ-PA set forth in this Agreement or any bills of sale or assignment and assumption agreements delivered in connection herewith to be true and correct at the date hereof and on the Closing Date; and

(ii) any and all Losses caused by or resulting from the breach of any covenant or other agreement on the part of ABIZ, ABIZ-PA or the Partnership under this Agreement or any bills of sale or assignment and assumption agreements delivered in connection herewith.

(c) No party seeking indemnification hereunder shall make any claim for indemnification under Section 10.2(a)(i) or Section 10.2(b)(i) against another party unless and until the aggregate amount of all such claims against such indemnifying party

exceeds \$250,000 (the "Threshold Amount") whereupon the indemnified party may claim indemnification for the amount of such claims, or portion thereof, in excess of such Threshold Amount; provided, however, that no Purchaser Indemnified Party on the one hand or Seller Indemnified Party on the other hand may recover in the aggregate an amount greater than the Cap from the other pursuant to Sections 10.2(a)(i) or 10.2(b)(i). In determining the amount of claims against an indemnifying party hereunder, no claims shall be made (or counted against the Threshold Amount) by an indemnified party for matters to the extent that they are covered by insurance.

Section 10.3. Indemnification Procedures

(a) Any indemnified party shall promptly notify in writing the indemnifying party of any claim hereunder (including without limitation items that would be claims if they were not below the Threshold Amount) and shall provide to the indemnifying party as soon as practicable thereafter all information and documentation necessary to support and verify the claim asserted (or which would be asserted if not below the Threshold Amount), and the indemnifying party shall be given access to all books and records in the possession or control of the indemnified party which the indemnifying party reasonably determines to be related to such claim.

(b) In the event that any Legal Proceeding shall be instituted or that any claim or demand shall be asserted by any Person in respect of which any Party may seek indemnification from another Party under Section 10.2 hereof (an "Indemnification Claim"), the indemnified party shall reasonably and promptly cause written notice of the assertion of any Indemnification Claim to be delivered to the indemnifying party. The indemnifying party shall have the right, at its sole expense, to be represented by counsel of its choice, which must be reasonably satisfactory to the indemnified party, and to defend against, negotiate, settle or otherwise deal with any Indemnification Claim which relates to any Losses indemnified against hereunder; provided that the indemnifying party shall have acknowledged in writing to the indemnified party its unqualified obligation to indemnify the indemnified party as provided hereunder. If the indemnifying party elects to defend against, negotiate, settle or otherwise deal with any Indemnification Claim which relates to any Losses indemnified against hereunder, it shall within thirty (30) business days (or sooner, if the nature of the Indemnification Claim so requires) notify the indemnified party of its intent to do so. If the indemnifying party elects not to defend against, negotiate, settle or otherwise deal with any Indemnification Claim which relates to any Losses indemnified against hereunder, fails to notify the indemnified party of its election as herein provided or contests its obligation to indemnify the indemnified party for such Losses under this Agreement, the indemnified party may defend against, negotiate or otherwise deal with such Indemnification Claim; provided, however, that the indemnified party may not settle or compromise any Indemnification Claim without the prior written consent of the Indemnifying Party which consent will not be unreasonably withheld. If the indemnifying party shall assume the defense of any Indemnification Claim, the indemnified party may participate, at his or its own expense, in the defense of such Indemnification Claim; provided, however, that such indemnified party shall be entitled to participate in any such defense with separate counsel at the expense of the indemnifying party if so requested by the indemnifying party to participate and provided,

further, that the indemnifying party shall not be required to pay for more than one such counsel (excluding local counsel) for all indemnified parties in connection with any Indemnification Claim. The parties hereto agree to cooperate fully with each other in connection with the defense, negotiation or settlement of any such Indemnification Claim. Notwithstanding anything in this Section 10.3 to the contrary, neither the indemnifying party nor the indemnified party shall, without the written consent of the other party, settle or compromise any Indemnification Claim or permit a default or consent to entry of any judgment unless the claimant and such party provide to such other party an unqualified release from all liability in respect of the Indemnification Claim and such settlement or compromise does not materially and adversely impair the ability of the indemnified party to conduct its business, and does not contain any admission of wrongdoing on the part of the indemnified party.

(c) If a judgment or award shall have been rendered by a Governmental Authority of competent jurisdiction which judgment provides that an indemnifying party is responsible for payments of an Indemnification Claim hereunder, or the indemnified party and the indemnifying party shall have arrived at a written mutually binding agreement with respect to an Indemnification Claim hereunder, then the indemnified party shall forward to the indemnifying party notice of any sums due and owing by the indemnifying party pursuant to this Agreement with respect to such matter and the indemnifying party shall be required to pay all of the sums so due and owing to the indemnified party by wire transfer of immediately available funds within ten (10) business days after the date of such notice.

(d) The failure of the indemnified party to give reasonably prompt notice of any Indemnification Claim shall not release, waive or otherwise affect the indemnifying party's obligations with respect thereto except to the extent that the indemnifying party can demonstrate actual loss and prejudice as a result of such failure.

(e) This Article 10 sets forth the only responsibility of each Party, from and after the Closing, to indemnify or otherwise protect the other party against any Loss arising out of or related to the transactions contemplated by this Agreement; provided, however, that nothing herein shall be deemed to limit or restrict in any manner any rights or remedies that any Party has, or might have, at law, in equity or otherwise, against any other party hereto, based on any fraud or any willful misrepresentation, willful breach of warranty or willful failure to fulfill any agreement or covenant; and provided further that each Party may be entitled to specific performance under certain circumstances in the event of a material breach of this Agreement.

Section 10.4. Tax Treatment of Indemnity Payments

The Parties agree to treat any indemnity payment made pursuant to this Article 10 as a purchase price adjustment for all tax purposes.

ARTICLE 11
OTHER AGREEMENTS

Section 11.1. Satisfaction of Conditions

Each party shall use commercially reasonable efforts to take, or cause to be taken, all actions and do, or cause to be done, all things necessary, proper or appropriate to satisfy the conditions set forth in Articles 7 and 8, as applicable to it, and to consummate the transactions contemplated by this Agreement on the terms and conditions set forth herein which are applicable to it. PHT shall cause representatives appointed by it to the Management Committee (as defined in the Partnership Agreement) of the Partnership to execute any consents necessary for the limited purpose of authorizing the Partnership to enter into this Agreement and each other Transaction Document to which it is or shall be a party and to fulfill its obligations hereunder and thereunder. PHT shall also cause such representatives to the Management Committee to execute and deliver on the Closing their respective letters of resignations, effective at the Closing, to the Partnership.

ARTICLE 12
MISCELLANEOUS PROVISIONS

Section 12.1. Required Filings

The Parties agree to file any filings with any Governmental Authorities required to consummate the transactions contemplated hereunder within ten (10) business days following the date hereof. The Parties agree to undertake all actions and file such material as shall be reasonably necessary or required to obtain any necessary waivers or other authority in connection with such other required filings.

Section 12.2. Amendment and Modification

This Agreement shall not be amended or modified except by a written instrument signed by all of the parties.

Section 12.3. Waiver of Compliance

Failure of a party to strictly comply with any obligation, covenant, agreement or condition contained herein may be waived by another party hereto only by a written instrument clearly expressing the intent to effect such waiver, but such waiver shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

Section 12.4. Fees and Expenses

Except as otherwise expressly provided herein (including without limitation under Section 5.1 and Section 5.16), each party hereto agrees to pay all legal and other costs and expenses incurred by the party in connection herewith and the consummation of the transactions contemplated hereby, including the fees of any financial advisor, broker, finder or agent that has acted on behalf of the party.

Section 12.5. Notices

To be effective, any notice, consent, request, demand or other communication required or permitted to be provided to a party in connection with this Agreement shall be in writing and shall be delivered in person or via facsimile machine, or shall be sent by documented overnight delivery service, to the parties' facsimile numbers or the addresses as set forth below, or to such other persons, facsimile numbers or addresses as any party shall communicate to the others by notice pursuant to this Section 12.5:

If to ABIZ, ABIZ-PA, THP or the Partnership, to:

Adelphia Business Solutions, Inc.
712 North Main Street
Coudersport, PA 16915
Attn: Ed Babcock
Facsimile Number: (814) 260-2025

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

TelCove
121 Champion Way
Canonsburg, PA 15317
Attn: General Counsel
Facsimile Number: (724) 743-9403

If to PHT or Exelon, to:

PHT Holdings LLC
c/o Exelon Communications Company, LLC
10 South Dearborn
37 East P.O. Box 805398
Chicago, IL 60603
Attn: George H. Gilmore Jr.
Facsimile Number: (312) 394-8814

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

Exelon Business Services Company
2301 Market Street S23-1
P.O. Box 8699
Philadelphia, Pennsylvania 19101-8699
Attn: General Counsel
Facsimile Number: (215) 568-3389

and

Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
Attn: Richard B. Aldridge
Facsimile Number: (215) 963-5001

Each such notice, consent, request, demand and other communication shall be effective (a) if delivered, upon delivery, (b) if sent by facsimile machine, upon transmission with confirmation of receipt by the receiving party's facsimile terminal, or (c) if sent by documented overnight delivery service, on the date delivered.

Section 12.6. Confidential Information

(a) Each of ABIZ-PA, ABIZ and the Partnership covenants that it will, and will cause its Affiliates and associates and the officers, directors, members, agents and other personnel and authorized representatives of itself and its Affiliates and associates to, hold in strictest confidence all Confidential Information of PHT or Exelon and not disclose such information to others without the prior consent of such party; provided, however, that ABIZ, ABIZ-PA and the Partnership and their Affiliates may disclose (i) such information as is legally required to be furnished in order to obtain the authorizations required to be obtained in connection with the execution, delivery and performance by it of this Agreement and the consummation by it of the transactions contemplated hereby, including all necessary filings with the relevant Governmental Authorities and (ii) such other information as is legally required to be disclosed from time to time, so long as it notifies PHT or Exelon, as the case may be, in advance of its obligation to disclose such other information and fully cooperates with PHT or Exelon, as the case may be, to protect the confidentiality of such other information.

(b) Each of Exelon and PHT covenants that it will, and will cause its Affiliates and associates and the officers, directors, members, agents and other personnel and authorized representatives of itself and its Affiliates and associates to, hold in strictest confidence all Confidential Information of ABIZ, ABIZ-PA and the Partnership and not disclose such information to others without the prior consent of such party; provided, however, that PHT and Exelon and their Affiliates may disclose (i) such information as is legally required to be furnished in order to obtain the authorizations required to be obtained in connection with the execution, delivery and performance by it of this Agreement and the consummation by it of the transactions contemplated hereby including all necessary filings with the relevant Governmental Authorities and (ii) such other information as is required to be disclosed from time to time by law or applicable stock exchange regulations, so long as it notifies ABIZ, ABIZ-PA or the Partnership, as the case may be, in advance of its obligation to disclose such other information and fully cooperates with ABIZ, ABIZ-PA or the Partnership, as the case may be, to protect the confidentiality of such other information.

(c) "Confidential Information" of a party means all information relating to the party (including without limitation the terms of this Agreement or the other Transaction Documents) or its Affiliates or their respective businesses (other than information that is

or becomes a matter of public knowledge or has been or is made available, without a requirement of confidentiality, to third parties).

(d) The parties agree that any press release or public announcement with respect to this Agreement and the transactions contemplated hereby shall, subject to compliance with all applicable securities laws, be, (i) with respect to the contents thereof, mutually agreeable to the parties hereto in their reasonable discretion and (ii) issued at such time and in such manner as ABIZ and PHT shall mutually determine.

(e) Notwithstanding anything to the contrary set forth herein or in any other agreement to which the Parties hereto are parties or by which they are bound, the obligations of confidentiality contained herein and therein, as they relate to the transactions described herein, shall not apply to the tax structure or tax treatment of the transactions described herein, and each Party hereto (and any employee, representative, or agent of any Party hereto) may disclose to any and all persons, without limitation of any kind, the tax structure and tax treatment of the transactions described herein and all materials of any kind (including opinions or other tax analysis) that are provided to such Party relating to such tax treatment and tax structure; provided, however, that such disclosure shall not include the name (or other identifying information not relevant to the tax structure or tax treatment) of any person and shall not include information for which nondisclosure is reasonably necessary in order to comply with applicable securities laws.

Section 12.7. Entire Agreement

This Agreement, together with the other Transaction Documents, constitute the entire agreement among the parties with respect to the matters provided for herein, and supersede all prior oral or written agreements, commitments and understandings with respect to the matters provided for herein and therein.

Section 12.8. Governing Law

This Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Pennsylvania, without regard to any choice of law rules.

Section 12.9. Captions; Gender and Number

The headings in this Agreement are inserted for convenience only and shall not constitute a part hereof. Any reference herein to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

Section 12.10. Severability

If any provision of this Agreement, on its face or as applied to any Person or circumstance, is or becomes unenforceable or violative of any law to any extent, the remainder of this Agreement and the application of the provision to any other Person, circumstance or extent, shall not be affected, and this Agreement shall continue in force.

Section 12.11. Assignment

No party may assign this Agreement without the prior consent of the other parties, which consent will not be unreasonably withheld or delayed; provided, however, that any Party may freely assign this Agreement to an Affiliate upon written notice to the other parties; provided, further, that any such assignment shall not release, affect or reduce in any way the assignor's obligations under this Agreement. Any assignment in contravention of this Section 12.11 shall be automatically void and of no force or effect.

Section 12.12. Binding Effect

This Agreement will be binding on and will inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 12.13. Counterparts

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

Section 12.14. Remedies

Each of the Parties acknowledges and agrees that the other parties hereto may be damaged irreparably in the event that certain of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached. Accordingly, each of the Parties agrees that the other Parties hereto may, in addition to all other remedies available to it at law or in equity, be entitled to specific performance in the event of a material breach of such provision without posting a bond.

[SIGNATURE PAGES FOLLOW]

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

"ABIZ"

ADELPHIA BUSINESS SOLUTIONS, INC.

By Ed E. Bobcock Jr.
Print Name: Edward E. Bobcock Jr.
Print Title: VP+CFO

"THP"

TELCOVE HOLDINGS OF PENNSYLVANIA, INC.

By Ed E. Bobcock Jr.
Print Name: Edward E. Bobcock Jr.
Print Title: VP+CFO

"ABIZ-PA"

ADELPHIA BUSINESS SOLUTIONS OF PENNSYLVANIA, INC.

By Ed E. Bobcock Jr.
Print Name: Edward E. Bobcock Jr.
Print Title: VP+CFO

"the Partnership"

PECO TELCOVE

By Ed E. Bobcock Jr.
Print Name: Edward E. Bobcock Jr.
Print Title: Management Committee Representative

By _____
Print Name: _____
Print Title: _____

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

"ABIZ"

ADELPHIA BUSINESS SOLUTIONS, INC.

By _____

Print Name: _____

Print Title: _____

"THP"

TELCOVE HOLDINGS OF PENNSYLVANIA, INC.

By _____

Print Name: _____

Print Title: _____

"ABIZ-PA"

ADELPHIA BUSINESS SOLUTIONS OF PENNSYLVANIA, INC.

By _____

Print Name: _____

Print Title: _____

"the Partnership"

PECO TELCOVE

By _____

Print Name: _____

Print Title: _____

By George H. Gilmore Jr.

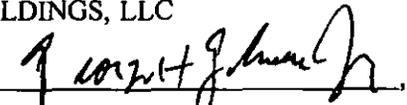
Print Name: George H. Gilmore Jr.

Print Title: Member, Management

Committee

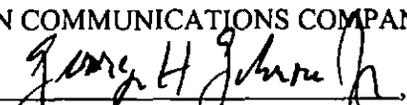
"PHT"

PHT HOLDINGS, LLC

By 
Print Name: George H. Gilmore Jr.
Print Title: President

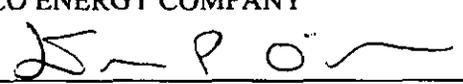
"Exelon"

EXELON COMMUNICATIONS COMPANY, LLC

By 
Print Name: George H. Gilmore Jr.
Print Title: President

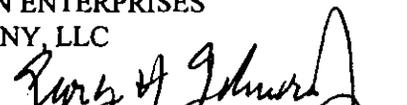
"PECO"

PECO ENERGY COMPANY

By 
Print Name: Denis P. O'Brien
Print Title: President

"EXELON ENTERPRISES"

EXELON ENTERPRISES
COMPANY, LLC

By 
Print Name: George H. Gilmore Jr.
Print Title: President and Chief
Executive Officer

CONFIDENTIAL

Exhibit A

Amended and Restated Lease Agreement

CONFIDENTIAL

AMENDED AND RESTATED
LEASE AGREEMENT

PECO Energy Company
Lessor

and

[TelCove]
Lessee

Originally Dated as of December 12, 1995
Amended and Restated as of _____, 2004

CONFIDENTIAL TO
PECO ENERGY COMPANY &
[TELCOVE]

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CONFIDENTIAL TO
PECO ENERGY COMPANY &
TELCOVE

**AMENDED AND RESTATED
LEASE AGREEMENT**

THIS AMENDED AND RESTATED LEASE AGREEMENT (the "Lease" or "Agreement") is made as of _____, 2004, by and between PECO Energy Company, a Pennsylvania corporation ("PECO Energy"), and [TelCove], a general partnership having its principal place of business in Pennsylvania ("Lessee") and amends and restates that certain Lease Agreement by and between PECO Energy and the Lessee dated as of December 12, 1995 (the "Original Lease").

RECITALS

PECO Energy has constructed and operates the System consisting of Cables and associated equipment, within its geographic Service Area, on which there are currently reserve fiber strands. In addition, PECO Energy may extend or expand its existing System in the future. Lessee desires to provide, via fiber optics, telecommunications services within the Service Area. Subject to the terms and conditions set forth below, PECO Energy desires to lease certain designated fibers in the System to Lessee, and Lessee desires to lease such fibers.

Pursuant to that certain Settlement and Purchase Agreement, dated as of April ____, 2004 among Adelpia Business Solutions, Inc. ("ABS"), Adelpia Business Solutions of Pennsylvania, Inc., PHT Holdings, LLC, Exelon Communications Company, LLC, Lessee, Exelon Enterprises Company, LLC and PECO Energy, Exelon has sold certain fibers to ABS or its affiliates which were previously Leased Fibers under this Agreement.

AGREEMENTS

In consideration of the foregoing, and of the mutual promises contained in this Agreement and intending to be legally bound hereby, the Parties agree as follows:

1. **Scope of Agreement.**

This Agreement states terms and conditions under which the Lessee will lease from PECO Energy, for Lessee's exclusive occupancy, the Leased Fibers and the Leased Facilities and under which PECO Energy will provide certain related services to the Lessee.

2. **Regulatory Approval.**

The effectiveness of this Lease, and the obligations of each Party hereto, are expressly subject to receipt of all necessary Authorizations, if any, without modification or condition.

3. Definitions.

“Acceptance Date” means the date on which Leased Fibers are accepted, or deemed accepted, by Lessee pursuant to Section 4(c).

“Acceptance Testing” means the testing of newly constructed fiber optic cable which must be satisfactorily completed before any additional fibers will be included on a Supplemental Schedule 1. Acceptance Testing will be conducted in accordance with the procedures set forth in Annex C. The Parties acknowledge that the test provided in Annex C is based on the Specifications.

“Affiliate” means, with respect to any individual, corporation, partnership, association, or other entity (any “Person”), any other Person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with such Person.

“Authorizations” means, collectively, each governmental, regulatory or municipal approval, franchise or authorization, right-of-way agreement, pole attachment agreement, conduit agreement and lease, license, consent or other agreement relating to this Lease, the Leased Fibers or the Leased Facilities.

“Cable” means a multi-strand single-mode optical fiber cable which complies in all respects with the Specifications including the entire optical ground wire, the connection cable, splice closures, splice cases, associated suspension hardware and other pole or tower attachments to be owned by PECO Energy and incorporating the Leased Fibers.

“Claims” has the meaning set forth in Section 21(a).

“Construction Costs” means all direct and indirect costs of constructing the additional Leased Fibers, plus applicable overhead, as set forth on Annex B. “Construction Costs” shall include: materials; labor; system documentation; and vendor charges.

“Damages” has the meaning set forth in Section 21(a).

“Demarcation Point” means the patch panel, mode or fiber distribution panel location within a building or other space, and designated on Schedule 1 and any Supplemental Schedule 1, where the Leased Fibers may be connected to Lessee Equipment, Lessee Fiber Optic Facilities or equipment or facilities owned by third parties.

“Expiration Date” means December 31, 2010, provided that the Lessee shall have four (4) options to renew this Lease for a further period of five (5) years each (each a “Renewal Term”) under the same terms and conditions hercof and the Expiration Date shall be extended to December 31, 2015, December 31, 2020, December 31, 2025 and December 31, 2030, respectively by each of the four Renewal Terms exercised by the Lessee. Lessee must give PECO written notice of its intention to renew this Lease at least two hundred seventy (270) days, prior to the end of the then current term of this Lease. At the time Lessee exercise each Renewal Term, Lessee shall have the right to revise the list of Leased Fibers set forth on Schedule 1 and any Supplemental Schedule 1 to delete designated fibers which are not to be included in the Lease for such Renewal Period.

"Force Majeure Event" has the meaning set forth in Section 27.

"Leased Facilities" means the space in locations owned by PECO Energy and necessary access and easements, as set forth in Annex A which PECO Energy leases to Lessee in accordance with this Lease to permit the placement and maintenance of Lessee Equipment, but which shall exclude any space in which Lessee may locate personnel on a regular basis, such as a control center.

"Leased Fibers" means those designated fibers in PECO Energy's System described on Schedule 1 and in any Supplemental Schedule 1, as provided for in Section 4(b), which shall include such designated fibers to and from the Demarcation Points specified in Schedule 1 or Supplemental Schedule 1.

"Lessee Equipment" means the power equipment, optronic and electronic equipment, including, without limitation, repeaters and all other articles of property owned by Lessee which may be necessary to provide transmission over the Leased Fibers.

"Lessee Fiber Optic Facilities" means fiber optic facilities constructed, owned and maintained by Lessee.

"Parties" means PECO Energy and its successors and assigns (which may hereinafter be referred to, collectively, as a "Party") and Lessee and its successors and assigns (which may hereinafter be referred to, collectively, as a "Party").

"PECO Energy's Allocable Overhead" means PECO Energy's corporate administrative and general allocation rate as calculated for joint ownership purposes for the year immediately preceding the year in which any Supplemental Schedule 1 is entered into or any services rendered by PECO Energy pursuant to this Agreement are performed, except as otherwise provided in Annex B.

"PECO Energy's Manhour Rate" means the average cost per hour incurred by PECO Energy for labor for joint ownership purposes for the year immediately preceding the year in which any Supplemental Schedule 1 is entered into or any services rendered by PECO Energy pursuant to this Agreement are performed.

"Personal Communications Services" or "PCS" shall mean communication services using spectrum licensed by the Federal Communications Commission ("FCC") in the 1850-1990 MHz frequencies for the provision of Commercial Mobile Radio Services ("CMRS").

"Primary Business" means, with respect to PECO Energy, its business as a regulated public utility providing electric and gas service to its customers pursuant to federal and state regulation and "Primary Business" means, with respect to Lessee, the provision of certain telecommunication services, including the provision of high quality, redundant, secure, wireline, private line, point-to-point, voice, data, and video transmission services and dedicated access services to long distance carriers, but excluding the provision of any residential services, utility services (including the associated data transmission with respect to such utility services), cable television service, or any Personal Communications Services.

“Regulatory Approval Date” means the latest date upon which the necessary approvals have been granted by all governmental and regulatory bodies of competent jurisdiction and such approvals have become final and no longer subject to legal challenge or reconsideration.

“Service Area” means the geographic area described in Annex A, as may be amended by the Parties from time to time.

“Specifications” means the technical and performance specifications for the Leased Fibers set forth in Annex E.

“System” means the fiber optic telecommunications system constructed and operated by PECO Energy within the Service Area.

4. Lease Arrangements.

(a) Initial Leased Fibers and Leased Facilities. PECO Energy hereby leases to Lessee the Leased Fibers for Lessee’s exclusive use for the provision of telecommunications services. PECO Energy also leases to Lessee the Leased Facilities.

(b) Additional Leased Fibers and Leased Facilities. At any time during the term of this Agreement, Lessee may request PECO Energy to construct, but PECO Energy will not be obligated to construct, additional Cables to any location in the Service Area to enable Lessee to lease additional Leased Fibers. Lessee also may, during the term of this Agreement, request that PECO Energy provide additional Leased Facilities in connection with the proposed additional Leased Fibers. Each such request shall contain such information as PECO Energy may reasonably request to assist it in determining whether it will construct such Cables and provide such additional Leased Fibers and Leased Facilities. Such information shall include, but shall not be limited to, the number of fiber strands required, the routes, the location of splice points, network architecture and diversity requirements, the date by which PECO Energy must respond to the request and the proposed Acceptance Date. In addition, at any time during the term of this Agreement, Lessee may request PECO Energy to lease additional reserve fibers over any of PECO Energy’s existing System, but PECO Energy will not be obligated to lease such fibers. Upon agreement by PECO Energy and Lessee as to the lease of any such newly constructed or existing additional fibers and facilities, and Lessee’s acceptance of the additional fibers and facilities pursuant to Section 4(c) below, the Parties shall execute a Supplemental Schedule 1 setting forth the same sort of information regarding such additional fibers and facilities as is set forth on Schedule 1 attached hereto with respect to the initial Leased Fibers. On the effective date or dates set forth in such Supplemental Schedule 1 (or if not specified therein, the date on which the exclusive use of the additional fibers is transferred to, and accepted by, Lessee in accordance with Section 4(c) below), such additional fibers shall become Leased Fibers for purposes of this Agreement. Lessee’s monthly lease payments for the additional Leased Fibers shall be calculated as set forth in Annex B attached hereto and the amount of such payments shall be set forth on the Supplemental Schedule 1.

(c) Acceptance of Leased Fibers.

(i) Initial Leased Fibers. By its execution and delivery of the Original Lease with Schedule 1 attached, Lessee accepted the initial Leased Fibers.

(ii) Additional Leased Fibers.

(A) Testing. With respect to any newly constructed or existing additional fibers, upon its determination that such fibers are ready for acceptance by Lessee, PECO Energy shall notify Lessee not less than two business days in advance of the proposed Acceptance Testing, that PECO Energy will conduct the Acceptance Testing. Lessee shall have the right, but not the obligation, to be present during and to participate in such Acceptance Testing. Within seven days of the conclusion of the Acceptance Testing, PECO Energy shall provide Lessee with a copy of the test results.

(B) Acceptance. If the Acceptance Testing results are within the parameters of the Specifications, Lessee shall provide PECO Energy with a written notice accepting the newly constructed or existing additional fibers. If Lessee does not provide a written acceptance within fifteen days of receiving the results of the Acceptance Testing, Lessee shall be deemed to have accepted the newly constructed or existing additional fibers. If Lessee accepts, or is deemed to have accepted, the fibers, PECO Energy and Lessee shall each execute and deliver a Supplemental Schedule 1 with respect to such additional Leased Fibers, provided, however, that such a Supplemental Schedule 1 shall not be a condition precedent to Lessee's obligation lease such Leased Fibers and Leased Facilities upon acceptance or deemed acceptance. The Supplemental Schedule 1 shall identify any additional Leased Facilities associated with the additional Leased Fibers.

(C) Failure and Cure. In the event the results of Acceptance Testing are not within the parameters of the Specifications, Lessee, within fifteen days of receiving the results of the Acceptance Testing, may notify PECO Energy in writing that the results are unacceptable with respect to some or all portions of the additional Leased Fibers. Thereupon, PECO Energy shall expeditiously take such action as shall be necessary with respect to such portions of the Leased Fibers as do not operate within the parameters of the Specifications, to bring the operating standards of such portions of the Leased Fibers within the said parameters of the Specifications. If PECO Energy is unable to bring the Leased Fibers within the said parameters of the Specifications within thirty days of receiving written notice from Lessee that the results of the Acceptance Testing were unacceptable, Lessee, at its option and as its sole remedy, may (1) decline to accept the fiber or (2) extend an additional time period for PECO Energy to cure.

(D) Deemed Acceptance. Lessee's use of the additional Leased Fibers to carry revenue bearing traffic or Lessee's sublease to other third parties of the Fibers shall constitute acceptance of the Leased Fibers and any associated Leased Facilities.

5. Term.

This Agreement shall terminate on the earliest to occur of (i) the Expiration Date, (ii) the date that PECO Energy's (or its successors or assigns) legal ability to operate the System in the Service Area either terminates or is materially impaired, or (iii) the date this Agreement terminates pursuant to Sections 18, 19, 25 or 26 hereof.

6. Lease Payments.

(a) Calculation and Timing of Lease Payments. Lessee shall pay PECO Energy rent for the Leased Fibers and Leased Facilities monthly. The rent for the Leased Fibers shall be calculated in accordance with the procedures set forth in Annex B and listed on Schedule 1 for the initial Leased Fibers and listed on any Supplemental Schedule 1 for any additional Leased Fibers. The rent for the Leased Facilities shall be calculated in accordance with the procedures set forth in Annex D and listed on Schedule 1 for the initial Leased Facilities and listed on any Supplemental Schedule 1 for any additional Leased Facilities. Effective with the commencement of the third Renewal Term, Lessee shall pay to PECO Energy, as adjusted rent during such Renewal Term, pro-rated on a monthly basis, an amount computed to offset any net decline in the purchasing power of the dollar, as reflected in the United States Department of Labor, Consumer Price Index, (All Urban Consumers – All Items – Philadelphia, PA-NJ; 1982-84=100), hereinafter referred to as the "CPI". The adjusted rent shall be calculated by multiplying the rent payable at the commencement of the Lease by a fraction of which the numerator shall be the CPI for the month of January in the calendar year with respect to which such adjustment is being made and the denominator shall be the CPI for the month of January 2004. If the CPI or a successor or substitute index is not available, a reliable governmental or other non-partisan publication, determined solely by PECO, evaluating the information theretofore used in determining the CPI shall be used. In no event, however, shall the provisions of this Section be construed to lower the rent hereunder to an amount less than the rent of the previous lease term. The lease payment in respect of any month shall be due and payable, without demand or setoff, by the end of such month.

(b) Inspection of Records. The amount of the lease payments for the Leased Fibers set forth on any Supplemental Schedule 1 are based on PECO Energy's Construction Costs for the additional Leased Fibers. PECO Energy shall, for a period of at least three years after the acceptance by Lessee of any Leased Fibers, maintain detailed records relating to the Construction Costs of such Leased Fibers. PECO Energy will permit Lessee at any time upon reasonable notice to examine all of such records, to make copies and extracts therefrom and to discuss such records and other matters relating to the Leased Fibers with the relevant employees of PECO Energy. If any discrepancy is found in such records which calls into question the accuracy of the computation of the lease payments as set forth on Schedule 1 or any Supplemental Schedule 1, the Parties shall negotiate in good faith to revise the affected lease payments in accordance with the procedures set forth in Annex B to reflect the actual Construction Costs of the affected Leased Fibers.

7. Taxes and Expenses.

Lessee shall pay any sales tax, property tax, transfer tax, use tax, gross receipts tax, excise tax, business and occupation tax, or other similar Federal, state and local taxes or charges (excluding taxes imposed on PECO Energy's net income) imposed by any governmental authority upon PECO Energy or Lessee as a result of any payments due from Lessee to PECO Energy hereunder or as a result of Lessee's activities under this Agreement or imposed upon or with respect to the Leased Fibers and Leased Facilities. In addition, Lessee shall be responsible (i) for any franchise fees on a grossed-up basis imposed upon or collected from PECO Energy by any franchising authority as a result of Lessee's activities under this Agreement, and (ii) for its share on an allocated basis (based on the ratio that the number of fibers included in the Leased Fibers bears to the total number of fibers in the cable which is the subject of the relevant fee or expense) of pole attachment fees, conduit fees and other out-of-pocket rights-of-way expenses incurred by PECO Energy in connection with the Leased Fibers and Leased Facilities; provided, however, Lessee reserves the right to challenge the governmental entity's assessment of such amount. To the extent that Lessee believes it has been double billed, PECO Energy shall provide Lessee all documentation in PECO Energy's possession, which is reasonably requested by Lessee regarding such challenge by Lessee. Payment shall be made promptly upon demand of PECO Energy, such authority or such rights-of-way providers, as the case may be. PECO Energy shall use commercially reasonable efforts to cooperate with Lessee in any contest between Lessee and a governmental entity regarding any taxes or fees, and in making tax-related reports and filings, provided, however, that PECO Energy shall have no obligation to contest, defend or otherwise challenge any matter with a governmental authority or any other third party.

8. Use of Leased Fibers and Leased Facilities.

Lessee shall not use the Leased Fibers or Leased Facilities in violation of this Agreement, any law, rule, regulation or order of any governmental or regulatory authority having jurisdiction, or any franchise, license, agreement or certificate relating to the System or PECO Energy's franchises, unless the validity thereof is being contested in good faith and by appropriate proceedings (but only so long as such proceedings and Lessee's use of the Leased Fibers and Leased Facilities do not, in PECO Energy's reasonable opinion, involve any risk of the sale, forfeiture or loss of the System, franchises, pole attachment or conduit agreements, or any part thereof or any interest therein). Lessee shall not do or permit anything to be done with respect to the Leased Fibers or Leased Facilities that would invalidate or conflict with any self-insurance or third-party insurance policies maintained by PECO Energy or Lessee covering the Leased Fibers or Leased Facilities. Lessee may use the Leased Fibers for the transmission of telecommunications services and for any other lawful purpose included within the scope of Lessee's Primary Business. Lessee shall have exclusive control over its providing of telecommunications services, including, without limitation, customer premise and nodal electronics, sales and marketing, electronics maintenance and monitoring, and billing and collection.

9. Non-Exclusivity; Connections to Leased Fibers.

Nothing in this Agreement shall be construed to require PECO Energy to be Lessee's exclusive provider of, or contractor with respect to, fiber optic facilities in the Service Area or to

limit in any way Lessee's right in its own name to apply for and obtain municipal franchises, authorizations and permits, to construct, maintain and own Lessee Fiber Optic Facilities, and to apply for and obtain pole attachment agreements, conduit licenses or other rights-of-way agreements from PECO Energy and other rights-of-way providers. In the event that Lessee does elect to own or construct Lessee Fiber Optic Facilities, PECO Energy shall splice such Lessee Fiber Optic Facilities, to the Leased Fibers at the splice points listed on each Schedule 1 and Supplemental Schedule 1 hereto, or designated subsequently in writing by PECO Energy from time to time. Lessee shall retain sole and exclusive title to any Lessee Fiber Optic facilities installed by it from the point of splicing. PECO Energy or its designated subcontractor shall have exclusive access to splice cases and distribution panels on the Leased Fibers. PECO Energy shall use all reasonable commercial efforts to splice Lessee Fiber Optic Facilities to the Leased Fibers at the splice points designated on Schedule 1 and Supplemental Schedule 1 hereto within two business days of receiving notice from Lessee that such splices are required.

10. Lease by Lessee of Capacity.

If Lessee obtains operating authority, rights-of-way, building entrance facilities, pole attachment agreements or conduit rights in the Service Area, constructs and owns Lessee Fiber Optic Facilities in the Service Area and determines, in its sole discretion, that it has capacity in such facilities, it may, in its sole discretion, upon request of PECO Energy, negotiate in good faith with PECO Energy for (i) the lease of capacity to PECO Energy for the provision by PECO Energy of services related to PECO Energy's Primary Business and for any other purpose not included in Lessee's Primary Business (such as Personal Communications Services), such lease to the extent possible to include all the applicable terms and provisions of this Agreement as if Lessee were PECO Energy and PECO Energy were Lessee hereunder or (ii) the provision to PECO Energy of the kinds of additional facilities services specified in Section 11.

11. [Intentionally Blank].

12. Performance and Maintenance.

(a) Leased Fibers. Except as the Parties may otherwise agree in writing, PECO Energy, or its subcontractors acting under its direction, shall inspect and maintain each portion of the Leased Fibers in accordance with industry standards and the maintenance standards set forth in the Specifications in effect on the date such portion of the Leased Fibers was added to this Agreement, so that at all times such portion of the Leased Fibers perform in accordance with the Specifications in effect as of such date. PECO Energy shall provide the following maintenance services:

(i) Routine Maintenance. Operations necessary for the electric transmission and distribution lines such as routine tower and right-of-way inspection, right-of-way clearing, tree trimming and other maintenance and regular inspection of those portions of the System containing the Leased Fibers. The fees for these services are included as part of the monthly payment provided for in Section 6 of this Agreement.

(ii) Additional Maintenance Services. PECO Energy shall provide other maintenance services, specifically requested by Lessee. The fee for such services shall

consist of the cost of materials, at invoice, PECO Energy's Manhour Rate, plus PECO Energy's Allocable Overhead, and a profit margin not to exceed ten percent of the foregoing charges, or, to the extent applicable, the vendor's invoice cost plus a profit margin, not to exceed five percent. Any invoices issued hereunder shall describe the services performed and the time expended in performing such services and shall be payable within thirty days of receipt of same by Lessee.

(iii) Casualty Repairs. If any portion of the Leased Fibers are damaged or destroyed by casualty, PECO Energy shall repair the damaged Leased Fibers and PECO Energy and Lessee shall share proportionately in the cost of such repair, based on the ratio that the number of fibers included in the Leased Fibers bears to the total number of fibers in the cable being repaired. The cost of the repair shall consist of the cost of materials, at invoice and PECO Energy's Manhour Rate, plus PECO Energy's Applicable Overhead; or, where applicable, the vendor's charges, at invoice.

(b) Leased Facilities. PECO Energy shall maintain the Leased Facilities in a condition sufficient to satisfy its use of such Leased Facilities and makes no warranties as to the suitability of such facilities for purposes of Lessee, except to the extent specified on Schedule 1 or Supplemental Schedule 1. PECO Energy shall be responsible for maintaining Leased Facilities to the standard specified on Schedule 1 or Supplemental Schedule 1 on the following terms:

(i) PECO Energy shall provide maintenance services on a cost plus material basis, plus reasonable overhead and profit. Any invoices issued hereunder shall describe the services performed and the time expended in performing such services and shall be payable within thirty days of receipt of same by Lessee.

(ii) If any portion of the Leased Facilities are damaged or destroyed by casualty, PECO Energy shall repair the damaged Leased Facilities and PECO Energy and Lessee shall share in the cost of such repair.

(c) Lessee Equipment. Lessee shall maintain the Lessee Equipment. PECO Energy shall have no responsibility for the maintenance of any Lessee Equipment.

13. Title.

All right, title and interest in all the Leased Fibers and Leased Facilities provided by PECO Energy hereunder shall at all times remain exclusively with PECO Energy. All right, title and interest in the Lessee Equipment shall remain exclusively with Lessee. Except as expressly provided elsewhere in this Agreement, PECO Energy shall retain full operating control and shall continue to hold and be solely responsible for all operating authority with regard to the System. Lessee shall hold and be responsible for all operating authority for the Lessee Equipment and for the provision of telecommunications services by it, including, without limitation, its use of the Leased Fibers.

14. Liens and Encumbrances.

Neither Party, directly or indirectly, shall create or impose any lien on the property of the other, or on the rights or title relating thereto, or any interest therein, or in this Agreement. Each Party will promptly, at its own expense, take such action as may be necessary to duly discharge any lien created by it on the property of the other.

15. Representations and Covenants Regarding Authorizations.

(a) PECO Energy hereby represents, warrants and covenants to Lessee as follows:

(i) PECO Energy has fully disclosed to Lessee any material facts known to PECO Energy, which in each case, relate to PECO Energy's ability to lease the Leased Facilities and perform PECO Energy's obligations under this Agreement.

(ii) PECO Energy will use commercially reasonable efforts throughout the term of this Agreement to obtain and maintain all Authorizations necessary to permit it to lease the Leased Fibers to Lessee and perform its obligations under this Agreement.

(iii) PECO Energy is duly organized, validly existing and in good standing under the laws of the State of its incorporation or organization and has full power and authority to execute, deliver and perform the terms of this Agreement.

(iv) There is no litigation, proceeding or governmental investigation to which PECO Energy is a party which could result in any material adverse effect on its ability to perform its obligations under this Agreement.

(b) Lessee hereby represents, warrants and covenants to PECO Energy as follows:

(i) Lessee has made available to PECO Energy true and correct copies of each Authorization obtained by it, and Lessee has fully disclosed to PECO Energy any material facts known to Lessee, which, in each case, relate to Lessee's ability to use the Leased Fibers and perform Lessee's obligations under this Agreement.

(ii) Lessee, exercising its reasonable judgment based upon information currently available, interprets the Authorizations obtained by it as lawfully permitting it to consummate the transactions and perform its obligations provided for in this Agreement.

(iii) Lessee will use commercially reasonable efforts throughout the term of this Agreement to obtain and maintain all Authorizations reasonably necessary to permit it to lease the Leased Fibers from PECO Energy and perform its obligations under this Agreement.

(iv) Lessee is duly organized, validly existing and in good standing under the laws of its state of incorporation or organization and has full power and authority to execute, deliver and perform the terms of this Agreement.

(v) There is no litigation, proceeding or governmental investigation to which Lessee is a party which could result in any material adverse effect on its ability to perform its obligations under this Agreement.

16. Rights of Way.

Under its existing right-of-way agreements with private landowners, PECO Energy believes it has the right to use the rights of way as contemplated herein, but does not warrant that they will be legally sufficient, without the consent of the landowners, for such purposes. With respect to property that may be owned in fee, this Agreement shall constitute a license from PECO Energy to Lessee on the terms hereof. Lessee will be required at its sole cost and expense to obtain rights of way for any connection or equipment it intends to install outside the PECO Energy's right-of-way and where PECO Energy's interest in such right-of-way is not legally sufficient.

17. Compliance With Law.

Each Party shall comply with all applicable laws, rules and regulations imposed by any governmental or regulatory authority.

18. Relocation of the Facilities.

Lessee recognizes that, from time to time, PECO Energy may elect or be required to relocate the Leased Fibers or Leased Facilities. Where such relocation is for the convenience of PECO Energy or a third party, and PECO Energy is not required to make such relocation by law or existing contract, PECO Energy shall be solely responsible for all costs incurred to relocate the Leased Fibers or, to the extent located in such Leased Facilities, the Leased Equipment. With respect to the Leased Fibers, where PECO Energy is required to make such relocation by law or existing contract or by the loss of a right-of-way, Lessee shall pay its share, based on the ratio that the number of fibers included in the Leased Fibers bears to the total number of fibers in the cable being relocated, of the cost of materials, plus PECO Energy's Manhour Rate, plus PECO Energy's Allocable Overhead of such relocation to the extent such costs cannot be recovered from such third party, provided that if the costs of such relocation to be paid by Lessee exceed the aggregate unpaid balance of the lease payments pursuant to Section 6 above with respect to such Leased Fibers, Lessee will have the option of terminating this Agreement with respect to such Leased Fibers and paying PECO Energy the present value of such unpaid balance (calculated using a discount rate equal to the interest rate used in calculating the lease payments as set forth in Schedule 1). With respect to the Leased Facilities, where PECO Energy is required to make such relocation by law or existing contract or by the loss of a right-of-way, Lessee shall pay the cost of relocating the Lessee Equipment located on such Leased Facilities. PECO Energy will use commercially reasonable efforts to effect any relocation in a manner that will not cause any material interruption to Lessee's use of the Leased Fibers or the Lessee Equipment located on the Leased Facilities. PECO Energy shall use commercially reasonable efforts to give Lessee at least three months prior notice of any relocation or of any governmental proceedings which might result in a relocation, or such lesser amount of notice that PECO Energy receives from such governmental authority, and Lessee shall have the right to participate in any such proceedings.

19. Condemnation and Casualty.

(a) Condemnation. If all or any portion of the System containing Leased Fibers or Leased Facilities are taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or otherwise, Lessee or PECO Energy shall be entitled to terminate this Agreement with respect to such Leased Fibers or Leased Facilities, provided that in such case where Lessee terminates this Agreement, Lessee shall pay PECO Energy the present value of the aggregate unpaid balance of the lease payments pursuant to Section 6 above, with respect to such Leased Fibers or Leased Facilities (calculated using a discount rate equal to the interest rate used in calculating the lease payments as set forth in Schedule 1). In such event, both Parties shall be entitled, to the extent possible under applicable law, to participate in any condemnation proceedings to seek to obtain compensation by either joint or separate awards for the economic value of their respective interests in the Leased Fibers or Leased Facilities and will share any awards in accordance with the fair market value of the hard assets lost by each Party.

(b) Casualty. If all or any portion of the Leased Fibers or Leased Facilities are made inoperable due to a casualty or other Force Majeure Event, and PECO Energy reasonably determines that such damage cannot be reasonably repaired within 10 days, Lessee or PECO Energy shall be entitled to terminate this Agreement with respect to the Leased Fibers or Leased Facilities affected by such casualty or other force majeure event, provided that in such case where Lessee terminates this Agreement, Lessee shall pay PECO Energy the present value of the aggregate unpaid balance of the lease payments pursuant to Section 6 above with respect to such Leased Fibers or Leased Facilities (calculated using a discount rate equal to the interest rate used in calculating the lease payments as set forth in Schedule 1). In such event, both Parties shall be entitled to seek to recover the economic value of their respective interests in the Leased Fibers or Leased Facilities (i) under any insurance policy carried by either Party or any third party, or (ii) in either joint or separate actions, from any third party which may be legally responsible for causing such casualty. The Parties will share any recoveries in accordance with the fair market value of the hard assets lost by each Party.

20. Proprietary Information.

Each Party acknowledges that, in the course of the performance of this Agreement, it may have access to privileged and proprietary information claimed to be unique, secret and confidential, and which constitutes the exclusive property or trade secrets of the other Party, and the Parties acknowledge that they are in a confidential relationship with each other. This information may be presented in documents marked with a restrictive notice or otherwise tangibly designated as proprietary or during oral discussions, at which time representatives of the disclosing Party will specify that the information is proprietary. Each Party agrees to maintain the confidentiality of the proprietary information and to use the same degree of care as it uses with regard to its own proprietary information to prevent the disclosure, publication or unauthorized use of the proprietary information. Neither Party may duplicate or copy proprietary information of the other Party other than to the extent necessary for legitimate business uses in connection with this Agreement. A Party shall be excused from these nondisclosure provisions if the proprietary information has been, or is subsequently, made public by the other Party or is independently developed by such Party or if the other Party gives its express, prior written

consent to the disclosure of the proprietary information or if the disclosure is required by law or regulation. Notwithstanding anything to the contrary in this Agreement, this provision shall survive the termination or expiration of this Agreement.

21. Indemnification.

(a) Indemnification by Lessee. Lessee will indemnify and hold harmless PECO Energy, its affiliates, and all officers, directors, employees, stockholders, partners and agents of PECO Energy and its affiliates from and against any and all claims, demands, costs, damages, losses, liabilities, joint and/or several, expenses of any nature (including reasonable attorneys, accountants and experts fees and disbursements) judgments, fines, settlements and other amounts (collectively, "Damages") arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative (collectively "Claims") relating to or arising out of:

(i) The installation, maintenance or operation of Lessee's or its agent's connections to the Leased Fibers or the conduct or management of Lessee's or its agent's business with regard to the Leased Fibers or the connections thereto, except to the extent such Damages are caused by PECO Energy or its agents;

(ii) The use by Lessee of the Leased Facilities, except to the extent such Damages are caused by PECO Energy or its agents;

(iii) Any breach by Lessee of any obligation or covenant under this Agreement;

(iv) Any failure of any representation or warranty made by Lessee herein to be true in any material respect as of the date made or deemed made;

(v) Any Claim by any customer of Lessee relating to the provision by Lessee of services to such customer using the Leased Fibers, the Leased Facilities or otherwise; and

(vi) Any Claim of any third party resulting from any action or inaction of Lessee;

Any indemnification hereunder will be satisfied solely out of the assets of Lessee and will be subject to the limitation in the last sentence of Section 25.

(b) Indemnification by PECO Energy. PECO Energy will indemnify and hold harmless Lessee, its affiliates, and all officers, directors, employees, stockholders, partners and agents of Lessee and its affiliates from and against any and all Damages arising from any and all Claims relating to or arising out of:

(i) The installation, maintenance or operation by PECO Energy or its agents of the Leased Fibers or the conduct or management of PECO Energy's business with regard to the Leased Fibers, except to the extent such Losses are caused by Lessee or its agents;

(ii) Any breach by PECO Energy of any obligation or covenant under this Agreement;

(iii) Any failure of any representation or warranty made by PECO Energy herein to be true in any material respect as of the date made or deemed made;

(iv) Any Claim by any customer of PECO Energy relating to PECO Energy's provision of services (other than services provided by Lessee) over the Leased Fibers; and

(v) Any Claim of any third party resulting from the negligence or willful misconduct of PECO Energy or its agents, except to the extent that such Claim relates to the provision by Lessee of services to such customer over the Leased Fibers or Leased Facilities;

provided, however, that the foregoing indemnification provisions shall not apply in the event of any interruption of service to Lessee, which shall be governed by Section 19 hereof. Any indemnification hereunder will be satisfied solely out PECO Energy's interest in the System and will be subject to the limitation in the last sentence of Section 25.

(c) Procedure. No Claim for indemnification shall be made by either Party against the other unless the aggregate amount of such Claim, together with any other indemnifiable Claims of such party, exceeds the amount of \$15,000. Any reasonable expenses incurred by any indemnified person pursuant to this Section 21 in defending any civil or criminal action, suit or proceeding (or the threat thereof), other than a Claim, action, suit or proceeding brought by the indemnifying Party, shall be borne and paid by the indemnifying Party in advance of the final disposition of such action, suit or proceeding (or the threat thereof) upon receipt of an undertaking by or on behalf of the indemnified person to repay to the indemnifying Party the amount of such expenses if it shall ultimately be determined that such person is not entitled to the indemnification provided for under this Section 21. Any person asserting a right to indemnification under this Section 21 shall so notify the indemnifying Party in writing. If the facts giving rise to such indemnification involve any actual or threatened Claim or demand by or against a third party, the indemnifying Party shall be entitled to control the defense or prosecution of such Claim or demand in the name of the indemnified person, if the indemnifying Party notifies the indemnified person in writing of its intention to do so within twenty days of the receipt of such notice by the indemnified person. The indemnified person shall have the right, however, to participate in such proceeding through counsel of its own choosing, which participation shall be at its sole expense. Whether or not the indemnifying Party chooses to defend or prosecute such Claim, each indemnified person and PECO Energy or Lessee, whichever is not the indemnifying Party, shall, to the extent requested by the indemnifying Party and at the indemnifying Party's expense, cooperate in the prosecution or defense of such Claim and shall furnish such records, information and testimony and attend such conferences, discovery proceedings, hearings, trials and appeals as may reasonably be requested in connection therewith.

(d) Survival. The provisions of this Section 21 shall survive the termination of this Agreement.

22. Provision of Insurance Coverage.

Each Party or its affiliates shall, at its own expense, secure and maintain in force, throughout the term of this Agreement, General Liability Insurance, with competent and qualified issuing insurance companies, including the following coverages: Product Liability, Hazard of Premises/Operations (including explosion, collapse and underground coverages) Independent Contractors; Products and Completed Operations; Blanket Contractual Liability (covering the liability assumed in this Agreement); Personal Injury (including death) ; and Broad Form Property Damage in policy or policies of insurance such that the total available limits to all insured will not be less than \$2,000,000 Combined Single Limit for each occurrence and \$2,000,000 aggregated for each annual period. Such insurance may be provided in policy or policies, primary and excess, including the so-called Umbrella or Catastrophe forms; provided, that PECO Energy shall have the right to self-insure for such risks. In addition, Lessee shall maintain in effect, with insurance companies of recognized responsibility, at its own expense, (i) "All Risk" property insurance coverage with limits sufficient to cover the full replacement cost of Lessee Equipment with no co-insurance, (ii) Business Interruption coverage on an actual loss sustained basis and (iii) such other insurance as may be required by any applicable franchise and/or pole attachment or conduit license agreements, as applicable. All policies required by this Section 22 shall, to the extent possible, be endorsed to show the other Party, its parent and affiliates and its and their directors, officers, agents, servants, employees and independent contractors as additional insured, as their interests may appear; require the insurance companies to notify the other Party at least thirty days prior to the effective date of any cancellation or material modification of such policies; waive all rights of recovery for property damage to a Party's property, under subrogation or otherwise, against the other Party, its parent and affiliates and its and their directors, officers, agents, servants, employees and independent contractors; and shall specify that the policy shall apply without consideration for other policies separately carried and shall state that each insured is provided coverage as though a separate policy had been issued to each, except the insurer's liability shall not be increased beyond the amount for which the insurer would have been liable had only one insured been covered and only one deductible shall apply regardless of the number of insured covered.

23. Interruption of Service.

In the event of any interruption of use by Lessee of any portion of the Leased Fibers through no fault of Lessee, unless such interruption is caused by PECO Energy's willful misconduct or gross negligence, PECO Energy's sole obligation shall be to provide credit on a pro rata basis against Lessee's obligation to make lease payments pursuant to Section 6 hereof. The remedy provided in this Section shall be Lessee's sole and exclusive remedy for outages or interruptions of service, subject to the termination provisions in Sections 18, 19 and 25 and the Force Majeure Events provision in Section 27.

24. Events of Default.

Each of the following events shall constitute an event of default (whether any such event shall be voluntary or involuntary or occur by operation of law or pursuant to any judgment, decree, order, rule or regulation of any court or administrative or governmental body):

(i) the failure of Lessee to make any lease payment pursuant to Section 6 hereof or any other payment due hereunder within ten days after Lessee's receipt of notice from PECO Energy of Lessee's failure to make such payment when due, provided PECO Energy shall not be required to give notice more than two times in a calendar year;

(ii) the failure of either Party to carry and maintain insurance in compliance with all provisions of Section 18 hereof;

(iii) the failure of either Party to perform or observe any material covenant or agreement to be performed or observed by it hereunder, and such failure shall continue unremedied for a period of thirty days after written notice is given to the defaulting Party;

(iv) a court or governmental authority of competent jurisdiction shall enter an order appointing a custodian, receiver, trustee, intervenor or other officer with similar powers with respect to a Party hereto or with respect to any substantial part of its property, or constituting an order for relief or approving a petition in bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding up, or liquidation of such Party, or if any such petition shall be filed against a Party and shall not be dismissed within sixty days thereafter, or an order shall have been issued granting either Party a suspension of payments under applicable law and any such order is not dismissed within sixty days thereafter; or

(v) either Party shall cease to have any of the material franchises, licenses, agreements, certificates, concessions, permits, rights or privileges required for the conduct of its Primary Business which loss is not remedied by the obtaining of a replacement franchise, license, agreement, certificate, concession, permit, right or privilege within sixty days of the loss thereof, if such loss would have a material adverse effect upon the ability of the Party suffering such loss to perform its obligations hereunder.

25. Remedies.

Upon the occurrence and during the continuance of any event of default, the non-defaulting Party may, at its option, declare this Agreement to be in default and may, in addition to any other remedies provided herein, terminate this Agreement. If this Agreement is terminated by PECO Energy pursuant to the preceding sentence prior to the payment by Lessee of all lease payments due pursuant to Section 6 above in respect of all Leased Fibers, Lessee shall pay PECO Energy the present value of such unpaid balance (calculated using a discount rate equal to the interest rate used in calculating the lease payments as set forth in Schedule 1). No remedy is intended to be exclusive, but each shall be cumulative and in addition to and may be exercised concurrently with any other remedy available to PECO Energy or Lessee at law or in equity. In addition to all other remedies contained herein, if any representation in Section 15 is untrue in any material respect when made and the non-defaulting Party elects not to terminate this Agreement, the Parties shall negotiate in good faith an equitable adjustment to the payment terms contained in Annex B hereto with the intention of reasonably compensating the other Party for any damages it may have sustained as a result of such representation being untrue when made. **IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR SPECIAL,**

CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES AS A RESULT OF THE PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT.

26. Additional Termination Rights.

(a) Lessee. Upon the payment by Lessee of the final lease payment due pursuant to Section 6 hereof in respect of any Leased Fibers or Leased Facilities and payment by Lessee of any other amounts then due hereunder, Lessee may, without further obligation to PECO Energy, with one hundred eighty days written notice, terminate its agreement of such portion of the Leased Fibers and Leased Facilities without cause, and will return such Leased Fibers and Leased Facilities to PECO Energy "as is" and "where is". Lessee at its election may remove or cause all of the Lessee Equipment connected to such Leased Fibers and Leased Facilities to be removed from such portion of the Leased Fibers and Leased Facilities at its expense (but under the supervision of PECO Energy) or may, by notice to PECO Energy, abandon such Lessee Equipment in place. If Lessee abandons any such Lessee Equipment, PECO Energy shall have no liability whatsoever for such Lessee Equipment and PECO Energy may within eighteen months of its receipt of such notice, remove the Lessee Equipment and bill Lessee for the costs incurred by it which bill shall be payable within thirty days of receipt.

(b) PECO Energy.

(i) PECO Energy may, without further liability to Lessee, at its option upon one hundred eighty days written notice, terminate this Agreement without cause upon the occurrence of any of the following events:

(A) Any governmental agency or third party institutes proceedings or any governmental agency determines to subject PECO Energy or the Leased Fibers or Leased Facilities to any form of telecommunications regulation as a result of its performance of this Agreement;

(B) Any action is brought by any third party challenging the continued validity or seeking to adversely modify, suspend or revoke PECO Energy's operating authority for all or any portion of its Primary Business or System as a result of its or Lessee's performance of this Agreement; or

(C) a legal or regulatory determination affecting adversely the Primary Business of PECO Energy and which, in any such case, renders it unlawful or impossible for PECO Energy to satisfy its obligations under this Agreement;

provided that, PECO Energy, upon written request of Lessee and at Lessee's sole expense, shall use commercially reasonable efforts to seek the permission of such governmental agency or third party to continue to lease the Leased Fibers and Leased Facilities to the Lessee on the terms hereof until such time as Lessee can through use of commercially reasonable efforts obtain other fibers and facilities to utilize in the provision of telecommunications services.

(ii) Notwithstanding anything in subsection (i), PECO Energy, at its sole discretion, may elect to continue this Agreement during the pendency of such

proceedings or actions, if Lessee agrees to indemnify, defend and hold harmless PECO Energy (pursuant to an indemnification agreement in form and substance reasonably satisfactory to PECO Energy) against all liability, claims, fines or damages (including reasonable attorney's fees) incurred by PECO Energy as a result of Lessee's continued operations and use of capacity on the System.

(iii) If the defense of such proceedings or actions is not successful, Lessee, upon the effective date of a final order in such proceedings or actions, shall terminate its use of the Leased Fibers and Leased Facilities, remove the Lessee Equipment and cease operations over the System.

27. Force Majeure Events.

Neither Party shall be liable to the other for any failure of performance or delay in performance under this Agreement due to causes beyond its control, including but not limited to: acts of God, fire, flood or other catastrophes; any law, order, regulation, direction, action or request of the United States Government, or of any other government, including state and local governments having or claiming jurisdiction over such Party, or of any department, agency, commission, bureau, corporation or other instrumentality of any one or more of these federal, state or local governments, or of any civil or military authority; national emergencies; unavailability of materials or rights-of-way; insurrections; riots; wars; or strikes, lock-outs, work stoppages or other labor difficulties (collectively, "Force Majeure Events"). In the event of any delay resulting from such causes, upon notice to the other Party promptly following the occurrence of the Force Majeure Event, the time for performance hereunder shall be extended for a period of time, reasonably necessary to overcome the effects of such delays. This shall constitute the sole remedy in the event of such delays.

28. Orderly Termination.

Upon termination of this Agreement in whole or with respect to any Leased Fibers or Leased Facilities, PECO Energy and Lessee shall cooperate in good faith to effect an orderly transition of any telecommunications services provided over the Leased Fibers. Without limitation, PECO Energy hereby agrees that notwithstanding such termination it will, to the extent permitted by applicable law and regulation, use commercially reasonable efforts to continue to make available to Lessee any portions of the Leased Fibers and Leased Facilities at the rates specified herein which Lessee reasonably requires to fulfill its obligations under existing customer agreements for a period up to three months after such termination in the case of a termination for Lessee's default, or twelve months after such termination in all other cases.

29. Building Access Cooperation.

PECO Energy and Lessee shall cooperate with each other in all reasonable respects to obtain access by each Party to buildings owned by third parties anywhere in the Service Area and with regard to any joint construction and/or use of any fiber optic cable installed in any building owned by third parties or other customer location within the Service Area.

30. Network Architecture and Diversity.

PECO Energy and Lessee shall consult and cooperate with each other with regard to all technical matters relating to network architecture, diversity and related matters. Without limitation, PECO Energy and Lessee will each designate a technical engineering representative and each agrees to inform the other of all its construction plans with respect to the System as in effect from time to time.

31. Obligations of Lessee.

In addition to the obligations of Lessee set forth elsewhere in this Agreement, Lessee shall:

(i) have full and complete control, responsibility and liability for the signals distributed over the Leased Fibers by Lessee or for its or its customer's benefit;

(ii) have full and complete control, responsibility and liability for the purchase, installation, construction and maintenance of the Lessee Equipment;

(iii) employ its own employees, agents and/or independent contractors in the handling, storage, retrieval, processing, transmitting, and/or receiving of any electronic signals distributed over the Leased Fibers;

(iv) provide all commercial or other power supplies for the operation of the Leased Fibers and Lessee Equipment and located on Lessee's, or its customer's, premises; and

(v) have full and complete control, responsibility and liability for maintaining any operating authority from any federal, state or local governmental body or agency that relates to the activities of Lessee under this Agreement, including Lessee's use of the Leased Fibers; and

(vi) maintain all books and records relating to the Leased Fibers and Leased Facilities.

32. Interest.

All payments due from either Party to the other under the terms of this Agreement which are not paid when due shall bear simple interest from the due date until paid at an interest rate equal to the lesser of 1 1/2% per month or the maximum lawful rate permitted by law.

33. Assignments.

Neither Party shall assign, transfer, sublease, delegate or in any other manner dispose of, any of its rights, privileges or obligations under this Agreement without the consent of the other Party, which consent shall not be unreasonably withheld, except by a Party in connection with a transaction pursuant to which such Party (i) sells all or substantially all of the assets of its Primary Business or substantially all of its equity interests, (ii) transfers any portion of its assets

to an Affiliate or (iii) makes a collateral assignment of any portion of its assets in connection with a financing. Any attempt to make any such assignment, transfer or disposition not expressly permitted hereby without consent shall be null and void.

34. Miscellaneous.

(a) Counterparts. This Agreement may be executed in counterparts each of which shall be deemed an original and all of which together shall constitute one and the same instrument, and in pleading or proving any provision of this Agreement, it shall not be necessary to produce more than one counterpart.

(b) Captions; Gender. Article and section headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. Whenever used herein the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

(c) Governing Law and Binding Effect. This Agreement shall be governed by and construed and enforced in accordance with the law (other than the law governing conflicts of law questions) and decisions of the Commonwealth of Pennsylvania applicable to contracts made and to be performed entirely therein. This Agreement shall bind and inure to the benefit of each of the Parties and their successors and permitted assigns.

(d) Waivers and Amendments. This Agreement may not be amended nor shall any waiver, change, modification, consent or discharge be effected, except by an instrument in writing adopted, in the case of an amendment, by each Party and, in the case of a waiver, consent or discharge, by the Party against whom enforcement of such instrument is sought. Any consent by either Party to, or waiver of, a breach by the other Party shall not constitute a waiver or consent to any subsequent or different breach. If either Party shall fail to enforce a breach of this Agreement by the other Party, such failure to enforce shall not be considered a consent to or a waiver of said breach or any subsequent breach for any purpose whatsoever.

(e) Relationship Not a Partnership or an Agency. The relationship between Lessee and PECO Energy shall not be that of partners or agents for one another and nothing contained in this Agreement shall be deemed to constitute a partnership, joint venture or agency agreement between them.

(f) Notices. All notices, requests, demands, statements, reports and other communications under this Agreement shall be in writing and deemed to be duly delivered at time of delivery if delivered in person, the following business day if delivered by overnight courier or four business days after the U.S. Postal Service post marked date of mailing if delivered by certified or registered mail:

If to Lessee, to:

TelCove.
121 Champion Way
Canonsburg, Pennsylvania 15317
Attention: John Glicksman, Esq.

and:

TelCove
712 North Main Street
Coudersport, Pennsylvania 16915
Attention: Ed Babcock

If to PECO Energy, to:

PECO Energy Company
2301 Market Street
Philadelphia, PA 19103
Attention: Michael A. Williams, director of
Real Estate John D. Halderman, Associate
General Counsel

Either Party hereto may change its mailing address or designate an alternative point of contact for recurring notices by giving notice to the other pursuant to the provisions of this Section.

(g) Disclaimers. **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 OR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.**

(h) Entire Agreement. This Agreement, including the exhibits, schedules and annexes hereto, which are hereby incorporated by reference and made a part of this Agreement as if they were set forth herein in their entirety, constitutes the entire agreement between PECO Energy and Lessee with respect to the subject matter hereof and supersedes all prior agreements and understandings between them as to such subject matter, and there are no restrictions, agreements, arrangements or undertakings, oral or written, between PECO Energy and Lessee relating to the transactions contemplated hereby which are not fully expressed or referred to herein.

(i) Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to either Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the greatest extent possible.

(j) Regulatory Acknowledgment. Each Party acknowledges that all of the undertakings of the Parties are subject and subordinate to their respective obligations under the

Public Utility Code, the Federal Power Act, the federal Communications act and any other applicable statute or regulation.

(k) Further Assurances. Each Party agrees to execute all such further instruments and documents and to take all such further actions as the other Party may reasonably request in order to effectuate the terms and purposes of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

PECO ENERGY COMPANY

By: _____

Name: _____

Title: Vice President and Group Executive,
Telecommunications

TELCOVE
BY ALL ITS GENERAL PARTNERS

[_____]

By: _____

Name _____

Title: _____

ADLEPHIA BUSINESS SOLUTIONS
OF PENNSYLVANIA, INC. d/b/a/ TELCOVE

By: _____

Name: _____

Title: President

SCHEDULE 1

[NOTE: THIS WILL NEED TO BE UPDATED TO LIST ONLY LEASE FIBER AND NOT THE PURCHASED FIBER]

Description of Initial Leased Fibers:

[Attach As-Built Drawings]

Initial Build:

Location Identifier:

Street Address:

Node:

Termination Point:

Number of Fibers:

Route Feet (Miles)

Splice Points:

Cost Basis:

Total Construction Costs: \$ _____

Total Fibers: _____

Allocated Cost (____% of Total Cost): \$ _____

Monthly Rental Amount: \$ _____

Rental Commencement Date: _____

Number of Payments: _____

Interest Rate: _____ %

ANNEX A

Service Area

Co-extensive with PECO Energy's electric and gas service territories (and the larger of the two where they do not overlap).

ANNEX B

Procedure for Calculation of Leased Fiber
and Routine Maintenance Payments

The formula for determining the monthly lease payments will be as follows:

$$\text{Monthly Payment} = (A \times B \times C) + (D \times C \times B \times G) + (E \times B) + F$$

Where:

- A = Lease payment factor (carrying charge) for remaining number of months until the expiration date, exclusive of any extension (19% would be the annual carrying charge for 180 months based on PECO Energy's weighted average cost of capital and depreciation and tax charges on the fiber). Future fiber constructions will be charged an adjusted carrying charge based on PECO Energy's weighted average cost of capital in the year that the fiber cable is completed.
- B = Utilization factor, equal to the number of fibers used by the Partnership divided by the total number of fibers available in a given fiber cable.
- C = Construction costs associated with the fiber optic Cable. The actual cost of future fiber construction may be adjusted from time to time.
- D = PECO Energy's corporate administrative and general allocation rate as calculated for joint ownership purposes. For purposes of the fiber listed in Schedule I this rate will be 13%. (PECO Energy's admin. and general rate is 13% resulting in a 113% factor). All subsequent fiber constructed will be subject to the administrative and general allocation rate as utilized for PECO Energy's joint ownership projects in the immediately preceding fiscal year.
- E = Monthly maintenance costs associated with the fiber optic cable.
- F = Rights of way and attachment fees associated with the fiber optic cable. For purposes of Schedule I these fees will be as set forth in the table below. These fees may be adjusted from time to time in accordance with PECO Energy's standard policy covering equal access to its facilities.
- G = Lease payment factor for 180 months @ 9.33% interest rate based upon PECO Energy's weighted average cost of capital.

| Fiber Type | Underground Duct | Optical Ground Wire | Aerial Wood Pole |
|----------------------------|--------------------|---------------------|---------------------|
| Pole/Structure Attachments | \$1,320/mile/month | \$157.50/mile/month | \$105.27/mile/month |

Right of Way

ANNEX C

Acceptance Procedures

1. PECO Energy will perform the following tests:
 - Bi - directional splice loss, for each splice.
 - Overall attenuation end-to-end to be conducted from distribution frame to distribution frame at each customer location as applicable.
 - PECO Energy shall use the attached forms for testing as applicable.
2. Upon completion of all acceptance testing, PECO Energy will submit to Lessee all test data sheets, and optical records via OTDR for review of correctness and completeness.
3. PECO Energy will be required at time of data review to submit one set of as-built working drawings for all facilities covered under these acceptance testing criteria.
4. As part of the turnover as-built documentation package, PECO Energy will supply the following detailed documents:
 - Cable routing drawings including cable splicing detail and cable cross section.
 - Manhole and duct assignments as applicable.
 - Aerial pole assignments where applicable.
 - Cable termination drawings and assignments.
 - Copies of permits and construction approvals from appropriate authorities.
5. Lessee may request additional tests and documentation as reasonably necessary.

ANNEX D

Procedure for Calculating Leased Facilities Payments (on an annual basis)**Land Use** (for placing Lessee Equipment on site on outdoor site owned by PECO Energy)

The land will be assessed at the rate of [**\$12/sq.ft./Yr.**] for the footprint of the Lessee Equipment or, if greater, the footprint of the shelter constructed by Lessee to house the Lessee Equipment (total land area leased)

Example: $12' \times 20' = 240$ square feet \times \$12 = \$2880/Yr.

Space Use (for placing Lessee Equipment inside a PECO Energy owned building)

The space will be assessed at the rate of [**\$35/sq.ft./Yr.**] for the footprint of the Lessee Equipment.

Example: 3 cabinets, $2' \times 2'$ each = 12 square feet
 12 square feet \times \$35 = \$ 420/Yr.

ANNEX E

Specifications

Design Criteria

Owner will endeavor to keep the number of splices in a span to a minimum, marking fibers aerial or underground.

Exchange of Information

Owner shall meet the optical fiber specifications as detailed below:

To insure that these specifications are adhered to, Owner will require the vendor to provide certified loss measurements for every fiber. Factory certified attenuation test data will be made available to Operator.

Optical Fiber Specifications - Singlemode Fiber
Parameter Specification

| | | |
|----------------------------------|---------------|--------------------------|
| Maximum Attenuation at | 1310 nm. | 0.50 dB/Km |
| Maximum Attenuation at | 1550 nm. | 0.40 dB/Km |
| Mode Field Diameter | 9.4 ± 0.7 nm. | |
| Cladding Diameter | 125.0 ± 2 nm. | |
| Cladding Non-Circularity | ± 2% | |
| Core to Clad Concentricity Error | ≤ 1.0 nm. | |
| Cable Cut-Off Wavelength | ≤ 1270 nm. | |
| Zero Dispersion Wavelength | 1310 ± 12 nm. | |
| Zero Dispersion Slope | ≤ 0.095 | ps/(nm ² -Km) |
| Maximum Dispersion (1285-1330nm) | 3.5 | ps/(nmKm) |

Reference: EIA RS-455 Test Method

OTDR End-to-End Loss Readings - Readings taken from both locations added together and divided by two.

Minimum Cover – as mutually determined by the parties on a case by case basis.

In the event that the cable measured attenuation values change after the cable is installed and is degraded by 2 dB or greater than specified above, Owner will perform corrective maintenance to attempt to restore the fiber to its original specified attenuation values.

End-to-End Attenuation Acceptance Criteria

Single Mode Fiber

The system will be tested at 1310 nm. and 1550 nm. The end-to-end attenuation acceptance criteria for fibers will be based an the following formula:

Maximum Acceptable End-to-End Attenuation at 1310 nm. =
[A1 = 0.5 dB/Km x the installed length of cable (in Km)]
+ (0.3 dB x number of splices)
+ [x dB (see note c below)]

Maximum Acceptable End-to-End Attenuation at 1550 nm =
[0.4 dB/Km x the installed length of cable (in Km)] + [0.3dB x number of splices] + [xdB
(see Note C below)]

(OTDR readings will also be taken at 1310 and 1550 nm.)

Where:

- a) A1 is the average unit attenuation as defined above.
- b) The loss incurred per splice is 0.3 dB, maximum.
- c) The attenuation contribution of each pigtail with associated connector is considered to be 1.3 dB, comprised of 1.0 dB connector loss and 0.3 dB splice loss (pigtail to street cable splice).

Therefore, this will be 0 dB if span is not connectorized at either end; 1.3 dB if span is connectorized) at one end; and 2.6 dB if span is connectorized at both ends.

Splice Loss

Owner splice loss will average 0.3 dB for all splices that are made by Owner. The 0.3 dB splice average will apply only to the junction between two identical optical fibers, i.e., identical in core and cladding dimensions, refractive index and optical loss characteristics.

All splices shall be of the electric fusion type.

CONFIDENTIAL

Exhibit B

Sunesys Dark Fiber License Agreement, as amended

DARK FIBER LICENSE AGREEMENT

This DARK FIBER LICENSE AGREEMENT (the "Agreement") is made as of January 1, 2000 between SUNESYS, INC., which has a place of business at 202 Titus Avenue, Warrington, PA 18976 ("SUNESYS") and EXELON COMMUNICATIONS COMPANY, LLC, having a place of business at 401 City Avenue, Suite 900, Bala Cynwyd, PA 19004 ("Licensee").

WHEREAS, SUNESYS has easements, conduit rights, pole attachment and license agreements to construct, install, operate, maintain, modify, replace or remove a redundant communications transmission system in and around Philadelphia, Chester, Montgomery, Delaware and Bucks Counties in Pennsylvania (the "Route"); and

WHEREAS, SUNESYS has installed and constructed, and now operates and maintains an optical fiber communication transmission system on utility poles or within conduit systems located on the Route (collectively, "SUNESYS's Conduit System") consisting of at least twelve (12) strands of optical fiber; and

WHEREAS, Licensee desires a license for certain specific strands of such optical fiber along the Route, for the purpose of entering into Sublicenses as set forth in Attachment A; and

WHEREAS, SUNESYS agrees to grant such license subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the parties agree as follows:

1. **DEFINITIONS**

As used in this Agreement:

1.1 Authorized Use means a business purpose of Licensee's optical fiber telecommunications network for telecommunication traffic of Licensee or its employees, officers, agents, or Sub-licensees.

1.2 Dark Fiber means one or more fiber optic strands subject to this Agreement through which an associated light, signal or light communication transmission must be provided to furnish service.

1.3 Fiber Optic Facilities means a certain fiber optic cable composed of at least Twelve (12) strands of single mode optical fiber, which cable is owned by SUNESYS and installed along the Route.

1.4 Hazardous Substances include any substance the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law or any substance which is or becomes defined as "Hazardous Waste," "Hazardous Substance," pollutants, toxic substances, compounds, elements, or chemicals pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), as amended, or any other federal, state or local environmental cleanup laws. Hazardous Substances also include asbestos, lead paint, Polychlorinated Biphenyls ("PCBs") and radon gas.

1.5 Hazardous Discharge means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping of Hazardous Substances from, in, or onto SUNESYS's Conduit System.

1.6 Licensee's Fiber Optic Facilities means specific Strands, as designated by SUNESYS, of Dark Fiber of the Fiber Optic Facilities identified as being licensed to the Licensee by Attachment A to this Agreement.

1.7 Strands means individual fiber optic strands within the Fiber Optic Facilities.

SUNESYS

1.8 Sub-license means the grant of its license hereunder by the Licensee to a third party, as set forth in Section 19.3 and Schedule A, as amended from time to time.

2. GRANT OF LICENSE

SUNESYS grants to Licensee and Licensee accepts from SUNESYS an exclusive and indefeasible license solely for Authorized Use of Licensee's Fiber Optic Facilities in SUNESYS's Conduit System (the "License"), as provided in this Agreement. Licensee shall have no further right, title or other interest in SUNESYS's Conduit System or in Licensee's Fiber Optic Facilities. SUNESYS shall have the right to grant and renew rights to any entity to use SUNESYS's Conduit System or any other property of SUNESYS; provided, however, that during the term of this Agreement, SUNESYS shall have no right to grant and renew any rights to any entity with respect to Licensee's Fiber Optic Facilities.

3. WORK

3.1 SUNESYS covenants that the segments of the Fiber Optic Facilities along the Route have been constructed substantially and in all material respects in accordance with standard outside plant specifications.

3.2 SUNESYS shall test all Licensee's Fiber Optic Facilities to verify that Licensee's Fiber Optic Facilities are installed and operational in accordance with standard fiber optic specifications. When SUNESYS has determined that the results of the testing with respect to the entire span show that Licensee's Fiber Optic Facilities so tested are installed and operating, SUNESYS shall promptly notify Licensee.

3.3 When SUNESYS gives notice to Licensee that the Fiber Optic Facilities are complete, Licensee shall provide SUNESYS with notice accepting (or rejecting by specifying the defect or failure in the testing that is the basis for such rejection) Licensee's Fiber Optic Facilities. If Licensee fails to notify SUNESYS of its acceptance or rejection of the final test results with respect to Licensee's Fiber Optic Facilities within ten (10) days after Licensee's receipt of notice of such test results, Licensee shall be deemed to have accepted Licensee's Fiber Optic Facilities. If, during the course of such construction, installation and testing, any material deviation from standard specifications is discovered, the construction or installation of the affected portion of the segment shall be repaired to such specification by SUNESYS. The date of such notice of acceptance (or deemed acceptance) of all Licensee's Fiber Optic Facilities for the Route shall be the "Acceptance Date" for the Route.

4. LICENSE FEE

4.1 Licensee has paid to SUNESYS a one time license fee of Five Hundred and Nine Thousand Nine Hundred Thirty-eight Dollars (\$512,939.00).

4.2 Except as otherwise specifically provided, Licensee shall pay all applicable fees and charges provided for in this Agreement, within thirty (30) days after receipt of invoice.

4.3 All payments not made when due shall bear a late payment charge of one and one-half (1 ½%) percent per month of the unpaid balance or the highest lawful rate, whichever is less.

5. LICENSE TERM

SUNESYS

The term of the License shall commence on the date first above set forth and shall continue until the last to expire of the Sublicenses set forth on Exhibit A, as amended from time to time.

6. MAINTENANCE AND OPERATION

6.1 SUNESYS shall be solely responsible to maintain Licensee's Fiber Optic Facilities. Sunesys warrants that such maintenance shall be performed in accordance with applicable industry standards and practices. Licensee shall cooperate with and assist, as may be reasonably required, SUNESYS in performing said maintenance. In the event of service outages or other maintenance request, SUNESYS agrees to use best efforts to respond within two (2) hours of time of notice.

6.2 Notwithstanding anything to the contrary contained herein, Licensee shall solely be responsible, at its own expense, for the construction, installation, operation, maintenance, repair and any other activity engaged by or on behalf of Licensee relating to all light communications transmission equipment and other terminal equipment and facilities required in connection with the use, electronics or signals of Licensee's Fiber Optic Facilities.

6.3 SUNESYS shall be responsible for all necessary splicing.

6.4 Should Licensee perform, authorize, or contract any splices or other work not in accordance with the provisions of this Agreement (specifically article 6.1 stating SUNESYS must do the work), SUNESYS may at its option correct said condition. SUNESYS shall notify Licensee in writing prior to performing such work whenever practicable. However, when such conditions pose an immediate threat to the physical integrity of SUNESYS's facilities, SUNESYS may perform such work and take such action that it deems necessary without first giving notice to Licensee. As soon as practicable thereafter, SUNESYS shall advise Licensee of the work performed and the action taken and shall endeavor to arrange for re-accommodation of Licensee's Fiber Optic Facilities so affected. Licensee shall promptly reimburse SUNESYS for all reasonable costs incurred by SUNESYS for all such work, action and re-accommodation performed by SUNESYS.

6.5 Licensee shall, at its sole cost and expense, promptly respond to and remediate any Hazardous Discharge to and from SUNESYS's Conduit System resulting from Licensee's operations.

6.6 SUNESYS shall be responsible for obtaining and maintaining from the appropriate public or private authority any pole attachment agreements, franchises, licenses, state, local or right-of-way permits or other authorizations required to enter upon the property where SUNESYS's Conduit System is located and to operate and maintain Licensee's Fiber Optic Facilities in SUNESYS's Conduit System. Licensee will not engage in any activity which affects SUNESYS's right-of-way interests without the written permission of SUNESYS.

6.7 Licensee, at its sole cost and expense, shall (i) use Licensee's Fiber Optic Facilities and (ii) conduct all work in or around SUNESYS's Conduit System in a safe condition and in a manner reasonably acceptable to SUNESYS, so as not to physically, electronically or inductively conflict or interfere or otherwise adversely affect SUNESYS's Conduit System or the facilities placed therein by SUNESYS, or other authorized licensees of the Fiber Optic Facilities.

6.8 Licensee must obtain prior written authorization from SUNESYS approving any further work and the party performing such work before Licensee shall perform any work in or around SUNESYS's Conduit System.

6.9 In the event Licensee receives information that the Fiber Optic Facilities are damaged, it shall notify SUNESYS of said damage by phone at 215-343-1340. In the event SUNESYS receives

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information that Licensee's Fiber Optic Facilities are damaged, SUNESYS will notify Licensee of said damage by phone at: 610-617-7021. In each case, the caller shall provide the following information:

1. Name of entity making report.
2. Location reporting problem.
3. Name of contact person reporting problem.
4. Description of the problem in as much detail as possible.
5. Time and date the problem occurred or began.
6. State whether or not the problem presents a jeopardy situation to SUNESYS's Conduit System or Licensee's Fiber Optic Facilities.

6.10 SUNESYS shall designate the particular Strands of Dark Fiber that will constitute Licensee's Fiber Optic Facilities and the location and manner in which they will enter and exit SUNESYS's Conduit System.

6.11 If SUNESYS moves, replaces or changes the location, alignment or grade of SUNESYS's Conduit System ("Relocation"), SUNESYS shall concurrently relocate Licensee's Fiber Optic Facilities. If the Relocation is because of an event of Force Majeure (as defined in Article 17) or of any governmental or third party authority, including any taking by right of eminent domain, Licensee shall reimburse SUNESYS for Licensee's proportionate share of the costs of the Relocation of SUNESYS's Conduit System. To the extent SUNESYS receives reimbursement from a third party which is allocable to a Relocation of SUNESYS's Conduit System, it will credit or reimburse Licensee for its proportionate share of the reimbursement. If SUNESYS relocates SUNESYS's Conduit System solely for its own benefit, Licensee shall not be required to reimburse SUNESYS for the costs of the Relocation of SUNESYS's Conduit System. Licensee's proportionate share shall be a fraction, the numerator of which shall be the number of Licensee's Fiber Optic Facilities and the denominator of which shall be the total number of Strands in SUNESYS's Conduit System.

7. OWNERSHIP

7.1 Licensee's Fiber Optic Facilities shall at all times remain the sole and exclusive property of SUNESYS and legal title shall be held by SUNESYS. Neither the provision or the use of Licensee's Fiber Optic Facilities by SUNESYS to Licensee hereunder, nor the payments by Licensee contemplated hereby, shall create or vest in Licensee any easement, interest, or any other ownership or property right of any nature in Licensee's Fiber Optic Facilities or Strands, except that SUNESYS agrees to Licensee's right to use Licensee's Fiber Optic Facilities for Authorized Use during the term of this Agreement. Licensee shall not grant any security interest in the Licensee's Fiber Optic Facilities or any part or component thereof.

8. EMINENT DOMAIN

If there is a taking of Licensee's Fiber Optic Facilities by right or threat of eminent domain (a "Taking") which, as agreed by the parties, or in the absence of such agreement as determined pursuant to the provisions of Section 16 of this Agreement, results in the remainder of Licensee's Fiber Optic Facilities being unable to be restored to a condition suitable for Licensee's business need within ninety (90) days from the date of the Taking ("Substantial Taking"), this Agreement shall terminate. In such event any periodic license fee and/or maintenance fee shall abate from the date of Taking and any previously paid license fee and/or maintenance fee shall abate from the date of Taking and any previously paid license fee and/or maintenance fee attributable for any period beyond such date shall be returned to Licensee. If there shall be a Taking which does not constitute a Substantial Taking, this Agreement shall not terminate but SUNESYS shall, with due

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diligence, restore Licensee's Fiber Optic Facilities as speedily as practical to its condition before the Taking in accordance with the provisions of Section 6.11.

9. INDEMNIFICATION

9.1 Each Party will compensate the other Party for the full actual loss, damage or destruction of that Parties' property that in any way arises from or is related to first Parties activities undertaken pursuant to this Agreement (including, without limitation, the installation, construction, operation or maintenance of Licensee's Fiber Optic Facilities).

9.2 Each Party further will indemnify, defend, and hold harmless the other Party and it's agents, officers and employees, from any and all losses, damages, costs, expenses (including reasonable attorneys fees), statutory fines or penalties, actions or claims for personal injury (including death), damage to property, or other damage or financial loss of whatever nature in any way arising from it's activities undertaken pursuant to this Agreement (including, without limitation, the installation, construction, operation or maintenance of Licensee's Fiber Optic Facilities), except to the extent caused by the negligence or willful misconduct on the part of the Party being indemnified or it's agents, officers or employees.

9.3 Without limiting the foregoing, Licensee assumes all risk for, and agrees to relieve SUNESYS of any and all liability for, loss or damage (and the consequences of loss or damage) to any property installed in SUNESYS's Conduit System and any other financial loss sustained by Licensee, whether caused by fire, extended coverage perils, or other casualty, except to the extent caused by the negligence or willful misconduct on the part of SUNESYS or SUNESYS's agents, officers or employees.

9.4 Each Party further shall indemnify and hold harmless the other Party, its officers, directors, employees and agents, and its successors and assigns from and against any claims, liabilities, losses, damages, fines, penalties, and costs (including reasonable attorneys fees), whether foreseen or unforeseen, which the indemnified parties suffer or incur because of: (i) any Hazardous Discharge resulting from acts or omissions of the indemnifying Party or that Party's predecessor in interest; (ii) acts or omissions of the indemnifying Party, its agents or representatives in connection with any cleanup required by law or (iii) failure of the indemnifying Party to comply with environmental, safety and health laws.

9.6 Except for the indemnification responsibilities as provided above, in no event shall either party be liable to the other party for any special, consequential or indirect damages (including by way of illustration, lost revenues and lost profits) arising out of this Agreement or any obligation arising thereunder, whether in action for or arising out of breach of contract, tort or otherwise.

10. INSURANCE

Each Party shall obtain and maintain insurance issued by one or more reputable insurance carriers with ratings of at least an A-and a financial size category of at least Class VII by A.M. Best which protects Licensee from and against all claims, demands, causes of action, judgments, costs, including attorney's fees, expenses and liabilities of insurable kind and nature which may arise or result directly or indirectly from or by reason of such loss, injury or damage that in any way arises from or is related to this Agreement or activities undertaken pursuant to this Agreement.

11. COMPLIANCE WITH LAWS

Notwithstanding anything to the contrary in this Agreement, each Party shall ensure that any and all activities it performs pursuant to this Agreement shall comply with all applicable laws. Without limiting the generality of the foregoing, each Party shall comply with all applicable provisions of i) workmen's compensation laws, ii) unemployment compensation laws, iii) the Federal Social Security Law, iv) the Fair Labor Standards Act, and v) all laws, regulations, rules, guidelines, policies, orders, permits, and approvals of any governmental authority relating to environmental matters and/or occupational safety.

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12. DISCLAIMER OF WARRANTIES

EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, SUNESYS MAKES NO WARRANTIES REGARDING THE SERVICES OR DELIVERABLES PROVIDED UNDER THIS AGREEMENT AND MAKES NO WARRANTIES EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

13. SUNESYS SALES OR DISPOSITIONS

Nothing in this Agreement shall prevent or be construed to prevent SUNESYS from selling or otherwise disposing of any portion of SUNESYS's Conduit System or other property of SUNESYS used for Licensee's Fiber Optic Facilities, provided, however, that in the event of a sale or other disposition, SUNESYS shall condition such sale or other disposition subject to the rights of Licensee and any Sub-licensee under this Agreement. SUNESYS shall promptly notify Licensee of the proposed disposition of SUNESYS's Conduit System or other property used by Licensee.

14. LIENS

Each Party shall keep SUNESYS's Conduit System and other property of SUNESYS free from all mechanic's, artisans, materialman's, architect's, or similar services' liens which arise in any way from or as a result of its activities and cause any such liens which may arise to be discharged or released.

15. DEFAULT PROVISIONS AND REMEDIES

15.1 Each of the following shall be deemed an Event of Default by Licensee under this Agreement:

15.1.1 Failure of Licensee to pay the license fee or any other sum required to be paid under the terms of this Agreement and such default continues for a period of fourteen (14) days after written notice thereof to Licensee;

15.1.2 Failure by Licensee to perform or observe any other material terms, covenant, agreement or condition of this Agreement on the part of Licensee to be performed and such default continues for a period of thirty (30) days after written notice thereof from SUNESYS (provided that if such default cannot be cured within such thirty (30) day period, this period will be extended if Licensee commences to cure such default within such thirty (30) day period and proceeds diligently thereafter to effect such cure);

15.1.3 The filing of a tax or mechanic's lien against SUNESYS's Conduit System or other property of SUNESYS which is not bonded or discharged within thirty (30) days of the date Licensee receives notice that such lien is filed;

15.1.4 An event of Licensee's Bankruptcy;

15.1.5 If Licensee knowingly uses Licensee's Fiber Optic Facilities in violation of any law or in aid of any unlawful act or undertaking; and such use is not corrected or terminated within thirty days of notification of Licensee by Sunesys or applicable legal or regulatory authority;

15.1.6 If Licensee occupies any portion of SUNESYS's Conduit System without having first been issued a license therefore; and such occupation is not corrected or terminated within thirty days of notification of Licensee by Sunesys; or

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15.1.7 If any authorization which lawfully may be required of the Licensee by any governmental or private authority for the operation (including splicing or other activities by Licensee), of Licensee's Fiber Optic Facilities within SUNESYS's Conduit System is denied or revoked.

15.2 Upon the occurrence of an Event of Default, SUNESYS, without further notice to Licensee in any instance (except where expressly provided for below or by applicable law) may do any one or more of the following:

15.2.1 Perform, on behalf and at the expense of Licensee, any obligation of Licensee under this Agreement which Licensee has failed to perform and of which SUNESYS shall have given Licensee notice, the cost of which performance by SUNESYS shall be payable by Licensee to SUNESYS upon demand;

15.2.2 Elect to terminate Agreement by giving notice of such election to Licensee;

15.2.3 Exercise any other legal or equitable right to remedy which it may have.

Any costs and expenses incurred by SUNESYS (including, without limitation, reasonable attorneys' fees) in enforcing any of its rights or remedies under this Agreement shall be repaid to SUNESYS by Licensee upon demand.

15.3 All rights and remedies of SUNESYS set forth in this Agreement shall be cumulative, and none shall exclude any other right or remedy, now or hereafter allowed by or available under any statute, ordinance, rule of court, or the common law, either at law or in equity, or both.

15.4 The following events or occurrences shall constitute a default by SUNESYS under this Agreement:

15.4.1 Any material noncompliance by SUNESYS with the terms of this agreement;

15.4.2 Any material breach by SUNESYS of a representation or warranty under this Agreement.

Licensee shall give prompt written notice to SUNESYS of the occurrence of any default under this Agreement. If such default continues for seven (7) days after receipt of such notice (provided that if such default cannot be cured within such seven day period, this period will be extended if SUNESYS continues to cure such default within such seven (7) day period and proceeds diligently thereafter to effect such cure), Licensee may at its option, terminate this Agreement and pursue any legal remedies it may have at law or equity.

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16. DISPUTES RESOLUTION

If a dispute arise out of or relates to this Agreement or its breach and the dispute cannot be settled through negotiation, the parties agree to submit the dispute to a sole mediator selected by the parties, or, at any time at the option of a party, to mediation by the AAA. If not thus resolved, it will be referred to binding arbitration with a sole arbitrator selected by the parties within thirty (30) days after the mediation or in the absence of such selection to AAA arbitration which shall be governed by the United States Arbitration Act and judgment on the award may be entered in any court having jurisdiction. The arbitration shall determine issues of arbitrability, but may not limit, expand or otherwise modify the terms of this Agreement. The parties, their representatives and other participants and the mediator and arbitrator shall hold the existence, content and results of mediation and arbitration in confidence. Each party will bear its own attorneys' fees associated with the mediation and arbitration and will pay all other costs and expenses of the mediation and arbitration as the rules of the AAA provide.

17. FORCE MAJEURE

Neither party shall have any liability for its delays or its failure to perform due to: fire, explosion, pest damage, power failures, strikes or labor disputes, acts of God, the elements, war, civil disturbances, acts of civil or military authorities or the public enemy, inability to secure raw materials, transportation facilities, fuel or energy shortages, or other causes beyond its control, whether or not similar to the foregoing.

18. TAXES AND OTHER CHARGES

If it is determined by any state or local governmental authority that the acquisition, license, grant, transfer or disposition of any part or portion of the property or rights herein described to or by Licensee, requires payment or any tax or fee (including sales or use tax) under statute, regulation or rule (but excluding any tax on or calculated with respect to the net income or capital of SUNESYS), Licensee shall pay the same, plus penalty or interest thereon, directly to the taxing authority but only to the extent otherwise required by law.

19. SUCCESSION, ASSIGNABILITY

19.1 This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns.

19.2 Licensee shall have the right to assign, transfer, or dispose this Agreement or any of its rights or obligations hereunder without prior written consent of SUNESYS. An assignment, transfer or disposition of this Agreement by Licensee shall relieve Licensee of any of its obligations under this Agreement.

19.3 Licensee shall have the right to Sub-license to any third party the right to use or the use of Licensee's Fiber Optic facilities as provided in and subject to this Agreement.

19.3 Subject to Section 13 hereof, SUNESYS shall have the right to assign this Agreement and to assign its rights and delegate its obligations and liabilities under this Agreement, either in whole or in part, to any party.

19.4 Except for sub-licensees as set forth in Section 19.2, neither this Agreement, nor any term or provision hereof, nor any inclusion by reference shall be construed s being for the benefit of any person or entity not a signatory hereto.

20. NOTICES

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Any demand, notice or other communication to be given to a party in connection with this Agreement shall be given in writing and shall be given by personal delivery by registered or certified mail, return receipt requested, by telecopy or commercial overnight delivery service addressed to the recipient as set forth as follows or to such other address, individual or telecopy number as may be designated by notice given by the party to the other:

SUNESYS:

SUNESYS, INC.
202 Titus Avenue
Warrington, PA 18976
Attention: David Channing
Telecopier Number: 215-343-3160
Emergency Telephone Number: 215-343-1340

LICENSEE:

EXELON COMMUNICATIONS
401 City Avenue, Suite 900
Bala Cynwyd, PA 19004
Att: Dean Gallagher
Telephone: 610-617-7021

Any demand, notice or other communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered or certified mail return receipt requested on the date of receipt thereof and, if given by telecopy, the day of transmittal thereof if given during the normal business hours of the recipient and on the next business day if not given during normal business hours.

21. NON-WAIVER

No course of dealing, course of performance or failure of either party strictly to enforce any term, right or condition of this Agreement shall be construed as a waiver of any term, right or condition.

22. CHOICE OF LAW

The construction, interpretation and performance of this Agreement shall be governed by the law of the Commonwealth of Pennsylvania without regard to its conflicts of laws provisions.

23. HEADINGS

All headings contained in this Agreement are inserted for convenience only and are not intended to affect the meaning or interpretation of this Agreement or any clause.

24. CONFIDENTIALITY AND PROPRIETARY INFORMATION

24.1 In connection with this Agreement, either party may furnish to the other certain information that is marked or otherwise specifically identified as proprietary or confidential ("Confidential Information"). This Confidential Information may include, among other things private easements licenses, utility agreements permits, other right-of-way granting documents, specifications, designs, plans, drawings data prototypes, and

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other technical and/or business information. For purposes of this Section 24, the party that discloses confidential Information is referred to as the "Disclosing Party", and the party that receives Information is referred to as the "Receiving Party".

24.2 When Confidential Information is furnished in tangible form, the Disclosing Party shall mark it as proprietary or confidential. When confidential Information is provided orally, the disclosing Party shall, at the time of disclosure or promptly thereafter, identify the Confidential Information as being proprietary or confidential.

24.3 With respect to Confidential Information disclosed under this Agreement, the Receiving Party and its employees shall:

- (a) hold the Confidential Information in confidence, exercising a degree of care not less than the care used by the Receiving Party to protect its own proprietary or confidential information that it does to wish to disclose.
- (b) restrict disclosure of the Confidential Information solely to those of its employees who have a need to know in connection with the performance of this Agreement, and not disclose the Confidential Information to any other person or entity without the prior written consent of the disclosing Party;
- (c) advise those employees of their obligations with respect to the Confidential Information; and
- (d) use the Confidential Information only in connection with the performance of this Agreement, except as the Disclosing Party may otherwise agree in writing.

24.4 Confidential Information shall be deemed the property of the Disclosing party. Upon written request of the Disclosing Party, the Receiving Party shall return all Confidential Information received in tangible form, except that each party's legal counsel may retain one copy in its files solely to provide a record of such Confidential Information for archival purposes. If the Receiving Party loses or makes an unauthorized disclosure of Confidential Information it shall notify the Disclosing Party and use reasonable efforts to retrieve the Confidential Information.

24.5 the Receiving Party shall have no obligation to preserve the proprietary nature of Confidential Information which:

- (a) was previously known to the Receiving Party free of any obligation to keep it confidential; or
- (b) is or becomes publicly available by means other than unauthorized disclosure; or
- (c) is developed by or on behalf of the Receiving Party independently of any Confidential Information furnished under this Agreement; or
- (d) is received from a third party whose disclosure does not violate any confidentiality obligation.

24.6 If the Receiving Party is required to disclose the Disclosing Party's Confidential Information by an order or a lawful process of a court or governmental body, the Receiving Party shall promptly notify the disclosing Party, and shall cooperate with the Disclosing Party in seeking reasonable protective arrangements before the Confidential Information is produced.

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24.7 Each party agrees that the Disclosing Party would be irreparably injured by a breach of this Section 24 by the Receiving Party or its representatives and that the Disclosing Party may be entitled to equitable relief, including injunctive relief and specified performance, in the event of any breach of the provisions of this Section 24. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 24, but shall be in addition to all other remedies available at law or in equity.

25. REQUIRED RIGHTS

25.1 SUNESYS covenants that it has obtained all easements, leases, licenses, fee interests, rights of-way, permits, authorizations and other rights necessary and requisite to enable SUNESYS to grant the License to Licensee ("Required Rights"). Sunesys further covenants that it will use commercially reasonable efforts to cause the Required Rights to remain in effect during the term of this Agreement. Subject to the foregoing obligations of SUNESYS, Licensee is accepting the License on an "AS IS, WHERE IS" basis and receiving its interests in Licensee's Fiber Optic Facilities only to the extent such interests are held by SUNESYS.

25.2 If SUNESYS fails to obtain and/or cause to remain effective throughout the term of this Agreement all Required Rights for the Route, either party may terminate this Agreement upon written notice to the other party. In the event of termination, any periodic license and/or maintenance fee shall abate from the date of termination and any previously paid maintenance fee and/or license fee attributable for any period beyond such date shall be returned to Licensee. SUNESYS's failure to obtain or cause to remain effective Required Rights does not constitute a breach of any warranty, representation or covenant of SUNESYS.

26. REPRESENTATIONS AND WARRANTIES

Each party represents and warrants that: (i) it has full right and authority to enter into, execute, deliver and perform its obligations under this Agreement; (ii) this Agreement constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms, subject to bankruptcy, insolvency, creditors' rights and general equitable principles; and (iii) its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes or court orders of any local, state or federal government agency, court, or body.

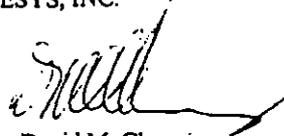
27. ENTIRE AGREEMENT

The terms and conditions contained in this Agreement supersede all prior oral or written understandings between the parties and constitute the entire agreement between them concerning the subject matter of this Agreement. There are no understandings or representations, express or implied, not expressly set forth in this Agreement. This Agreement shall not be modified or amended except by a writing signed by the party to be charged.

SUNESYS

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized representatives.

SUNESYS, INC.

By: 
Name: David M. Channing
Title: Vice President
Date: 1/7/2004

EXELON COMMUNICATIONS


By:
Name: Nicholas G. Stathos
Title: Vice President
Date: 1/8/2004



Attachment A

Attachment A

| Exelon Job # | Dist. | Units | Fibers Aerial or U/G | PECO TelCove Customer Name and Address | From | To | Term | | One-Time Payment Amount |
|--------------|------------|-------|----------------------|---|---|---|----------|------------|-------------------------|
| | | | | | | | Start | End | |
| 405 | 4.5 miles | | 4 fibers - aerial | Delaware County Community College, 901 S. Media Line Rd., Media | PECO Pole #193, W. Baltimore Ave. & S.Olive St., Media (EC Map 56AB12) | PECO Pole # 93774, Newtown St. & Media Line Rd., Marple (EC Map 49CD12) | 1/1/2000 | 12/31/2014 | \$ 53,800 |
| 425 | 1 miles | | 4 fibers - aerial | Marple Newtown High School, 120 Media Line Rd., Broomall | PECO Pole # 93774, Newtown St. & Media Line Rd., Marple (EC Map 49CD12) | PECO Pole # 67, Media Line Rd. & Highland Ave., Marple (EC Map 49CD12) | 1/1/2001 | 12/31/2015 | \$ 11,955 |
| 471 | 7.5 miles | | 2 fibers - aerial | Penn Delco School District, 95 Concord Rd., Aston | Bell Pole #91, Chester Heights & Spring Valley Way, Aston (EC Map 55EF78) | PECO Pole # 3478, W. 9th St. & Barkley Ave., Chester (EC Map 56EF12) | 1/1/2001 | 12/31/2015 | \$ 44,832 |
| 507 | 13 miles | | 12 fibers - aerial | COPA - Dept. of Public Welfare, 100 James Buchanan Dr., Thorndale | Bell Pole # 26, Whiteford Rd., & W. Schoen Rd., Whiteford (EC Map 38EF34) | PECO Pole # 57797, Strasburg Rd. & Harvey's Bridge, West Bradford (EC Map 46EF78) | 1/1/2002 | 12/31/2016 | \$326,378 |
| 556 | 0.86 miles | | 4 fibers - aerial | Chester County Intermediate Unit, 535 James Hance Ct., Exton | Pole not tagged, next to PECO Pole # 85334, Lincoln Hwy. (U.S. HWY. #30) (EC Map 38EF34) | PECO Pole # 84057, Whitford Rd. & Route #30, W. Whiteland (EC Map 38EF34) | 1/1/2002 | 12/31/2016 | \$ 20,563 |
| 556 | 710 feet | | 4 fibers - U/G | Chester County Intermediate Unit, 535 James Hance Ct., Exton | Lincoln Hwy. (U.S. HWY. #30), South of south curb line, manhole, W. Whiteland (EC Map 38EF34) | Data room at customer's address (EC Map 38EF34) | 1/1/2002 | 12/31/2016 | \$ 42,260 |
| 488 | 0.55 miles | | 4 fibers - aerial | Cheyeny University, 372 Cheyney Rd., Cheyney | PECO Pole # 158, Street Rd., & Cheyney Rd., Thornbury (EC Map 48GH12) | Data room at customer's address (EC Map 48GH12) | 1/1/2002 | 12/31/2016 | \$ 13,151 |
| | | | | | | | | | |
| | | | | | | | | | |

Total \$512,939

CONFIDENTIAL

AMENDMENT TO
DARK FIBER LICENSE AGREEMENT

The DARK FIBER LICENSE AGREEMENT (the "Agreement") dated as of January 1, 2000 between SUNESYS, INC. ("SUNESYS") and EXELON COMMUNICATIONS, COMPANY, LLC, ("Licensee") is amended as set forth herein.

WHEREAS, SUNESYS has easements, conduit rights, pole attachment and license agreements to construct, install, operate, maintain, modify, replace or remove a redundant communications transmission system in and around Philadelphia, Chester, Montgomery, Delaware and Bucks Counties in Pennsylvania (the "Route"); and

WHEREAS, SUNESYS has installed and constructed, and now operates and maintains an optical fiber communication transmission system on utility poles or within conduit systems located on the Route (collectively, the "SUNESYS Conduit System") consisting of at least twelve (12) strands of optical fiber; and

WHEREAS, pursuant to the Agreement, Sunesys granted to Licensee a license for certain specific strands of such optical fiber along the Route, for the purpose of entering into Sublicenses as set forth in Attachment A to the Agreement; and

WHEREAS, the parties agree to amend such Attachment A by adding to the Sublicenses.

NOW, THEREFORE, the parties agree as follows:

1. Attachment A to the Agreement is amended by adding the Sublicenses as set forth on Appendix 1 hereto, in accordance with the terms and conditions of said Appendix 1.
2. In all other respects the terms and conditions of the Agreement and Attachment A thereto shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized representatives.

SUNESYS, INC.

By: [Signature]

Name: DAVID M. CHANNING

Title: VICE PRESIDENT

Date: MARCH 24, 2004

EXELON COMMUNICATIONS, COMPANY, LLC.

By: [Signature]

Name: Nicholas G. Stathes

Title: Vice president

Date: March 26, 2004

CONFIDENTIAL

APPENDIX 1

| Order # | Distance | Unit | Fiber Type | PECO Pole # | PECO Pole # | PECO Pole # | Start | End | Amount |
|---------|----------|-------|-------------------|--|---|---|-----------|------------|-----------|
| 554 | 1.80 | miles | 2 fibers - aerial | Crozer-Chester Medical Center, One Medical Center Blvd., 19013 | PECO Pole # 14, Edgemont Rd. & E. Brookhaven Rd., Brookhaven BORO (EC | PECO Pole # 3901, Upland Rd., & Diamond Rd., Chester (EC Map 56EF34) | 1/1/2003 | 12/31/2017 | \$ 10,934 |
| 583 | 7.834 | miles | 2 fibers - aerial | COPA - Dept. of Public Welfare - 845 Main Street, Darby | PECO Pole # 373, Morton Ave. & Hancock Rd., Ridley (EC Map 56EF56) | Pole not tagged, Highland Ave. & E. Steward Ave., Lansdowne (EC Map 50GH12) | 5/13/2003 | 5/13/2018 | \$ 47,588 |

CONFIDENTIAL

Exhibit C

Inner Duct Occupancy Agreement

Form: Inner Duct Occupation Agreement - 4/6/99

Date:

INNER DUCT OCCUPATION AGREEMENT

THIS INNER DUCT OCCUPATION AGREEMENT (this "Agreement") made as of this 1st day of January 2001, by and between PECO Energy Company, a Pennsylvania corporation, having its principal office at 2301 Market Street, Philadelphia, Pennsylvania 19103 ("PECO Energy"), and Exelon Communications Company, LLC, a Pennsylvania limited liability company, having its principal office at 401 City Avenue, Suite 900, Bala Cynwyd, PA 19004 ("Occupier").

BACKGROUND

- A. Occupier desires to occupy PECO Energy inner duct with fiber cable.
- B. PECO Energy is willing, to permit the occupation of fiber cable in its inner duct and manholes to the extent it may lawfully do so, provided however, due to safety within PECO Energy facilities, PECO Energy shall manage all work required and Occupier understands they are not permitted access to PECO Energy manholes. Said installation is subject to the terms and conditions herein.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, and intending to be legally bound, the parties hereto hereby agree as follows:

1. License. PECO Energy grants to Occupier a revocable, non-exclusive license to occupy PECO Energy inner duct and manholes, subject to the approval of an application and the issuance of a permit ("Permit") in accordance with the terms of this Agreement. PECO Energy reserves the right to terminate this agreement and any Permit in whole or in part when, in PECO Energy's judgment, such action is necessary to protect PECO Energy's interests.
2. Application Approval Procedure. Upon receipt of application, PECO Energy and Occupier will enter into a Construction Services Agreement which will provide for engineering, construction and project management services which PECO Energy will perform to complete Occupier's fiber installation request.
3. Construction Specifications. PECO Energy will perform work for Occupier in accordance with the regulations and specifications of the National Electric Safety Code, latest Edition, or any amendments or revisions thereof, in compliance with any applicable rules, regulations or orders now in effect or hereafter issued by any Federal or state commission or any other public authority having jurisdiction, and in conformity with the requirements of PECO Energy.

It is understood and agreed, PECO Energy standards may be more stringent than the National Electric Safety Code.

4. Inspections. PECO Energy reserves the right to make periodic inspections and surveys of any part of Occupier's installations. PECO Energy will attempt to give Occupier reasonable notice of such inspections and surveys, except in those instances where, in the sole judgment of PECO Energy, safety considerations justify the need for such an inspection or survey without notice. Except in the case of an emergency, a representative of Occupier may accompany a PECO Energy's representative on inspections. Occupier shall reimburse PECO Energy for the expenses of such inspections and surveys. PECO Energy's right to make periodic inspections and surveys shall not relieve Occupier of any responsibility, obligation or liability assumed under this Agreement.

5. Franchise and Other Requirements. Occupier shall at all times have in effect all required franchises, licenses, approvals and consents from Federal, state and municipal authorities necessary to construct and operate its system. Occupier shall have the obligation to obtain any required additional rights-of-way or consents for the Occupations from property owners other than PECO Energy.

6. Relocations. PECO Energy at its sole discretion may require the relocation of Occupier's fiber cable. Said relocation shall be at Occupier's sole cost and expense. PECO Energy will make every attempt to provide thirty (30) days notice to Occupier. In the case of emergency, PECO Energy is permitted to relocate Occupier's fiber without prior notice.

7. Damage. Occupier shall immediately report to PECO Energy or the applicable owner any damage to PECO Energy facilities or to the facilities of others using PECO Energy's conduit arising out of the operations of Occupier.

8. Limitation of Liability. PECO Energy shall not be liable to Occupier for any loss or damage to the Occupation, including without limitation the loss of or interference with service of the system, arising in any manner out of PECO Energy's operations. In no event shall PECO Energy be liable to Occupier for any punitive, indirect or consequential damages arising out of this Agreement, including without limitation, damages for lost profits.

9. Termination.

(a) Upon thirty (30) days' advance written notice to PECO Energy, Occupier may request PECO Energy to remove Occupier's fiber in accordance with the procedures established by PECO Energy, provided, however, that if PECO Energy advises Occupier that such removal will interfere with PECO Energy's operations, said removal will be delayed until such time as is approved by PECO Energy. Such delay will have no effect on the validity of the Permit, or upon the rental charges computed hereunder.

(b) Occupier may terminate this Agreement or a Permit in whole or in part upon sixty (60) days' written notice to PECO Energy using the appropriate form specified in Exhibit C. No refund of any rental will be due on account of such surrender.

(c) Upon termination of this Agreement or the termination of any approval granted hereunder, PECO Energy shall immediately begin to remove the fiber cable at Occupier's sole cost and expense. . However, if either this Agreement or any Permit is terminated by PECO

Energy, other than according to Sections 11 and 12 herein, PECO Energy shall refund Attacher, on a pro-rated basis, all pre-paid attachment fees.

10. Occupation Fees.

(a) Occupier shall pay PECO Energy an annual fee in the amount of \$3.00 per foot of fiber cable installed in PECO Energy inner duct and manholes. Said fees shall be due and payable, without setoff, semi-annually in advance of the first day of February and the first day of August. Semi-annual rental payments shall be based upon the footage of fiber installed in PECO Energy inner duct and manholes, for which Permits are in effect as of the first day of the month preceding the day on which such rental is payable.

(b) Occupier shall reimburse PECO Energy for any taxes, fees or other charges which PECO Energy is required or obligated to pay by reason of the Occupation.

(c) PECO Energy may at its option adjust the fee specified in Paragraph 10(a) above in accordance with FCC guidelines. PECO Energy shall give written notice of such adjustment not less than sixty (60) days prior to any day on which semi-annual rental payments are due.

11. Billing and Default.

(a) Except as otherwise herein specifically provided, all amounts due PECO Energy under this Agreement shall be paid by Occupier within thirty (30) days after billing date. Occupier shall be considered in default if any amount is not paid to PECO Energy by the due date. In the event of default, PECO Energy shall assess a monthly one (1) percent finance charge to the outstanding balance, and PECO Energy may at its sole discretion terminate this Agreement with thirty (30) days written notice.

(b) If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees, costs of suit and discovery costs, including costs of appeals.

12. Unauthorized Occupancy.

(a) If Occupier should occupy any inner duct of PECO Energy without having first obtained a Permit in accordance with this Agreement, PECO Energy shall have the right, upon thirty (30) days' notice to Occupier to terminate this Agreement **in its entirety**. Prior to the effective termination date, PECO Energy shall remove all of Occupier's equipment, including but not limited to all Permitted Occupations, at the sole cost of Occupier.

(b) In addition, PECO Energy in its sole discretion shall have the right upon written notice to Occupier to impose a back rental charge on all unauthorized Occupations. The back rental charge for each unauthorized Occupation shall be the product of the appropriate annual rental rate specified in the latest revision, multiplied by the period of time beginning on the date of this Agreement and ending on the date when all such unauthorized Occupations are removed.

13. Indemnification. Occupier shall indemnify, hold harmless and, at PECO Energy's option, defend, PECO Energy, its officers, agents and employees from and against any loss, damage, liability or cost (including without limitation reasonable attorneys' fees) for the following: (i) damage to property and injuries including death to all persons, including but not limited to employees of PECO Energy and employees of Occupier, which may arise out of, result from or in any manner be caused by or related to the installation, maintenance, presence, use of removal of the Occupations from PECO Energy's inner duct and manholes whether or not caused by PECO Energy's negligence, including without limitation PECO Energy's contributory negligence, concurring negligence, active negligence and passive negligence. ; (ii) loss or infringement of copyright, libel, slander, or unauthorized use of information arising out of, resulting from or in any manner caused by or related to the operation or use of Occupier's system; (iii) Occupier's failure to secure required franchises, licenses, approvals and consents from Federal, state and municipal authorities and any necessary rights-of-way from owners of property; or (iv) infringement of patents with respect to the manufacture, use and operation of Occupier's equipment in combination with PECO Energy's equipment or otherwise. This paragraph shall survive termination of this Agreement.

14. Insurance. Occupier shall, when submitting an application hereunder, and annually thereafter, furnish to PECO Energy evidence satisfactory to PECO Energy of the following insurance in a form and by an insurance carrier acceptable to PECO Energy with not less than the limits stated, such insurance to be kept in force throughout the term of this Agreement:

Workers' Compensation in the statutory amount and Employer's Liability Insurance with limits of not less than \$1,000,000; Comprehensive General Liability Policy providing personal injury/bodily injury and property damage with a combined single limit of not less than \$4,000,000 per occurrence. This insurance should include broad form contractual liability, completed operations, independent contractors and vehicle liability and name PECO Energy as additional insured. Coverage shall also be primary to any other insurance carried by PECO Energy.

15. Bonding. At PECO Energy's request, Occupier shall furnish a surety bond in the amount of Occupier's annual attachment fees or \$10,000, whichever is greater, guaranteeing the payment of any fees due under this Agreement or charges for work performed by PECO Energy hereunder.

16. Cost. Throughout this Agreement, "cost" shall be understood to comprise both direct and indirect costs, plus applicable overheads.

17. Waiver of Compliance. Failure of PECO Energy to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

18. Non-Exclusivity. Except as explicitly provided in a Permit, nothing contained herein shall be construed as affecting the rights or privileges previously or hereafter conferred by PECO Energy by contract or otherwise upon others not parties to this Agreement to use any inner duct and manholes covered by such Permits.

19. Additional Conditions. Nothing contained herein or in any Permit shall be construed to compel PECO Energy to acquire, construct, retain or maintain any conduits or other facilities in any manner not required by its own service requirements. Permits issued hereunder shall be valid only for Occupation of PECO Energy approved cables and associated appurtenances to be operated by Occupier.

20. Notices. Any notice under this Agreement shall be in writing and sent certified mail, return receipt requested, postage prepaid, or by commercial overnight courier, to PECO Energy or to Occupier, as appropriate, at their respective addresses appearing in the first paragraph of this Agreement.

21. Force Majeure. Either party hereto shall be excused from performance hereunder, other than the obligation to make payments of amounts already due, and shall not be liable for damages or otherwise if, to the extent that the party is unable to perform by any act, event, cause or condition that is beyond the party's reasonable control, and that by the exercise of reasonable diligence the party is unable to overcome or prevent, including but not limited to the following: accidents, strikes, lockouts, fire, floods, acts of civil or military authorities, theft, vandalism, misuse or insurrection. The party failing to fulfill its obligations shall immediately notify the other party indicating the cause and expected duration of such failure. In the event the Force Majeure event continues for thirty (30) days beyond the required time of performance, the affected party may, at its option, terminate this Agreement upon notice to the other party.

22. Severability. If any of the provisions of the Agreement shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provisions or provisions, and the rights and obligations of the parties shall be construed and enforced accordingly.

23. Assignment. Neither this Agreement nor any interest herein, nor any Permit granted hereunder, shall be assigned sublet or transferred by Occupier without the prior written authorization of PECO Energy, which shall not be unreasonably withheld. Notwithstanding the foregoing, Occupier may assign its interest in this Agreement to a purchaser of all or substantially all of Occupier's assets.

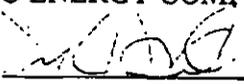
24. Governing Law. This Agreement shall be construed under and in accordance with the laws of the Commonwealth of Pennsylvania. All legal actions instituted by attached under this Agreement must be filed in Philadelphia, Pennsylvania.

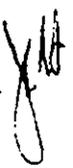
25. Entire Agreement. This Agreement, and the documents referred to therein, contain the entire agreement and understanding between PECO Energy and Occupier as to the subject matter of the Agreement, and merges and supersedes all prior agreements, commitments, representations, and discussions between PECO Energy and the Occupier pertaining to this Agreement. No modification or amendment of this Agreement will be binding unless agreed to in writing by the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed the day and year first above written.

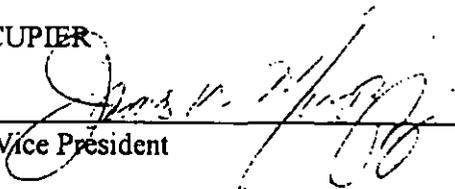
CONFIDENTIAL

PECO ENERGY COMPANY

BY: 
Michael A. Williams
Director, Real Estate



OCCUPIER

BY: 
: Vice President

CONFIDENTIAL

EXHIBIT A
APPLICATION

APPLICATION FOR JOINT USE OF PECO ENERGY FACILITIES

DATE OF APPLICATION: _____

DO YOU HAVE A SIGNED JOINT USE AGREEMENT ON FILE WITH PECO ENERGY? Y/N

NAME OF COMPANY OR INDIVIDUAL:

NAME: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

NAME OF CONTACT PERSON: _____ PHONE () _____

MUNICIPALITY: _____

(A permit application is required for each municipality where the facilities are located)

FACILITIES: () Pole Attachments Number of poles _____

() Duct approximate number of feet _____

PURPOSE: Voice _____ Audio/Video _____
 Data _____ Other _____ (specify) _____

APPLICATION FEE ENCLOSED: \$ _____ (See Rate Schedule Below)

| | |
|-------------------|--------------|
| 1 - 5 Poles | \$ 50.00 Fee |
| 6 - 10 Poles | \$100.00 Fee |
| 11 or more Poles | \$250.00 Fee |
| ALL DUCT REQUESTS | \$250.00 Fee |

NOTE: DEPOSIT REQUIRED - \$1,000.00 (to be applied to costs of survey and/or construction services)

POLE RENTAL BILLING ADDRESS (IF DIFFERENT FROM ABOVE)

NAME: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

Instructions For Application

- (A) Read and complete the entire Application and sign in the appropriate places.
- (B) Enclose a list of the poles or duct locations (or both) along with a check for the required Application and Deposit Fees as indicated above to:

CONFIDENTIAL

PECO ENERGY COMPANY
Attn.: M. A. Williams, Manager
Real Estate & Facilities, N3-3
2301 Market St.
Philadelphia, PA 19103

GENERAL INFORMATION
Concerning the Application Process

- (1) Upon receipt of this application, PECO Energy will perform a route availability cost study.
- (2) You will be supplied with a cost for the study. This cost will vary with the complexity of the request. You will be required to pay this cost should you elect to proceed with the request or reject the costs and cancel this application.
- (3) After receiving the Invoices for the study, payment will be due for the amount indicated on receipt. Invoices outstanding for more than 30 days will be declared delinquent and no additional applications will be accepted until the invoice is paid in full. Advance deposits will be credited to costs of engineering/survey with excess, if any, applied to construction services, if applicable.
- (4) Should you decide to amend your application for reasons not resulting from PECO Energy's field survey, your application will be canceled and you must resubmit for joint use of PECO Energy's facilities.
- (5) Upon receipt of costs, we will perform the study upon receipt of the payment. Payment must be received within 60 days of the date of the invoice. After that time, the application will be canceled and if you want to continue with the application at a later date, a new application will be required.
- (6) Upon receipt of the payment authorizing PECO Energy to proceed, PECO Energy will prepare and mail our standard "Inner Duct Occupation Agreement" and "Construction Services Agreement", in duplicate. You must sign both copies in the proper location, and return both copies to this office. The Agreements will be executed on behalf of PECO Energy and one copy of each returned to you for your records.
- (7) PECO Energy will provide you with a route design and copies of all manhole diagrams for the proposed route along with an invoice estimate and schedule for a manhole inspection.
- (8) Upon receipt of a check in the amount of the estimate PECO Energy will perform the inspection.
- (9) A monthly invoice estimate and schedule will be provided to you for the rodding and roping, pulling of the inner duct and fiber cable, and testing the fiber until such time the project is completed.
- (10) Upon completion PECO Energy will forward you an invoice for the work for the actual amount. If additional monies are owed to PECO Energy payment must be made immediately. If the amount is less than the amount of the monies already paid in the estimate a check will be forwarded to you. At this time, PECO will issue a permit.

(11) It is understood that PECO Energy must perform all work associated with the request.

(12) Applicant will identify their cable in every manhole with a PECO Energy approved cable tag.

(13) This application will remain in effect for sixty (60) days.

Applicant hereby acknowledges to have read and understood this application, agrees to comply with the application procedures described above and to pay in full the Engineering and Survey fees and understands the initial application fee is non-refundable.

Date Signed

Applicant's Signature

Title: _____

EXHIBIT B

PERMIT

[REDACTED]

PERMIT

**FOR JOINT USE OF
PECO ENERGY FACILITIES**

PERMIT NO. _____

Control Number:
W.O. #

In accordance with the "Application for Joint Use of PECO Energy Facilities" dated _____ and submitted by _____, a permit to occupy PECO Energy inner duct and manholes as outlined in the application for _____ (municipality), County, PA on _____ Road, is hereby granted for the following facilities:

_____ PECO owned duct

PECO ENERGY COMPANY

By: _____

Title: _____

Date:

This permit is void if not exercised within ninety (90) days from the date granted.

CONFIDENTIAL

THIS PERMIT MUST BE AVAILABLE ON SITE FOR INSPECTION DURING
CONSTRUCTION.

EXHIBIT C

NOTICE OF REMOVAL BY OCCUPIER

Date: _____

PECO Energy Company

In accordance with the terms of Agreement dated _____, please be advised that we hereby request PECO Energy to remove our fiber cable from the following inner ducts and manholes.

| <u>Manhole Number</u> | <u>Street Location</u> | <u>Between Streets</u> | <u>Permit Number</u> |
|-----------------------|------------------------|------------------------|----------------------|
|-----------------------|------------------------|------------------------|----------------------|

OCCUPIER

BY: _____

Notice No. _____

Number of Fiber Feet Discontinued this Notice: _____

Number of Fiber Feet Previously Vacated: _____

Total Number of Fiber Feet Vacated to Date: _____

CONFIDENTIAL

Exhibit D

PECO Pole Attachment Agreement

Form: Pole Attachment Agreement – last revised 2/20/02
Date:

POLE ATTACHMENT AGREEMENT

THIS POLE ATTACHMENT AGREEMENT (this "Agreement") made as of this 1st day of January 2001, by and between PECO Energy Company, a Pennsylvania corporation, having its principal office at 2301 Market Street, Philadelphia, Pennsylvania 19103 ("PECO Energy"), and Exelon Communications Company, LLC, a Pennsylvania limited liability company, having its principal office at 401 City Avenue, Suite 900, Bala Cynwyd, PA 19004 ("Attacher").

BACKGROUND

- A. Attacher desires to attach aerial cables, wires and associated appurtenances ("Attachments") to certain PECO Energy poles.
- B. PECO Energy is willing to permit Attacher to make such Attachments to its poles to the extent it may lawfully do so, subject to the terms and conditions herein.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, and intending to be legally bound, the parties hereto hereby agree as follows:

1. License. PECO Energy grants to Attacher a revocable, non-exclusive license to make attachments on PECO Energy poles, subject to the approval of an application and the issuance of a permit ("Permit") in accordance with the terms of this Agreement. PECO Energy reserves the right to terminate this agreement and any Permit in whole or in part when, in PECO Energy's judgment, such action is necessary to protect PECO Energy's interests.

2. Application Approval Procedure.

(a) For each Attachment desired in each municipality, Attacher shall submit an application in the form set forth in Exhibit A attached hereto or as may be subsequently amended. Such application shall be accompanied by a non-refundable application fee as specified on the application. As a part of each application, Attacher shall submit, in the quantity of copies required by PECO Energy, a detailed drawing showing the proposed location and manner of each Attachment included in the application. At the request of Attacher, PECO Energy will prepare said drawing at Attacher's expense.

(b) In addition to the aforementioned application fee, Attacher shall reimburse PECO Energy for all costs incurred by PECO Energy in processing the application, including, but not limited to, survey and engineering studies, costs in determining the availability and suitability of the pole space, whether or not the application is approved. Together with the application fee, Attacher shall pay PECO Energy, in advance, the estimated cost of the survey and engineering studies.

c) If facilities of PECO Energy or others must be rearranged or relocated, or other work done, to make ready for the requested Attachment, Attacher shall be responsible for the cost of such make-ready work. Prior to the start of make-ready work, PECO Energy may require Attacher to pay the costs of such work. Attacher shall send notice to, and obtain any required consents from, other attachers or occupiers of the poles regarding rearrangement of their facilities. PECO Energy, or in PECO Energy's discretion, PECO Energy's approved contractor, shall perform all make-ready work in accordance with this Agreement.

(d) Within 45 calendar days after receipt of the application and application fee, PECO Energy shall notify Attacher whether the application has been approved or denied and shall provide Attacher with a written estimate of all PECO Energy costs, including survey and engineering studies as well as for make-ready work on PECO Energy facilities. Upon approval of the application, payment of the estimated cost of the survey, engineering studies and make-ready work, and completion of any necessary make-ready work, PECO Energy shall issue a Permit substantially in the form attached hereto as Exhibit B. PECO Energy may include in the Permit such conditions as it deems appropriate.

(e) The Permit when issued shall be accompanied by a bill for rental for each pole to which an Attachment is authorized at the rate specified in Exhibit C attached hereto, pro-rated for the fraction of the year between the date of issuance of the Permit and the date of the next regular semi-annual billing specified in Section 10 hereof. If the costs incurred by PECO Energy in application review and make-ready work are greater than the amounts paid by Attacher to cover those costs, PECO Energy shall bill for the excess costs.

(f) When requested by Attacher, PECO Energy, or at PECO Energy's discretion, PECO Energy's approved contractor, will install Attachments for Attacher at Attacher's cost on facilities or property of PECO Energy, in accordance with and subject to the provisions of this Agreement and the Permit. PECO Energy may, at its discretion, allow Attacher to install Attachments. The Permit shall terminate if approved Attachments are not made within ninety (90) days from the date of approval of the Permit, unless a written waiver of this provision is granted by PECO Energy or unless such delay is caused by PECO Energy. In the event of such termination, PECO Energy shall have the right to retain any fees or charges paid to PECO Energy on account of such Permit.

3. Construction Specifications. When Attacher is approved to perform work, Attacher shall install, construct, maintain, and remove in accordance with the regulations and specifications of the National Electric Safety Code, latest Edition, or any amendments or revisions thereof, in compliance with any applicable rules, regulations or orders now in effect or hereafter issued by any Federal or state commission or any other public authority having jurisdiction, and in conformity with the requirements of PECO Energy. Such requirements may include but not be limited to approval by PECO Energy of contractors, methods, and hardware to be used by Attacher and establishment by PECO Energy of procedures to be followed by employees and contractors of Attacher when working on PECO Energy property. Attacher shall place

identifying markers on its Attachments at each pole in a manner acceptable to PECO Energy.

4. Inspections. PECO Energy reserves the right to make periodic inspections and surveys of any part of Attacher's installations. PECO Energy will attempt to give Attacher reasonable notice of such inspections and surveys, except in those instances where, in the sole judgment of PECO Energy, safety considerations justify the need for such an inspection or survey without notice. Except in the case of an emergency, a representative of Attacher may accompany a PECO Energy representative on inspections. Attacher shall reimburse PECO Energy for its pro-rata share of all expenses of such inspections and surveys. PECO Energy's right to make periodic inspections and surveys shall not relieve Attacher of any responsibility, obligation or liability assumed under this Agreement.

5. Franchise and Other Requirements. Attacher shall at all times have in effect all required franchises, licenses, approvals and consents from Federal, state and municipal authorities necessary to construct and operate its system. Attacher shall have the obligation to obtain any required additional rights-of-way or consents for the Attachments from property owners other than PECO Energy.

6. Relocations. Within ten (10) days after notice from PECO Energy, Attacher, at its expense, shall relocate, replace or renew any of the Attachments, or perform any other work in connection with the Attachments that may be directed by PECO Energy that may be required in the maintenance, replacement, removal or relocation of any facilities or equipment of PECO Energy or for the service needs of PECO Energy. PECO Energy reserves the right to perform such relocations or other work and Attacher shall reimburse PECO Energy for the cost thereof. Nothing in this Article shall relieve Attacher of the responsibility to promptly to repair, service and maintain its own facilities.

7. Damage. Attacher shall immediately report to PECO Energy or the applicable owner any damage to PECO Energy facilities or to the facilities of others using PECO Energy's poles arising out of the operations of Attacher. At option of PECO Energy or the applicable facility owner, Attacher shall at its cost, repair such damage forthwith, or reimburse such owner the cost of such repairs.

8. Limitation of Liability. PECO Energy shall not be liable to Attacher for any loss or damage to the Attachments, including without limitation the loss of or interference with service of the system, arising in any manner out of PECO Energy's operations or its performance of make-ready work. In no event shall PECO Energy be liable to Attacher for any punitive, indirect or consequential damages arising out of this Agreement, including without limitation, damages for lost profits.

9. Termination.

(a) Upon ten (10) days' advance written notice to PECO Energy, Attacher may remove its attachments in accordance with the procedures established by PECO Energy, provided, however, that if PECO Energy advises Attacher that such removal

will interfere with PECO Energy's operations, Attacher shall delay such removal until such time as is approved by PECO Energy. Such delay will have no effect on the validity of the Permit, or upon the rental charges computed hereunder.

(b) Attacher may terminate this Agreement or a Permit in whole or in part upon thirty (30) days' written notice to PECO Energy using the appropriate form specified in Exhibit D. No refund of any rental will be due on account of such surrender.

(c) Upon termination of this Agreement or the termination of any approval granted hereunder, Attacher shall immediately begin to remove the Attachments at its own costs, from all poles of PECO Energy affected by such termination. If not so removed within thirty (30) days, PECO Energy shall have the right to remove them at the cost of Attacher and without any liability therefore. However, if either this Agreement or any Permit is terminated by PECO Energy, other than according to Sections 11 and 12 herein, PECO Energy shall refund Attacher, on a pro-rated basis, all pre-paid attachment fees.

10. Attachment Fees.

(a) Attacher shall pay PECO Energy an annual fee in the amount set forth in Exhibit C for each pole attachment made pursuant to this Agreement. Such fees shall be due and payable, without setoff, semi-annually in advance of the first day of February and the first day of August. Semi-annual rental payments shall be based upon the number of such pole attachments, for which Permits are in effect as of the first day of the month preceding the day on which such rental is payable.

(b) Attacher shall reimburse PECO Energy for any taxes, fees or other charges which PECO Energy is required or obligated to pay by reason of the Attachments.

(c) PECO Energy may at its option adjust the fees specified in Exhibit C in accordance with FCC guidelines. PECO Energy shall give written notice of such adjustment in the form of a revised Exhibit C to Attacher not less than sixty (60) days prior to any day on which semi-annual rental payments are due. References herein to Exhibit C shall be understood to refer to the latest revision thereof.

11. Billing and Default.

(a) Except as otherwise herein specifically provided, all amounts due PECO Energy under this Agreement shall be paid by Attacher within thirty (30) days after billing date. Attacher shall be considered in default if any amount is not paid to PECO Energy by the due date. In the event of default, PECO Energy shall assess a monthly one (1) percent finance charge to the outstanding balance, and PECO Energy may at its sole discretion terminate this Agreement with thirty (30) days written notice.

(b) If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to have and

recover from the losing party reasonable attorneys' fees, costs of suit and discovery costs, including costs of appeals.

12. Unauthorized Occupancy

(a) If Attacher should occupy any pole of PECO Energy without having first obtained a Permit in accordance with this Agreement, PECO Energy shall have the right, upon thirty (30) days' notice to Attacher to terminate this Agreement in its entirety. Prior to the effective termination date, Attacher shall remove all of its equipment, including but not limited to all Permitted Attachments, at the sole cost of Attacher. Upon the failure of Attacher to so remove said equipment, PECO Energy shall have the right to remove such equipment at Attacher's cost and expense.

(b) In addition, PECO Energy in its sole discretion shall have the right upon written notice to Attacher to impose a back rental charge on all unauthorized Attachments. The back rental charge for each unauthorized attachment shall be the product of the appropriate annual rental rate specified in the latest revision of Exhibit C, multiplied by the period of time beginning on the date of this Agreement and ending on the date when all such unauthorized attachments are removed.

13. Indemnification. Attacher shall indemnify, hold harmless and, at PECO Energy's option, defend, PECO Energy, its officers, agents and employees from and against any loss, damage, liability or cost (including without limitation reasonable attorneys' fees) for the following: (i) damage to property and injuries including death to all persons, including but not limited to employees of PECO Energy and employees of Attacher, which may arise out of, result from or in any manner be caused by or related to the erection, installation, maintenance, presence, use or removal of the Attachments upon or from PECO Energy's poles, whether or not caused by PECO Energy's negligence, including without limitation PECO Energy's contributory negligence, concurring negligence, active negligence and passive negligence; (ii) loss or infringement of copyright, libel, slander, or unauthorized use of information arising out of, resulting from or in any manner caused by or related to the operation or use of Attacher's system; (iii) Attacher's failure to secure required franchises, licenses, approvals and consents from Federal, state and municipal authorities and any necessary rights-of-way from owners of property; (iv) infringement of patents with respect to the manufacture, use and operation of Attacher's equipment in combination with PECO Energy's equipment or otherwise; or (v) liens on PECO Energy's property arising from the activities of Attacher. This paragraph shall survive termination of this Agreement.

14. Insurance. Attacher shall, when submitting an application hereunder, and annually thereafter, furnish to PECO Energy evidence satisfactory to PECO Energy of the following insurance in a form and by an insurance carrier acceptable to PECO Energy with not less than the limits stated, such insurance to be kept in force throughout the term of this Agreement:

Workers' Compensation in the statutory amount and Employer's Liability Insurance with limits of not less than \$1,000,000; Comprehensive General Liability Policy providing personal injury/bodily injury and property damage with a combined

single limit of not less than \$5,000,000 per occurrence. This insurance should include broad form contractual liability, completed operations, independent contractors and vehicle liability and name PECO Energy as additional insured. Coverage shall also be primary to any other insurance carried by PECO Energy.

15. Bonding. At PECO Energy's request, Attacher shall furnish a surety bond in the amount of Attacher's annual attachment fees or \$10,000, whichever is greater, guaranteeing the payment of any fees due under this Agreement or charges for work performed by PECO Energy hereunder.

16. Cost. Throughout this Agreement, "cost" shall be understood to comprise both direct and indirect costs, plus applicable overheads.

17. Waiver of Compliance. Failure of PECO Energy to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

18. Non-Exclusivity. Except as explicitly provided in a Permit, nothing contained herein shall be construed as affecting the rights or privileges previously or hereafter conferred by PECO Energy by contract or otherwise upon others not parties to this Agreement to use any poles covered by such Permits.

19. Additional Conditions. Nothing contained herein or in any Permit shall be construed to compel PECO Energy to acquire, construct, retain or maintain any pole or other facilities in any manner not required by its own service requirements. Permits issued hereunder shall be valid only for Attachment of PECO Energy approved cables and associated appurtenances to be operated by Attacher.

20. Notices. Any notice under this Agreement shall be in writing and sent certified mail, return receipt requested, postage prepaid, or by commercial overnight courier, to PECO Energy or to Attacher, as appropriate, at their respective addresses appearing in the first paragraph of this Agreement.

21. Force Majeure. Either party hereto shall be excused from performance hereunder, other than the obligation to make payments of amounts already due, and shall not be liable for damages or otherwise if, to the extent that the party is unable to perform by any act, event, cause or condition that is beyond the party's reasonable control, and that by the exercise of reasonable diligence the party is unable to overcome or prevent, including but not limited to the following: accidents, strikes, lockouts, fire, floods, acts of civil or military authorities, theft, vandalism, misuse or insurrection. The party failing to fulfill its obligations shall immediately notify the other party indicating the cause and expected duration of such failure. In the event the Force Majeure event continues for thirty (30) days beyond the required time of performance, the affected party may, at its option, terminate this Agreement upon notice to the other party.

22. Severability. If any of the provisions of the Agreement shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provisions or provisions, and the rights and obligations of the parties shall be construed and enforced accordingly.

23. Assignment. Neither this Agreement nor any interest herein, nor any Permit granted hereunder, shall be assigned, sublet or transferred by Attacher without the prior written authorization of PECO Energy, which shall not be unreasonably withheld. Notwithstanding the foregoing, Attacher may assign its interest under this Agreement to a purchaser of all or substantially all of the assets of Attacher.

24. Governing Law. This Agreement shall be construed under and in accordance with the laws of the Commonwealth of Pennsylvania. All legal actions instituted by attached under this Agreement must be filed in Philadelphia, Pennsylvania.

25. Entire Agreement. This Agreement, and the documents referred to therein, contain the entire agreement and understanding between PECO Energy and Attacher as to the subject matter of the Agreement, and merges and supersedes all prior agreements, commitments, representations, and discussions between PECO Energy and the Attacher pertaining to this Agreement. No modification or amendment of this Agreement will be binding unless agreed to in writing by the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed the day and year first above written.

PECO ENERGY COMPANY

BY: 
Director, Real Estate 

ATTACHER

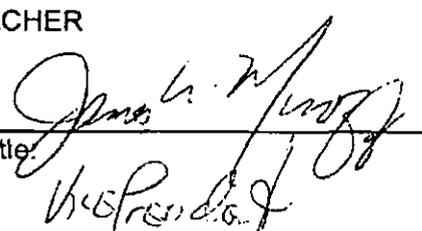
BY: 
Title: 

EXHIBIT A
APPLICATION

APPLICATION FOR JOINT USE OF PECO ENERGY FACILITIES

DATE OF APPLICATION: _____

DO YOU HAVE A SIGNED JOINT USE AGREEMENT ON FILE WITH PECO ENERGY? Y / N

NAME OF COMPANY OR INDIVIDUAL

NAME: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

NAME OF CONTACT PERSON: _____ PHONE () _____

MUNICIPALITY: _____

(A permit application is required for each municipality where the facilities are located)

FACILITIES: () Pole Attachments Number of poles _____

() Duct approximate number of feet _____

PURPOSE: Voice _____ Audio/Video _____
 Data _____ Other _____ (specify) _____

APPLICATION FEE ENCLOSED: \$ _____ (See Rate Schedule Below)

| | |
|-------------------|--------------|
| 1 - 5 Poles | \$ 50.00 Fee |
| 6 - 10 Poles | \$100.00 Fee |
| 11 or more Poles | \$250.00 Fee |
| ALL DUCT REQUESTS | \$250.00 Fee |

NOTE: ADVANCE PAYMENT WILL BE REQUIRED PRIOR TO THE START OF THE SURVEY AND ENGINEERING STUDIES

POLE RENTAL BILLING ADDRESS (IF DIFFERENT FROM ABOVE)

NAME: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

Instructions For Application

- (A) Read and complete the entire Application and sign in the appropriate places.
- (B) Enclose a list of the poles or duct locations (or both) along with a check for the required Application and Deposit Fees as indicated above to:

PECO ENERGY COMPANY
 Attn.: M. A. Williams, Manager
 Real Estate & Facilities, N3-3
 2301 Market St.
 Philadelphia, PA 19103

**GENERAL INFORMATION
Concerning The
Application Process**

- (1) Upon receipt of this application, the request will be forwarded to the appropriate location for an SURVEY and ENGINEERING review.
- (2) You will be supplied with an estimated cost for our SURVEY and ENGINEERING studies to review the request based on the number of poles in your application. You will be required to pay this estimated cost in advance.
- (3) If other attachments need to be relocated to accommodate your request, you will be supplied with a cost for MAKE READY (including an adjustment for survey and engineering review based on the actual number of poles), which you will be required to pay if you elect to continue with the request.
- (4) After receiving the invoice for the cost of the MAKE READY (other than the adjustment for survey and engineering review) which shall be due and payable, you will have the option to accept the costs and authorize PECO to proceed with the application OR reject the costs and cancel the application.
- (5) Should you decide to amend your application for reasons not resulting from PECO's field survey, your application will be canceled and you must resubmit for joint use of PECO's facilities.
- (6) If you accept the cost and authorize PECO to proceed with the application, we will release the Make Ready work to our construction work management upon receipt of the payment. Payment must be received within 60 days of the date of the invoice. After that time, the application will be canceled and if you want to continue with the application at a later date, a new application will be required.
- (7) Upon receipt of the payment authorizing PECO to proceed, PECO will prepare and mail our standard "Pole Attachment Agreement", in duplicate. You must sign both copies in the proper location, and return both copies to this office.
- (8) PECO will complete any required make ready work and return one fully executed copy of the "Pole Attachment Agreement" to you for your records. At this time, PECO will issue a permit, which will permit you to begin work. The permit must be available on site for inspection during construction.
- (9) It is understood that the applicant CANNOT attach to any PECO poles or utilize any PECO duct until a permit is issued.
- (10) Applicant will identify their cable on every pole with a PECO approved cable tag.
- (11) This application will remain in effect for sixty (60) days.

Applicant hereby acknowledges to have read and understood this application, agrees to comply with the application procedures described above and to pay in full the Survey and Engineering fees and understands the initial application fee is non-refundable.

Date Signed

Applicant's Signature

Title: _____

EXHIBIT B

PERMIT



PERMIT

**FOR JOINT USE OF
PECO ENERGY FACILITIES**

PERMIT NO.

Control Number:
W.O. #

In accordance with the "Application for Joint Use of PECO Energy Facilities" dated _____ and submitted by _____, a permit to attach to facilities as outlined in the application for _____ Twp., _____ County, Pa., on _____ Road, is hereby granted for the following facilities:

_____ PECO owned poles

PECO ENERGY COMPANY

By: _____

Date: _____

This permit is void if not exercised within ninety (90) days from the date granted.

THIS PERMIT MUST BE AVAILABLE ON SITE FOR INSPECTION DURING CONSTRUCTION.

EXHIBIT C

ATTACHMENT FEES

Rental Rates

\$ 47.25/pole/year

\$24.16 annual per pole attachment for CATV

If facilities are overlashed over CATV facilities, the non-CATV rate shall be charged. All overlashed carriers will be considered an additional attacher for purposes of allocating costs of usable and unusable space.

NOTE: Rental rates are subject to change at any time upon notice not less than 60 days prior to any rental due date.

EXHIBIT D

NOTICE OF REMOVAL BY ATTACHER

Date: _____

PECO Energy Company

In accordance with the terms of Agreement dated _____, please be advised that we intend to remove our attachments from the following poles between _____, 19__ and _____, 19__.

Pole Number

Pole Location

Permit Number

ATTACHER

BY: _____

Notice No. _____

Total Poles Discontinued this Notice: _____

Poles Previously Vacated: _____

Total Poles Vacated to Date: _____

Exhibit E

Verizon License Agreement

CONFIDENTIAL

Standard License 1/2000

LICENSE AGREEMENT

DATED DECEMBER 30, 2003

BETWEEN

VERIZON PENNSYLVANIA INC.

AND

EXELON COMMUNICATIONS CO., LLC

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LICENSE AGREEMENT

THIS AGREEMENT, entered into on this _ ____ day of December 2003, between

VERIZON PENNSYLVANIA INC., a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, having its principal office in the city of Philadelphia, Pennsylvania (hereinafter VERIZON), and **EXELON COMMUNICATIONS CO. LLC**, a corporation (partnership, or other legal entity) organized and existing under the laws of the Commonwealth of Pennsylvania having its principal office in the city of Philadelphia, Pennsylvania _____ (hereinafter Licensee):

WITNESSETH:

WHEREAS, Licensee desires to place and maintain aerial cables, equipment and facilities on Poles and in the Rights of Way of VERIZON; and

WHEREAS, VERIZON is willing to permit the placement of said cables, equipment and facilities on VERIZON's property on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties do hereby mutually covenant and agree as follows:

ARTICLE I
DEFINITIONS

As used in this Agreement and related Appendices, the following terms shall have the meanings stated below. A term listed below intended to convey the meaning stated below is capitalized when used.

1.1 Anchor

An assembly (rod and fixed object or plate) owned solely or in part by VERIZON, designed to resist the pull of a Guy Strand.

1.2 Guy Strand

A metal cable attached to a Pole and Anchor (or another structure) for the purpose of increasing Pole stability.

1.3 Joint Owner

A person, corporation or other legal entity, sharing ownership of a Pole and/or Anchor with VERIZON.

1.4 Make-Ready or Make-Ready Work

All work, including but not limited to rearrangement and/or transfer of existing facilities, replacement of a Pole, and other changes, required to accommodate Licensee's Facilities on a Pole, or in a Right of Way.

1.5 Pole

A pole owned solely or in part by VERIZON with respect to which VERIZON has the right to authorize the Attachment of Licensee's Facilities.

1.6 Pole Attachment

Any item of Licensee's Facilities affixed to a Pole.

- a) Horizontal Attachment is for a single Pole Attachment associated with pole to pole construction.
- b) Vertical Attachment is for single Pole construction where Licensee's Facilities are affixed along the vertical axis of the Pole.

1.7 Prelicense Survey

All work, including field inspection and administrative processing, to determine the Make-Ready work necessary to accommodate Licensee's Facilities on a Pole or in a Right of Way.

1.8 Right of Way

A right possessed by VERIZON to use or pass over, on or under, the land of another person, with respect to which VERIZON has the right to authorize the usage or passage of Licensee's Facilities over, on or under such land. A Right of Way may run under, on or over public or private property (including the air space above such property).

1.9 Licensee's Facilities

All facilities, including but not limited to cables, equipment and associated hardware, owned and utilized by Licensee, which are attached to a Pole or occupy a Right of Way.

ARTICLE II

SCOPE

- 2.1 Subject to the provisions of this Agreement, for licenses granted by VERIZON in accordance with Article VII, below, VERIZON hereby grants to Licensee a nonexclusive license authorizing the Attachment of Licensee's Facilities to VERIZON's Poles, or the placement of Licensee's Facilities in VERIZON's Rights of Way, as specified in the pertinent application.
- 2.2 No use, however extended, of Poles or Rights of Way, or payment of any fees or charges required under this Agreement, shall create or vest in Licensee any easements or any other ownership or property rights of any nature in such Poles or Rights of Way. Licensee's rights herein shall be and remain a mere license. Neither this Agreement nor any license granted hereunder shall constitute an assignment of any of VERIZON's rights to use the public or private property at locations of such Poles or Rights of Way.
- 2.3 Nothing contained in this Agreement shall limit VERIZON's right to locate and maintain its Poles and Rights of Way, and to operate its facilities in conjunction therewith, in such a manner as will best enable it to fulfill its own service requirements consistent with its obligations under the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act") and any other applicable law or regulation (collectively "Applicable Law").
- 2.4 To the extent required by Applicable Law, VERIZON shall grant Licensee nondiscriminatory access to VERIZON's Poles and Rights of Way. This obligation

extends to Poles and Rights of Way VERIZON owns and with respect to which VERIZON has the right to authorize the occupancy of Licensee's Facilities. In cases of Poles and Rights of Way VERIZON owns, but with respect to which VERIZON does not have the right to authorize the occupancy of Licensee's Facilities, to the extent required by Applicable Law, VERIZON shall reasonably cooperate with Licensee to permit Licensee to obtain a right of occupancy for Licensee's Facilities, subject to VERIZON's right to provide a reasonable technical evaluation of the requirements for such occupancy to the property owner or other authorized person. Such reasonable cooperation by VERIZON shall not obligate VERIZON to purchase a right of occupancy for, or right to authorize the occupancy of, Licensee's Facilities. Upon reasonable request by Licensee, VERIZON will provide any documentation that is not confidential or privileged in its possession supporting a claim that it does not own or have authority to grant access to a given Pole or Right of Way.

ARTICLE III

FEES AND CHARGES

- 3.1 Licensee shall pay all fees and charges applicable in connection with the attachment of Licensee's Facilities to a Pole or occupancy of a Right of Way, as specified in Appendix I attached hereto and made a part of this Agreement.
- 3.2 Nonpayment of any amount due under this Agreement shall constitute a default by Licensee of this Agreement. Late payments shall be subject to a late payment charge as specified in Appendix I, Section 2.4.
- 3.3 After a failure by Licensee to make payment as required hereunder, or as a condition to attachment or occupancy upon VERIZON's reasonable determination that Licensee may have difficulty meeting its financial commitments hereunder (including, but not limited to, if Licensee's credit rating indicates that Licensee is delinquent on its obligations), VERIZON may require a bond in a form satisfactory to VERIZON or other financial security satisfactory to VERIZON, in such amount as VERIZON from time to time may reasonably require, to guarantee the performance of all Licensee obligations under this Agreement. Licensee's provision of the bond or financial security shall not operate as a limitation upon the obligations of Licensee hereunder; and if Licensee furnishes a deposit of money pursuant to this section, such deposit may be held during the continuance of this Agreement at the option of VERIZON as security for any and all amounts which are or may become due to VERIZON under this Agreement.
- 3.4 On an annual basis, changes in the amount of the fees and charges identified in Appendix I may be made by VERIZON upon at least 60 days prior written notice to Licensee in the form of a revised Appendix I, and Licensee agrees to pay such changed fees and charges provided that they are in accordance with Applicable Law. Notwithstanding any other provision of this Agreement, Licensee may terminate this Agreement at the end of such notice period if the change in fees and charges is not acceptable to Licensee, by giving

VERIZON written notice of its election to terminate this Agreement at least 30 days prior to the end of such notice period.

ARTICLE IV

ADVANCE PAYMENTS

- 4.1 Upon VERIZON's request, the Licensee shall make an advance payment to VERIZON prior to:
- a) any undertaking by VERIZON of a Prelicense Survey or the administrative processing of such a survey, in an amount sufficient to cover the estimated charges for completing the specific work operation required, and
 - b) performance by VERIZON of any Make-Ready work required, in an amount sufficient to cover the estimated charges for completing the required Make-Ready work.
- 4.2 The amount of the advance payment required will be credited against the payment due VERIZON for performing the Prelicense Survey and/or Make-Ready work.
- 4.3 Where the advance payment is less than the charge by VERIZON for such Prelicense Survey and/or Make-Ready work, Licensee agrees to pay VERIZON within 30 days of receipt of the bill all sums due in excess of the amount of the advance payment.
- 4.4 Where the advance payment exceeds the charge by VERIZON for such survey and/or Make-Ready Work, VERIZON shall refund the difference to Licensee within 30 days of the attachment date.

ARTICLE V

SPECIFICATIONS

- 5.1 Licensee's Facilities shall be placed and maintained in accordance with the requirements and specifications of Applicable Law, and the requirements and specifications of the following publications, as amended from time-to-time, the Manual of Construction Procedures (Blue Book) currently identified as Telcordia Document No. SR-1421, the National Electrical Code (NEC), and the National Electrical Safety Code (NESC), the rules and regulations of the Occupational Safety and Health Act (OSHA) and regulations or directives of a governing authority having jurisdiction over the subject matter. Where a difference in requirements or specifications may exist, the more stringent shall apply.
- 5.2 Licensee shall correct all safety violations caused by Licensee immediately upon notice from VERIZON. Licensee shall correct all other non-standard conditions caused by

Licensee within thirty (30) days from receipt of written notice from VERIZON. If Licensee does not correct any such violation or non-standard condition within the aforementioned time limits, VERIZON may at its option correct said violations or conditions at Licensee's sole expense and risk.

- 5.3 Notwithstanding Paragraph 5.2 of this Article, when conditions created by Licensee's Facilities pose an immediate threat to the safety of the public or the employees of VERIZON or other attachers or occupants, interfere with the performance of VERIZON's service obligations or the service obligations of other attachers or occupants, or pose an immediate threat to the physical integrity of VERIZON's facilities or structures or the facilities or structures of other attachers or occupants, VERIZON may perform such work and/or take such action as it deems necessary using reasonable care without first giving written notice to Licensee. As soon as practical thereafter, VERIZON will advise Licensee in writing of the work performed or the action taken and will endeavor to arrange for reaccommodation of Licensee's Facilities so affected. Licensee shall pay VERIZON for all reasonable costs incurred by VERIZON in performing such work.
- 5.4 The failure of VERIZON to notify Licensee of violations or non-standard conditions or to correct violations or non-standard conditions pursuant to Paragraph 5.2 or Paragraph 5.3 of this Article shall not relieve Licensee of its responsibility to place and maintain its Facilities in a safe manner and condition in accordance with the terms of this Agreement, and shall not relieve Licensee of any liability imposed by this Agreement.
- 5.5 VERIZON and Licensee shall each provide a single point of contact for processing license applications and access to information needed to prepare a license application.

ARTICLE VI

LEGAL REQUIREMENTS

- 1 No license granted under this Agreement shall extend to any Poles, or Rights of Way where the Attachment or placement of Licensee's Facilities would result in a forfeiture of rights of VERIZON or VERIZON's existing attachers to occupy the property on which such Poles or Rights of Way are located. If the existence of Licensee's Facilities on a Pole or in a Right of Way would cause a forfeiture of the right of VERIZON or VERIZON's existing attachers to occupy the property on which the Pole or Right of Way is located, Licensee agrees to remove Licensee's Facilities forthwith upon receipt of written notification from VERIZON. If Licensee's Facilities are not so removed, VERIZON may perform or have performed such removal after the expiration of 60 days from the receipt of said written notification. All removals of Licensee's Facilities shall be at Licensee's expense.

ARTICLE VII

ISSUANCE OF LICENSES

- 7.1 Before Licensee shall attach to any Pole, or occupy any portion of a Right of Way, Licensee shall make written application for and have received a written license from VERIZON utilizing the following forms: Appendix II, Forms A-1 and A-2 and/or B-1 through B-2.
- 7.2 VERIZON shall process all license applications, including the performance of a Prelicense Survey, on a first-come, first-served basis in accordance with the provisions of Articles VII and VIII. VERIZON shall make all access determinations in accordance with the requirements of Applicable Law, considering such factors as capacity, safety, reliability and general engineering considerations. VERIZON shall inform Licensee in writing as to whether an application has been granted or denied (including the reasons for denial) within the following time after receipt of such application: 45 days, plus any time taken by Licensee for action by Licensee, including, but not limited to, time taken by Licensee to respond to VERIZON's proposal for a Prelicense Survey. Where an application involves an increase in capacity by VERIZON, VERIZON shall take reasonable steps to accommodate requests for access in accordance with Applicable Law. Before denying Licensee access based on lack of capacity, VERIZON shall explore potential accommodations in good faith with Licensee. The parties agree to consider reasonable and prudent ways to expand Rights of Way at the lowest cost.
- 7.3 In order to facilitate Licensee's completion of an application, VERIZON shall use commercially reasonable efforts to provide Licensee, within ten (10) business days of a legitimate request identifying the specific geographic area and types and quantities of required structures, access to such maps or other relevant data reasonably necessary to complete the applications described above, subject to a non-disclosure agreement in a form reasonably agreeable to VERIZON. Such requests shall be processed by VERIZON on a "first-come, first-served" basis.
- 7.4 License applications received by VERIZON from two or more applicants for the same Pole or Right of Way will be processed by VERIZON according to the order in which the applications are received by VERIZON.
- 7.5 If within twelve (12) months from the date a license is granted by VERIZON, Licensee shall not at a minimum have initiated material construction or similar activity related to its Attachment or occupancy, Licensee's license for the applicable Pole(s) or Right(s) of Way shall automatically terminate and Licensee shall remove any Facilities installed as of such date in accordance with the provisions of Section 9.8. Licensee shall be liable for Attachment or occupancy charges commencing the date of the license grant.

ARTICLE VIII

PRELICENSE SURVEY AND MAKE-READY WORK

- 8.1 When an application for Attachment to a Pole or occupancy of a Right of Way is submitted by Licensee, a Prelicense Survey will be required to determine the existing adequacy of such structures or property to accommodate Licensee's Facilities.
- 8.2 The field inspection portion of the Prelicense Survey, which requires the visual inspection of such structures or property, shall be performed by VERIZON (Licensee at its option, may request participation for which VERIZON shall provide at least 24 hours advance notice). At its option, VERIZON may allow Licensee to perform the field inspection survey subject to a quality check by VERIZON. VERIZON shall also perform the administrative processing portion of the Prelicense Survey, which includes the processing of the application, the preparation of the Make-Ready Work orders (if necessary), and the notification of work requirements to other attachers and occupants (if necessary).
- 8.3 In the event VERIZON determines that a Pole or Right of Way which Licensee desires to utilize is inadequate or otherwise needs rearrangement, modification or expansion of the existing facilities, structures or property to accommodate Licensee's Facilities, VERIZON will advise Licensee in writing of the estimated Make-Ready charges that would apply to any rearrangements, modifications or expansions that VERIZON proposes to undertake (Appendix II, Form B-1). Make-Ready charges to Licensee shall not apply in connection with the correction of safety violations or non-standard conditions caused by other attachers. If no Make-Ready Work is needed to accommodate Licensee's Facilities, upon receipt of a license from VERIZON, Licensee may proceed with placement of its Facilities. VERIZON shall complete the steps described in paragraphs 8.1 through 8.3 within forty-five (45) days, excluding the time taken by Licensee to respond to VERIZON's proposals.
- 8.4 Licensee shall have ten (10) business days from the receipt of said Form B-1 to indicate its written authorization for completion of the required Make-Ready Work and acceptance of the resulting charges. VERIZON shall use commercially reasonable efforts to provide written notice to existing attachers or occupiers of the affected structures or property of such proposed changes within ten (10) business days of receipt of such authorization. Such attachers or occupiers will be given sixty (60) days from such notice to indicate whether they desire to participate in the proposed modification or expansion.
- 8.5 VERIZON shall not be obligated to initiate Make-Ready Work earlier than sixty (60) days after notice to existing attachers or occupiers, but VERIZON shall have the right to initiate Make-Ready Work earlier if existing attachers and occupiers agree in writing. Make-Ready Work will be completed by VERIZON in a commercially reasonable time according to a schedule to be mutually agreed upon, depending on the size of the job and the cooperation of necessary third parties. Make-Ready Work for Licensee will be

scheduled and performed in the same manner as VERIZON's Make-Ready Work is scheduled and performed. Licensee shall pay VERIZON for all Make-Ready Work performed by VERIZON in accordance with the provisions of this Agreement.

ARTICLE IX

CONSTRUCTION, MAINTENANCE AND REMOVAL OF LICENSEE'S FACILITIES

- 9.1 Licensee shall, at its own expense, construct and maintain its Facilities on Poles or in Rights of Way covered by this Agreement, in a safe condition and in a manner acceptable to VERIZON, so as not to physically conflict or electrically interfere with the facilities of VERIZON or other authorized attachers or occupants.
- 9.2 VERIZON shall specify the point of attachment on each Pole to be occupied by Licensee's Facilities. Where facilities of more than one attacher are involved, VERIZON will attempt, to the extent practical, to designate the same relative position on each Pole for each attacher's facilities.
- 9.3 Licensee shall secure VERIZON's written consent, not to be unreasonably withheld or delayed, before adding to, relocating, replacing or otherwise modifying Licensee's Facilities attached to a Pole where additional space or holding capacity may be required on either a temporary or permanent basis. No modifications shall be made by Licensee that would affect the placement or operations of attachments of VERIZON or existing attachers, except through application to VERIZON in accordance with the provisions of Articles VII and VIII.
- 9.4 If Licensee requests any modification, alteration or rearrangement of Poles or Rights of Way, other than Make-Ready Work to be performed pursuant to Article VIII, above, Licensee shall reimburse VERIZON for the cost of such modification, alteration or rearrangement, in accordance with Applicable Law.
- 9.5 Whenever VERIZON intends to modify or alter any Poles or Rights of Way which contain Licensee's Facilities, VERIZON shall provide written notification to Licensee at least sixty (60) days prior to taking such action so that Licensee may have a reasonable opportunity to add to or modify Licensee's Facilities. If Licensee adds to or modifies Licensee's Facilities according to this paragraph, Licensee shall bear a proportionate share of the costs incurred by VERIZON in making modifications or alterations of Poles and Rights of Way, in accordance with Applicable Law.
- 9.6 Licensee shall be notified in writing at least sixty (60) days prior to any modification that will result in the rearrangement or replacement of Licensee's Facilities. Licensee agrees to make such rearrangements or replacements of Licensee's Facilities as are reasonably requested by VERIZON or other attachers or occupants to accommodate the attachment or placement of the facilities of VERIZON or other attachers or occupants. If the rearrangement or replacement is required as a result of an additional attachment or the

modification of an existing attachment sought by persons other than Licensee, including VERIZON, then, subject to Section 9.4, above, to the extent such persons are required by Applicable Law to reimburse Licensee for the costs of rearranging or replacing Licensee's Facilities, Licensee may request such persons to reimburse Licensee for the costs actually incurred by Licensee to rearrange or replace Licensee's Facilities. VERIZON shall not be obligated to reimburse Licensee for any costs incurred by Licensee for a rearrangement or replacement of Licensee's Facilities to the extent such rearrangement or replacement was sought by persons other than VERIZON.

- 9.7 VERIZON shall not attach, nor authorize other entities to attach, facilities on, within or overlashed to existing Licensee Facilities without Licensee's prior written consent.
- 9.8 Licensee, at its expense, will remove its Facilities from Poles, and Rights of Way within 60 days after:
- a) Termination of the license covering such Pole Attachment or Right of Way occupancy, in accordance with the terms of this Agreement; or
 - b) The date Licensee replaces its existing Facilities on a Pole with the placement of substitute Facilities on the same Pole or another Pole.
- 9.9 Licensee shall remain liable for and pay to VERIZON all fees and charges pursuant to provisions of this Agreement for any Attachment to a Pole or occupancy of a Right of Way that continues after the termination of the license for such Attachment or occupancy.
- 9.10 If Licensee fails to remove its Facilities within the specified period, VERIZON shall have the right to remove such facilities at Licensee's expense and without any liability on the part of VERIZON for damage to such facilities.
- 9.11 When Licensee's Facilities are removed from a Pole or Right of Way, no reattachment to the same Pole, or occupancy of such Rights of Way, shall be made until:
- a) Licensee has first complied with all of the provisions of this Agreement as though no such Pole Attachment or Right of Way occupancy had previously been made, and
 - b) All outstanding charges due VERIZON for such previous Attachment and/or occupancy have been paid in full.
- 9.12 Licensee shall advise VERIZON in writing as to the date on which the removal of its Facilities from each Pole or Right of Way has been completed.

ARTICLE X

TERMINATION OF LICENSES

- 10.1 Any license issued under this Agreement shall automatically terminate when Licensee ceases to have authority to construct and operate its Facilities on public or private property at the location of the particular Pole or Right of Way covered by the license.
- 10.2 Licensee may at any time terminate its license with respect to the Attachment to a Pole, or occupancy of a Right of Way, and remove its Facilities, by giving VERIZON written notice of such termination (Appendix II, Form C). Once Licensee's Facilities have been removed, they shall not be reattached to such Pole, or occupy the same portion of such Right of Way, until Licensee has complied with all provisions of this Agreement as though no previous license had been issued.
- 10.3 In addition to any other right to terminate Licensee's license to occupy a Pole or Right of Way that VERIZON may have under this Agreement, upon sixty (60) days advance written notice, VERIZON may terminate Licensee's license to occupy any VERIZON Pole or Right of Way, if VERIZON removes, abandons, terminates VERIZON's use of or right to use, or loses VERIZON's right to grant Licensee a right to attach to or occupy, such Pole or Right of Way.

ARTICLE XI

INSPECTION OF LICENSEE'S FACILITIES

- 11.1 The parties understand that post-installation inspections shall be performed by VERIZON at the sole expense of Licensee to ensure that Licensee's attachments, installations or other work has been performed in accordance with all applicable requirements.
- 11.2 Thereafter, VERIZON reserves the right to make reasonable periodic inspections at its own expense of any part of Licensee's Facilities attached to VERIZON's Poles, or occupying VERIZON's Rights of Way, provided that Licensee shall bear such expenses in the event more frequent inspections are required due to material non-conformances by Licensee that are found by VERIZON.
- 11.3 VERIZON will give Licensee advance written notice of such inspections, except in those instances where VERIZON determines that safety considerations justify the need for such an inspection without the delay of waiting until a written notice has been forwarded to Licensee.

- 11.4 The making of inspections or the failure to do so shall not operate to impose upon VERIZON any liability of any kind whatsoever nor relieve Licensee of any responsibility, obligations or liability assumed under this Agreement.

ARTICLE XII

UNAUTHORIZED ATTACHMENT, UTILIZATION, OR OCCUPANCY

- 12.1 If any of Licensee's Facilities shall be found attached to Poles, or occupying Right of Way, for which no license has been granted, VERIZON without prejudice to its other rights or remedies under this Agreement or at law or in equity may require Licensee to submit an application pursuant to Article VII of this Agreement within fifteen (15) days after receipt of written notification from VERIZON of the unauthorized Attachment or occupancy. If such application is not received by VERIZON within the specified time period, Licensee may be required to remove its unauthorized Attachment or occupancy, or VERIZON may, at VERIZON's option, remove Licensee's Facilities at Licensee's sole expense and risk. In addition, Licensee shall pay any unauthorized Attachment or occupancy charge as specified in Appendix I.
- 12.2 No act or failure to act by VERIZON with regard to said unlicensed use shall be deemed as a ratification of the unlicensed use; and if any license should be subsequently issued, said license shall not operate retroactively or constitute a waiver by VERIZON of any of its rights or privileges under this Agreement or otherwise; provided, however, that Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement in regard to said unauthorized use from its inception.

ARTICLE XIII

LIABILITY AND DAMAGES

- 13.1 VERIZON shall exercise reasonable care to avoid damaging the Facilities of Licensee attached to Poles, or occupying Rights of Way, under this Agreement, and shall make an immediate report to Licensee of the occurrence of any such damage caused by VERIZON's employees, agents or contractors. VERIZON agrees to reimburse Licensee for all reasonable costs incurred by Licensee for the physical repair of damage to such Licensee Facilities proximately caused by the negligence of VERIZON; however, VERIZON shall not be liable to Licensee for any loss of Licensee revenue or profits resulting from any interruption of Licensee's service caused by such damage or interference with the operation of Licensee's Facilities caused by such damage.
- 13.2 Licensee shall exercise reasonable care to avoid damaging the facilities of VERIZON and of others attached to Poles, or occupying Rights of Way, and shall make an immediate

report of damage to the owner of facilities so damaged and Licensee assumes all responsibility for any and all direct loss from damage caused by Licensee's employees, agents or contractors; however, Licensee shall not be liable to VERIZON for any loss of VERIZON revenue or profits resulting from any interruption of VERIZON's service caused by such damage or interference with the operation of VERIZON's Facilities caused by such damage.

- 13.3 Licensee shall indemnify, protect and save harmless VERIZON and other authorized users of Poles or Rights of Way from any and all damages and costs, including reasonable attorneys' fees, incurred by VERIZON as a result of acts by the Licensee or their employees, agents or contractors, including, but not limited to the cost of relocating Poles resulting from a loss of Right of Way or property owner consents and/or the cost of defending those rights and/or consents.
- 13.4 Licensee shall indemnify, protect and save harmless VERIZON and other authorized users of Poles and Rights of Way from and against any and all claims, demands, causes of actions and costs, including reasonable attorneys' fees, for damages to property and injury or death to Licensee's employees or other persons, including but not limited to payments under any Workmen's Compensation law or under any plan for employee's disability and death benefits, which may arise out of or be caused by the erection, maintenance, presence, use or removal of Licensee's Facilities or by their proximity to the facilities of all parties attached to a Pole or placed in Rights of Way, or by any act or omission of the Licensee's employees, agents or contractors on or in the vicinity of VERIZON's Poles or Rights of Way. The foregoing indemnity, hold harmless and defense provisions shall not apply to the extent, if at all, they would violate, or be void under, applicable state law.
- 13.5 The Licensee shall indemnify, protect and save harmless VERIZON and other authorized users of Poles and Rights of Way from any and all claims, demands, causes of action and costs, including reasonable attorneys' fees, which arise directly or indirectly from the construction and operation of Licensee's Facilities, including but not limited to taxes, special charges by others, claims and demands for damages or loss from infringement of copyright, for libel and slander, for unauthorized use of television or radio broadcast programs and other program material, and from and against all claims, demands and costs, including attorney's fees, for infringement of patents with respect to the manufacture, use and operation of Licensee's Facilities in combination with Poles, Rights of Way or otherwise.
- 13.6 VERIZON and Licensee shall promptly advise each other of all claims relating to damage to property or injury to or death of persons, arising or alleged to have arisen in any manner by the erection, maintenance, repair, replacement, presence, use or removal of facilities governed by this License Agreement. Copies of all accident reports and statements made to a party's insurer by the other party or affected entity shall be furnished promptly to the insured party.
- 13.7 Unless expressly provided for otherwise herein, neither party shall be liable to the other

for any special, consequential or other indirect damages arising under this Agreement.

ARTICLE XIV

INSURANCE

- 14.1 Licensee shall, at its sole cost and expense, procure, maintain, pay for and keep in force insurance, including endorsements insuring the indemnification provisions of this Agreement issued by an insurance carrier authorized to conduct business in Licensee's operating region and having an A.M. Best rating of not less than A-VII, to protect VERIZON and other authorized user of transport structures from and against all claims, demands, causes of actions, judgments, costs, including attorneys' fees, expenses and liabilities of every kind and nature which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage as covered in this Agreement including Article XIV preceding.
- 14.2 The amounts of such insurance shall be as follows:
- a) Comprehensive General Liability coverage on an occurrence basis in an amount of \$2 million combined single limit for bodily injury and property damage, with a policy aggregate of \$4 million. Said agreement shall include the contractual, independent contractors products/completion operations, broad form property and personal injury endorsements.
 - b) All Risk Property coverage on a full replacement cost basis insuring all of the Licensee's real and personal property situated on or within VERIZON's location(s). The Licensee may also elect to purchase Transmission and Distribution insurance and/or contingent business interruption insurance.
 - c) Statutory Worker's Compensation coverage
Contractual Liability coverage
Automobile Liability coverage
Employer's Liability coverage in the amount of \$2 million dollars
- 14.3 Licensee shall name VERIZON as an additional insured and shall provide certificates by each company insuring Licensee to the effect that it has insured Licensee for all liabilities of Licensee covered by this Agreement and that it will not cancel or change any such policy of insurance issued to Licensee except after 60 days written notice to VERIZON.
- 14.4 All insurance required in accordance with this Section 15 must be effective before VERIZON will authorize attachment to a Pole, or occupancy of Rights of Way, and shall remain in force until such Licensee's Facilities have been removed from all such Poles or

Rights of Way. In the event that the Licensee shall fail to maintain the required insurance coverage, VERIZON may pay any premium thereon falling due, and the Licensee shall forthwith reimburse VERIZON for any such premium paid.

- 14.5 All policies purchased by Licensee shall be deemed to be primary and not contributing to or in excess of any similar coverage purchased by VERIZON.
- 14.6 Notwithstanding the foregoing, if Licensee's net worth exceeds \$50,000,000, Licensee may elect to self-insure in lieu of obtaining any of the insurance required by this Section. If Licensee self-insures, Licensee shall furnish to VERIZON, and keep current, evidence of such net worth. If Licensee self-insures, Licensee shall release, indemnify, defend, and hold VERIZON harmless against all losses, costs (including reasonable attorney's fees), damages, and liabilities resulting from claims that would otherwise have been covered by the foregoing insurance requirements (including without limitation claims alleging negligence or breach of contract).

ARTICLE XV

AUTHORIZATION NOT EXCLUSIVE

Nothing contained in this Agreement shall be construed as a grant of any exclusive authorization, right or privilege to Licensee. Subject to the rights granted Licensee under the provisions of this Agreement, VERIZON shall have the right to grant, renew and extend rights and privileges in a nondiscriminatory manner to others not parties to this Agreement, by contract or otherwise, to use any Pole or Right of Way covered by this Agreement.

ARTICLE XVI

ASSIGNMENT OF RIGHTS

Licensee shall not assign or transfer any license or any authorization granted under this Agreement, and such licenses and authorizations shall not inure to the benefit of Licensee's successors or assigns, without the prior written consent of VERIZON. VERIZON shall not unreasonably withhold such consent. In the event such consent or consents are granted by VERIZON, then the provisions of this Agreement shall apply to and bind the successors and assigns of Licensee. Notwithstanding the foregoing, Licensee may assign this Agreement without VERIZON's consent to an entity controlling, controlled by, or under common control with Licensee, or to an entity acquiring all or substantially all of Licensee's assets, upon prior written notice to VERIZON provided that the assignee is capable of assuming all obligations of Licensee hereunder, and further provided that nothing herein shall relieve Licensee of any of its obligations hereunder without VERIZON's prior written consent.

ARTICLE XVII**FAILURE TO ENFORCE**

Failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated shall not constitute a general waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect.

ARTICLE XVIII**TERMINATION OF AGREEMENT**

- 18.1 Subject to provisions of Article XVII hereof, should Licensee cease to use its Facilities in or through the area covered by this Agreement on other than a demonstrably temporary basis not to exceed 6 months, then all of Licensee's rights, privileges and authorizations under this Agreement, including all licenses issued hereunder, shall automatically terminate as of the date following the final day that such Facilities are used.
- 18.2 Subject to Section 18.3, below, VERIZON shall have the right to terminate this entire Agreement or any license issued hereunder whenever Licensee is in default of any term of this Agreement, including, but not limited to, the following conditions:
- a) If Licensee's Facilities are used or maintained in violation of any law or in aid of any unlawful act or undertaking; or
 - b) If Licensee attaches to any Poles or occupies any Rights of Way without having first been issued a license therefor; or
 - c) If any authorization which may be required of Licensee by any governmental or private authority for the construction, operation, and maintenance of Licensee's Facilities is denied or revoked; or
 - d) If the insurance carrier shall at any time notify VERIZON or Licensee that Licensee's policy or policies of insurance required under this Agreement will be canceled or changed, or if VERIZON reasonably determines that the requirements of this Agreement with regard to Licensee's policy or policies of insurance will no longer be satisfied, this Agreement shall terminate upon the effective date of such cancellation or change.
- 18.3 VERIZON will promptly notify Licensee in writing of any condition(s) applicable to Section 18.2, above. Licensee shall take immediate corrective action to eliminate any

such conditions(s) and shall confirm in writing to VERIZON within 30 days following receipt of such written notice that the cited condition(s) has ceased or been corrected. If Licensee fails to discontinue or correct such condition(s) or fails to give the required confirmation, VERIZON may immediately terminate this Agreement.

- 18.4 In addition to any other obligation that Licensee may have under this Agreement to remove its Facilities from VERIZON's Poles or Rights of Way (including, but not limited to, under Section 9.8, above), in the event of termination of this Agreement or any of Licensee's rights, privileges or authorizations hereunder, Licensee shall remove its Facilities from VERIZON's Poles and Rights of Way within 6 months from the date of termination; provided, however, that Licensee's obligations under this Agreement with regard to such facilities shall continue following termination of this Agreement, including, but not limited to, Licensee's obligation to pay all fees and charges accruing pursuant to terms of this Agreement for Licensee Facilities attached to Poles or occupying Rights of Way.
- 18.5 If Licensee does not remove its Facilities from VERIZON's Poles and Rights of Way within the applicable time periods specified in this Agreement, VERIZON shall have the right to remove them at the expense of Licensee and without any liability on the part of VERIZON to Licensee therefor.
- 18.6 In the event any of the arrangements, fees and charges provided for under this Agreement are offered under a tariff filed by VERIZON and in effect with a regulatory commission, this Agreement with respect to those arrangements, fees and charges shall be suspended and shall be superseded by said tariff. Said suspension shall become effective on the day when said tariff becomes effective, and shall remain in effect for the time that the tariff remains in effect.

ARTICLE XIX

TERM OF AGREEMENT

- 19.1 This Agreement shall continue in effect until terminated by either party in accordance with the provisions of this Agreement, or by Licensee upon six (6) months prior written notice thereof.
- 19.2 Termination of this Agreement or any licenses issued hereunder shall not affect Licensee's liabilities and obligations incurred hereunder prior to the effective date of such termination.
- 19.3 This Agreement shall be deemed to have been executed in the Commonwealth of Pennsylvania and the parties hereto agree that the terms and performance hereof shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania unless otherwise provided by Federal law.

ARTICLE XX

NOTICES

All written notices required under this Agreement shall be given by posting the same in first class mail to Licensee as follows:

| | |
|------------------|---|
| (Name) | Lilia Moldavsky |
| (Title) | Project Manager |
| (Company) | Exelon Communications 401 City Line Avenue, Suite 900 Bala Cynwyd, PA 19004 |

and to VERIZON as follows:

| | |
|------------------|--|
| (Name) | Andrea J. Stamps |
| (Title) | Specialist - Pole and Conduit Administration |
| (Company) | Verizon Pennsylvania Inc. 900 Race Street - 6 th Floor Philadelphia, PA 19107 |

or to such address as the parties hereto may from time to time specify in writing.

ARTICLE XXI

SUPERSEDURE OF PREVIOUS AGREEMENT(S)

This Agreement supersedes all previous agreements between Licensee and VERIZON for placement and maintenance of Licensee's Facilities on VERIZON poles or Rights of Way within the geographical area covered by this Agreement, and there are no other provisions, terms or conditions to this Agreement except as expressed herein. All currently effective licenses heretofore granted pursuant to such previous agreements shall be subject to the terms and conditions of this Agreement.

ARTICLE XXII

HEADINGS

The headings used for the Articles of this Agreement are for convenience of reference only and shall not be deemed to be a part of or to affect the meaning or interpretation of this Agreement.

CONFIDENTIAL

ARTICLE XXIII

CONFLICTS

This Agreement, including all exhibits and appendices hereto, shall be subject to the Communications Act of 1934, as amended, and any related rules and regulations, and in the event of any conflicting provisions of this Agreement and such laws, rules or regulations, such laws, rules and regulations shall govern.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective on the 1 day of April 2003 in duplicate.
~~Jan 2004~~

WITNESS

[Signature]
Vice President

EXFLON COMMUNICATIONS, INC., LLC

By: [Signature]

Title: Vice President

Date: 12/25/03

WITNESS

[Signature]
Manager - outside
Plant Eng.

VERIZON PENNSYLVANIA INC.

By: [Signature]

Title: Director-Outside Plant Engineering

Date: 1/7/04

APPENDIX I**SCHEDULE OF FEES AND CHARGES**

THIS APPENDIX I contains the fees and charges governing the use of VERIZON's Poles and Rights of Way by Licensee's Facilities.

1. Attachment, Utilization, and Occupancy Fees

1.1 General

- a) Attachment, utilization, and occupancy fees commence on the date set forth in Section 7.5 of the Agreement. Such fees cease as of the final day of the calendar month in which the Attachment or occupancy is physically removed or is discontinued; provided, that if an Attachment or occupancy is terminated as a result of a violation of this Agreement by Licensee, charges shall continue until the end of semi-annual period in which the Attachment or occupancy is physically removed or discontinued.
- b) A one month minimum charge is applicable for all Attachment and occupancy accommodations.
- c) Fees shall be payable semi-annually in advance on the first day of January and July.
- d) The total Attachment fees due hereunder shall be based upon the number of Poles for which licenses have been issued before the first day of December and the first day of June each year. Charges shall apply for Attachment to a Pole for which a license has been issued even if Licensee has not actually made an Attachment to the Pole. Each semi-annual payment shall include a proration of the monthly Attachment applicable for Attachments initially authorized by VERIZON during the preceding six (6) month period.

2. Fees2.1 Annual Fee

- | | | |
|----|---|---------|
| a) | Pole--Horizontal Attachment Per Pole Attachment | \$ 3.81 |
| b) | Pole--Vertical Attachment Per Pole Attachment, Per vertical foot of occupancy | \$ 3.81 |
| c) | Right of Way (determined on a case by case basis as mutually agreed by the Parties) | |

2.2 Other Charges

- | | | |
|----|-------------------------------|----------|
| a) | Assignment of Agreement | \$120.00 |
| b) | Request for Additional Copies | |
| | Initial Fee | \$ 5.00 |
| | Per Page | \$ 1.00 |

Computation

Charges for all work performed by VERIZON or by VERIZON's contractor or authorized representative in connection with the furnishing of Pole and Right of Way accommodations covered by this Agreement shall be based upon the full cost to VERIZON for performance of such work, in accordance with VERIZON's regular and customary methods for determining such costs and Applicable Law. Such charges will apply for, but not be limited to, Prelicense Survey; Make-Ready Work; inspection of Licensee's Facilities; removal of Licensee's Facilities, where applicable.

- 2.3 In the event that it is determined that Licensee has made an Attachment to any Pole or has occupied Right of Way of VERIZON for which a License has not been executed, Licensee shall be obliged to a) apply for such License immediately; and b) pay to VERIZON fees for said Attachment or Right of Way for the entire period of time which can be reasonably established as the date of Licensee's Attachment, but in no case less than one year prior to date of discovery. In addition to back-billing the Licensee for the unauthorized attachment(s), an assessment of \$50.00, representing liquidated damages, shall be imposed by VERIZON upon the Licensee for each unauthorized attachment.

2.4 Payment Date

Payment of fees and charges shall be due thirty (30) days after issuance of VERIZON's bill. Failure to pay all fees and charges within thirty (30) days after issuance of the bill therefor shall constitute a default of this Agreement, and in addition shall result in a 1 1/2% per month late charge until paid in full.

APPENDIX H**ADMINISTRATIVE FORMS AND NOTICES**

| | <u>FORM NUMBER</u> | <u>PAGE</u> |
|--|---------------------------|--------------------|
| Application – Survey Form | A-1 | 5 |
| Applications – Survey Form Pole Details | A-2 | 6 |
| Permit/License for Pole Attachments Rearrangements Required | B-1 | 7 |
| Permit/License for Pole Attachments Rearrangements Required (Subsequent Pages) | B-1 | 8 |
| Permit/License for Pole Attachments No Rearrangements Required | B-2 | 9 |
| Permit/License for Pole Attachments No Rearrangements Required (Subsequent Pages) | B-2 | 10 |
| Notification of Removal by Licensee | C | 11 |



Form A-1
Application - Survey Form

Subject to the terms of our Agreement dated _____, 20____, application is hereby made for a Permit/ License to make attachments to poles in the following locations:

Location: _____
(City, Borough or Township, County and State)

Attached, in connection with this application are detailed sheets showing all poles presently supporting Verizon facilities owned either by Verizon or others, to which attachment of facilities are planned.

Ownership of these poles is indicated to the best of our ability in order to assist Verizon to properly grant permits or licenses for their structures consistent with this application.

All clearances, guying and work- required data, as indicated in the attached survey, are based upon the Manual of Construction Procedures.

Company Name

Account Number _____
(required)

Company Type: _____
CATV Telecommunications

By _____

Title _____

Total Verizon Poles _____

CONFIDENTIAL



VERIZON PENNSYLVANIA INC.

Form B-1
(Rev. 08/00)

THIS PERMIT/LICENSE MUST BE CARRIED WHILE ATTACHING TO THE POLES REFLECTED ON THIS LICENSE

ACCT. #
MUNI. #
I.D. #
R.W.O #

APP. #

Permit/License For Pole Attachments
Rearrangement Work Required

Date _____

Company Name

Location: _____
(City, Borough or Township, County and State)

Subject to the terms of our Agreement , a Permit/License for the poles shown on the attached schedule will be granted upon completion of the changes and rearrangements indicated thereon. Such changes and rearrangements to be made at your expense now estimated at ____ Engineering Costs estimated at _____.

VERIZON PENNSYLVANIA INC.

By _____

Title:

You are authorized to proceed with the foregoing changes and rearrangements.

COMPANY: _____

By _____

Title _____

Date _____

Rearrangements completed and Permit/License granted _____, 20____.

VERIZON PENNSYLVANIA INC.

Permit/License No ____
Total Poles _____

By _____
Title _____



Form B-1
Permit/License For Pole Attachments
Rearrangement Work Required

COMPANY NAME _____

LOCATION: _____

VERIZON POLE NUMBER

POWER NUMBER

LOCATION

PERMIT/LICENSE NO.
PAGE 2

Form B2
(Rev. 08/00)



APP# ___ ACCT# ___ MUNI# ___ I.D.#

Permit/License For Pole Attachments
No Rearrangement Work Required

THIS PERMIT MUST BE CARRIED WHILE ATTACHING TO THE POLE(S) REFLECTED ON THIS LICENSE

Date _____

(Name of Company)

Subject to the terms of our Agreement dated _____ a License is granted to make attachments to the following poles:

Location: _____
(City, Borough, or Township, County and State)

| | |
|---------------------------|--|
| VERIZON | POWER |
| <u>POLE NUMBER</u> | <u>POLE NUMBER</u> <u>LOCATION</u> |

VERIZON PENNSYLVANIA INC

Permit/License No.
Total Poles
Page 1

By _____
Title **SPECIALIST**



Form B2
(Rev. 08/00)

APP# 6748 ACCT# 4085 MUNI# 0438 I.D.#

**Permit/License For Pole Attachments
No Rearrangement Work Required**

(Name of Company)

Location: _____
(City, Borough, or Township, County and State)

**VERIZON
POLE NUMBER**

**POWER
POLE NUMBER LOCATION**

Permit/License No. _____



FORM C
Notification of Removal by Licensee

_____, 20____

Company Name

In accordance with the terms of our Agreement dated _____, kindly cancel from your records the following poles covered by Permit/License Number _____.

Location: _____
(City Borough or Township, County and State)

POLE NUMBER

POLE LOCATION

Company Name _____

By _____

Title _____

Notice Acknowledged _____, 20____

VERIZON PENNSYLVANIA INC.

Notice No. _____
Total Poles Discontinued _____
Sheet 1 of _____

By _____
Title _____

Exhibit F

Assignment of Verizon License Agreement

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT is dated as of _____, 2004 (this "Assignment") and is by and between Exelon Communications Company, LLC, a Pennsylvania limited liability company ("Assignor"), and PECO TelCove, a Pennsylvania partnership ("Assignee").

BACKGROUND

A. Assignor has entered into a License Agreement, dated December 30, 2003, with Verizon Pennsylvania Inc. (the "Agreement").

B. Assignor desires to transfer and assign to Assignee, and Assignee desires to assume, all of Assignor's interest in the Agreement.

C. Verizon Pennsylvania Inc. has received notice of this assumption as required under the Agreement.

NOW, THEREFORE, in consideration of the premises and mutual agreements contained herein, and intending to be legally bound, Assignor and Assignee agree as follows:

1. Assignment and Assumption. Assignor hereby assigns and transfers to Assignee, and Assignee hereby assumes and agrees to pay, perform and discharge, all of Assignor's right, title and interest in and to the Agreement.

2. Governing Law. This Assignment shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania.

3. Binding Effect. This Assignment shall be binding upon, and shall inure to the benefit of, the successors and assigns of Assignor and Assignee.

4. Counterparts. This Assignment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Assignment by facsimile transmission shall be effective as delivery of a manually executed counterpart of this Assignment.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Assignment has been duly executed by each of Assignor and Assignee as of the date first above written.

ASSIGNOR:

EXELON COMMUNICATIONS
COMPANY, LLC

By: _____
Name:
Title:

ASSIGNEE:

PECO TELCOVE

By: _____
Name:
Title:

CONFIDENTIAL

Exhibit G

Bill of Sale with respect to the Purchase Fibers

BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT (the "**Bill of Sale**") is made and entered into as of this ___ day of _____, 2004 by and between PECO TELCOVE, a partnership organized and existing under the laws of Pennsylvania, and EXELON COMMUNICATIONS COMPANY, LLC, a limited liability company organized and existing under the laws of Delaware ("Exelon").

Unless otherwise defined herein, capitalized terms are used herein as defined in the Agreement, dated as of _____, 2004 (the "**Agreement**"), by and among ADELPHIA BUSINESS SOLUTIONS, INC., a corporation organized and existing under the laws of Delaware ("ABIZ"), ABIZ-PA, PHT HOLDINGS, LLC, a limited liability company organized and existing under the laws of Delaware ("PHT"), Exelon, PECO TelCove, EXELON ENTERPRISES COMPANY, LLC, a limited liability company organized and existing under the laws of Pennsylvania ("Exelon Enterprises") and PECO ENERGY COMPANY, a corporation organized and existing under the laws of Pennsylvania ("PECO").

BACKGROUND

Pursuant to the Agreement, Exelon has agreed to grant, sell, convey, assign, transfer and deliver to PECO TelCove all right, title and interest of such Seller in and to the Purchase Fibers, and the Buyer has agreed to purchase, acquire, take assignment and assume and thereafter pay, discharge and perform as and when due all liabilities relating thereto.

AGREEMENT

NOW, THEREFORE, the parties hereto, intending to be legally bound hereby, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the mutual covenants herein and in the Agreement, and subject to the terms and conditions of the Agreement, hereby agree as follows:

1. Exelon hereby grants, sells, conveys, assigns, transfers, delivers, sets over to, and vests in PECO TelCove and its successors and assigns, all of Exelon's right, title and interest, legal and equitable, in and to the Purchase Fibers, to have and to hold the same, including the appurtenances thereof, unto PECO TelCove and its successors and assigns, forever, to its own proper use and behalf.

2. PECO TelCove hereby assumes and shall hereafter pay, discharge and perform as and when due all liabilities relating to the Purchase Fibers.

3. Nothing in this instrument, expressed or implied, is intended or shall be construed to confer upon or give to any person other than Exelon and PECO TelCove, their respective successors, and their respective permitted assigns to whom all or part of the rights and obligations under the Agreement are assigned in accordance with the terms and conditions of the Agreement, any remedy or claim under or by reason of this instrument or any term, covenant or condition hereof, and all of the terms, covenants, conditions, promises and agreements contained in this instrument shall be for the sole and exclusive benefit of each of Exelon and PECO TelCove each of their respective successors and permitted assigns as aforesaid.

4. Neither the making nor the acceptance of this instrument shall enlarge, restrict or otherwise modify the terms of the Agreement or constitute a waiver or release by Exelon or PECO TelCove of any duties or obligations imposed upon either of them by the terms of the Agreement, including, without limitation, the representations and warranties and other provisions that the Agreement provides shall survive the Closing Date and the limitations on survival and remedies set forth in the Agreement.

5. This instrument is being executed by each of Exelon and PECO TelCove and their successors and assigns, for the use and purposes above set forth and referred to, as of the date hereof.

6. This Bill of Sale shall be governed by and construed in accordance with the internal laws of the Commonwealth of Pennsylvania, without regard to any choice of law rules.

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

8. This instrument is being delivered pursuant to and in accordance with the Agreement. The Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided in the Agreement. In the event of any conflict between the terms of the Agreement and the terms of this instrument, the terms of the Agreement shall govern. This instrument, together with the Agreement (including the other documents referred to in the Agreement), sets forth the entire understanding of Exelon and PECO TelCove with respect to the transactions contemplated hereby and supersedes all prior agreements or understandings among the parties hereto regarding those matters.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned have caused this Bill of Sale, Assignment and Assumption Agreement to be duly executed on the date first above written.

"PECO TelCove"

PECO TELCOVE

By _____

Print Name: _____

Print Title: _____

"Exelon"

EXELON COMMUNICATIONS COMPANY,
LLC

By _____,
its Manager

By _____

Print Name: _____

Print Title: _____

Exhibit H

Assignment of Exelon's rights under the Sunesys Agreement

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT is dated as of _____, 2004 (this "Assignment") and is by and between Exelon Communications Company, LLC, a Pennsylvania limited liability company ("Assignor"), and PECO TelCove, a Pennsylvania partnership ("Assignee").

BACKGROUND

A. Assignor has entered into a Dark Fiber License Agreement, dated as of January 1, 2000 and amended as of March 26, 2004, with Sunesys, Inc. (the "Agreement").

B. Assignor desires to transfer and assign to Assignee, and Assignee desires to assume, all of Assignor's interest in the Agreement.

NOW, THEREFORE, in consideration of the premises and mutual agreements contained herein, and intending to be legally bound, Assignor and Assignee agree as follows:

1. Assignment and Assumption. Assignor hereby assigns and transfers to Assignee, and Assignee hereby assumes and agrees to pay, perform and discharge, all of Assignor's right, title and interest in and to the Agreement.
2. Governing Law. This Assignment shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania.
3. Binding Effect. This Assignment shall be binding upon, and shall inure to the benefit of, the successors and assigns of Assignor and Assignee.
4. Counterparts. This Assignment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Assignment by facsimile transmission shall be effective as delivery of a manually executed counterpart of this Assignment.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Assignment has been duly executed by each of Assignor and Assignee as of the date first above written.

ASSIGNOR:

EXELON COMMUNICATIONS
COMPANY, LLC

By: _____

Name:

Title:

ASSIGNEE:

PECO TELCOVE

By: _____

Name:

Title:

CONFIDENTIAL

Exhibit I

Assignment of Exelon's rights under the Duct Agreement

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT is dated as of _____, 2004 (this "Assignment") and is by and between Exelon Communications Company, LLC, a Pennsylvania limited liability company ("Assignor"), and PECO TelCove, a Pennsylvania partnership ("Assignee").

BACKGROUND

A. Assignor has entered into an Inner Duct Occupation Agreement, dated as of January 1, 2001, with PECO Energy Company (the "Agreement").

B. Assignor desires to transfer and assign to Assignee, and Assignee desires to assume, all of Assignor's interest in the Agreement.

NOW, THEREFORE, in consideration of the premises and mutual agreements contained herein, and intending to be legally bound, Assignor and Assignee agree as follows:

1. Assignment and Assumption. Assignor hereby assigns and transfers to Assignee, and Assignee hereby assumes and agrees to pay, perform and discharge, all of Assignor's right, title and interest in and to the Agreement.
2. Governing Law. This Assignment shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania.
3. Binding Effect. This Assignment shall be binding upon, and shall inure to the benefit of, the successors and assigns of Assignor and Assignee.
4. Counterparts. This Assignment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Assignment by facsimile transmission shall be effective as delivery of a manually executed counterpart of this Assignment.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Assignment has been duly executed by each of Assignor and Assignee as of the date first above written.

ASSIGNOR:

EXELON COMMUNICATIONS
COMPANY, LLC

By: _____

Name:

Title:

ASSIGNEE:

PECO TELCOVE

By: _____

Name:

Title:

CONFIDENTIAL

Exhibit J

Assignment of Exelon's rights under the PECO Pole Attachment Agreement

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT is dated as of _____, 2004 (this "Assignment") and is by and between Exelon Communications Company, LLC, a Pennsylvania limited liability company ("Assignor"), and PECO TelCove, a Pennsylvania partnership ("Assignee").

BACKGROUND

- A. Assignor has entered into a Pole Attachment Agreement, dated as of January 1, 2001, with PECO Energy Company (the "Agreement").
- B. Assignor desires to transfer and assign to Assignee, and Assignee desires to assume, all of Assignor's interest in the Agreement.

NOW, THEREFORE, in consideration of the premises and mutual agreements contained herein, and intending to be legally bound, Assignor and Assignee agree as follows:

1. Assignment and Assumption. Assignor hereby assigns and transfers to Assignee, and Assignee hereby assumes and agrees to pay, perform and discharge, all of Assignor's right, title and interest in and to the Agreement. Provided, however, that pursuant to Section 5.4 of the Settlement and Purchase Agreement dated as of _____ among Adelpia Business Solutions, Inc., TelCove Holdings of Pennsylvania, Inc., Adelpia Business Solutions of Pennsylvania, Inc., PHT Holdings, LLC, Exelon Communications Company, LLC, PECO TelCove, Exelon Enterprises Company, LLC and PECO Energy Company the rental rate in the Agreement shall be modified to be \$31.58 per pole per annum.
2. Governing Law. This Assignment shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania.
3. Binding Effect. This Assignment shall be binding upon, and shall inure to the benefit of, the successors and assigns of Assignor and Assignee.
4. Counterparts. This Assignment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Assignment by facsimile transmission shall be effective as delivery of a manually executed counterpart of this Assignment.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Assignment has been duly executed by each of Assignor and Assignee as of the date first above written.

ASSIGNOR:

EXELON COMMUNICATIONS
COMPANY, LLC

By: _____

Name:

Title:

ASSIGNEE:

PECO TELCOVE

By: _____

Name:

Title:

CONFIDENTIAL

Schedule I

Schedule I

Fiber Documentation

1. Fiber Optic Quad Maps – Map Numbers:

| | | | |
|--------|--------|--------|--------|
| 13AB56 | 22GH56 | 26EF56 | 33AB78 |
| 13CD34 | 23AB56 | 26EF78 | 33CD12 |
| 13CD56 | 23AB78 | 26GH34 | 33CD56 |
| 13EF34 | 23CD56 | 26GH56 | 33CD78 |
| 13EF56 | 23CD78 | 26GH78 | 33EF34 |
| 13EF78 | 23EF56 | 30AB12 | 33EF56 |
| 13GH34 | 23EF78 | 30AB34 | 33EF78 |
| 13GH56 | 23GH34 | 30AB56 | 33GH12 |
| 13GH78 | 23GH56 | 30AB78 | 33GH34 |
| 14EF12 | 23GH78 | 30CD12 | 33GH56 |
| 14GH12 | 24AB12 | 30CD34 | 33GH78 |
| 15CD56 | 24AB34 | 30CD78 | 34AB56 |
| 15CD78 | 24AB78 | 30EF12 | 34AB78 |
| 15EF56 | 24CD34 | 30EF78 | 34CD56 |
| 15EF78 | 24CD56 | 30GH12 | 34EF12 |
| 15GH56 | 24CD78 | 31AB12 | 34EF56 |
| 15GH78 | 24EF34 | 31AB34 | 34EF78 |
| 16AB34 | 24EF56 | 31AB56 | 34GH12 |
| 16CD34 | 24EF78 | 31AB78 | 34GH34 |
| 16EF34 | 24GH12 | 31CD12 | 34GH56 |
| 16EF56 | 24GH34 | 31CD34 | 38AB12 |
| 16GH12 | 24GH56 | 31CD56 | 38AB34 |
| 16GH34 | 24GH78 | 31CD78 | 38AB78 |
| 16GH56 | 25AB12 | 31EF12 | 38CD12 |
| 17GH34 | 25AB34 | 31EF34 | 38CD34 |
| 18GH12 | 25CD12 | 31EF56 | 38CD56 |
| 18GH34 | 25CD34 | 31EF78 | 38CD78 |
| 18gh56 | 25CD56 | 31GH12 | 38EF34 |
| 21AB34 | 25CD78 | 31GH34 | 38EF56 |
| 21AB56 | 25EF12 | 31GH56 | 38EF78 |
| 21AB78 | 25EF34 | 31GH78 | 38GH56 |
| 21CD34 | 25EF56 | 32AB12 | 38GH78 |
| 21CD78 | 25EF78 | 32AB34 | 39AB12 |
| 21EF34 | 25GH12 | 32AB56 | 39AB34 |
| 21EF56 | 25GH34 | 32CD78 | 39AB56 |
| 21EF78 | 25GH56 | 32EF12 | 39AB78 |
| 21GH78 | 25GH78 | 32EF34 | 39CD12 |
| 22AB12 | 26AB12 | 32EF78 | 39CD34 |
| 22CD12 | 26AB34 | 32GH12 | 39CD56 |
| 22CD34 | 26AB56 | 32GH34 | 39CD78 |
| 22EF12 | 26CD12 | 32GH56 | 39EF12 |
| 22EF34 | 26CD34 | 32GH78 | 39EF34 |
| 22GH12 | 26EF12 | 33AB12 | 39EF56 |
| 22GH34 | 26EF34 | 33AB56 | 39GH12 |

| | | | |
|--------|--------|--------|--------|
| 39GH34 | 42AB56 | 49CD78 | 55CD12 |
| 40AB12 | 42AB78 | 49EF34 | 55CD34 |
| 40AB34 | 42CD12 | 49EF56 | 55CD56 |
| 40AB56 | 42CD34 | 49EF78 | 55CD78 |
| 40AB78 | 42CD56 | 49GH34 | 55EF12 |
| 40CD12 | 42EF12 | 50AB12 | 55EF34 |
| 40CD34 | 42EF34 | 50AB34 | 55EF56 |
| 40EF12 | 42EF56 | 50AB56 | 55EF78 |
| 40EF34 | 42GH12 | 50AB78 | 56AB12 |
| 40EF56 | 42GH34 | 50CD12 | 56AB34 |
| 40EF78 | 43AB12 | 50CD34 | 56AB56 |
| 40GH34 | 46AB56 | 50CD56 | 56AB78 |
| 40GH56 | 46EF78 | 50CD78 | 56CD34 |
| 40GH78 | 46GH78 | 50EF12 | 56CD56 |
| 41AB12 | 47AB56 | 50EF34 | 56CD78 |
| 41AB34 | 47AB78 | 50EF56 | 56EF12 |
| 41AB56 | 47CD56 | 50EF78 | 56EF56 |
| 41AB78 | 47CD78 | 50GH12 | 56EF78 |
| 41CD12 | 47EF12 | 50GH34 | 56GH12 |
| 41CD34 | 47EF34 | 50GH56 | 56GH34 |
| 41CD56 | 47EF56 | 50GH78 | 56GH56 |
| 41CD78 | 47EF78 | 53AB78 | 56GH78 |
| 41EF12 | 47GH78 | 53CD78 | 57AB12 |
| 41EF34 | 48AB12 | 53EF78 | 57AB34 |
| 41EF56 | 48EF34 | 54AB78 | 57AB56 |
| 41EF78 | 48EF56 | 54EF34 | 57CD12 |
| 41GH12 | 48GH56 | 54EF56 | 57CD34 |
| 41GH34 | 48GH78 | 54EF78 | 57CD56 |
| 41GH56 | 49AB34 | 54GH12 | 57EF12 |
| 41GH78 | 49CD12 | 54GH34 | 61AB12 |
| 42AB12 | 49CD34 | 55AB12 | 89AB12 |
| 42AB34 | 49CD56 | 55AB78 | 89CD12 |

2. Fiber Optic System Schematics and Splice Diagrams - Drawing Descriptions & sheet numbers:

| Dgn No. | Sh No. | Description | Note |
|----------|--------|---|--|
| 25340001 | 1 | FO System HUB Internal Conn. | Byberry Hub |
| 25340002 | 2 | FO System HUB Internal Conn. | Warminster Hub |
| 25340003 | 3 | FO System HUB Internal Conn. | Plymouth Meeting HUB |
| 25340004 | 4 | FO System HUB Internal Conn. | Plymouth Meeting Hub (continuation from sheet 3) |
| 25340005 | 5 | FO System HUB Internal Conn. | West Chester Hub |
| 25340006 | 6 | FO System HUB Internal Conn. | Berwyn Hub |
| 25340007 | 7 | FO System HUB Internal Conn. | Berwyn Hub (continuation from sheet 6) |
| 253401S1 | 1 | FO Backbone at Commerce Transitway (16th & 18th Sts.) | |
| 25340401 | 1 | FO System Schematic & Splicing Dia. | Downtown-23rd & Market Sts. & 3020 Market CO |

| | | | |
|----------|----|-------------------------------------|--|
| 25340402 | 2 | FO System Schematic & Splicing Dia. | Downtown-24th & Walnut Sts. |
| 25340403 | 3 | FO System Schematic & Splicing Dia. | Downtown-23rd & South Sts. |
| 25340404 | 4 | FO System Schematic & Splicing Dia. | Downtown-Independance Mall |
| 25340405 | 5 | FO System Schematic & Splicing Dia. | Downtown-Willow Rd., 8th & Callowhill Sts. |
| 25340406 | 6 | FO System Schematic & Splicing Dia. | Renaissance loop |
| 25340407 | 7 | FO System Schematic & Splicing Dia. | 1st & Gulf Rd. |
| 25340408 | 8 | FO System Schematic & Splicing Dia. | West Chester - Middletown |
| 25340409 | 9 | FO System Schematic & Splicing Dia. | Pencoyd-Germantown & Coulter |
| 25340410 | 10 | FO System Schematic & Splicing Dia. | Trooper-Audubon |
| 25340411 | 11 | FO System Schematic & Splicing Dia. | Ridge Pike & Alanwood Rd. - Plymouth |
| 25340412 | 12 | FO System Schematic & Splicing Dia. | Warminster-Jarrett |
| 25340413 | 13 | FO System Schematic & Splicing Dia. | Newtown-Tullytown loops |
| 25340414 | 14 | FO System Schematic & Splicing Dia. | Exton - Paoli, Goshen |
| 25340415 | 15 | FO System Schematic & Splicing Dia. | Jacksonville & Street. Rds. |
| 25340416 | 16 | FO System Schematic & Splicing Dia. | Fort Washington-Country Inn & York Rd. |
| 25340417 | 17 | FO System Schematic & Splicing Dia. | 17th & Tioga; Wissahickon |
| 25340418 | 18 | FO System Schematic & Splicing Dia. | Wayne Backbone |
| 25340419 | 19 | FO System Schematic & Splicing Dia. | Downtown-22nd & Arch; Girard |
| 25340420 | 20 | FO System Schematic & Splicing Dia. | 61st & Master; Evergreen |
| 25340421 | 21 | FO System Schematic & Splicing Dia. | Pottstown |
| 25340422 | 22 | FO System Schematic & Splicing Dia. | Lansdale loop |
| 25340423 | 23 | FO System Schematic & Splicing Dia. | Downtown-19th & Arch; 1635 Market CO |
| 25340424 | 24 | FO System Schematic & Splicing Dia. | Bryn Mawr & Haverford colleges loop |
| 25340425 | 25 | FO System Schematic & Splicing Dia. | Hector St. PEP Boys loop |
| 25340426 | 26 | FO System Schematic & Splicing Dia. | Rubbin & Bustleton run |
| 25340427 | 27 | FO System Schematic & Splicing Dia. | Yale-Morton area |
| 25340428 | 28 | FO System Schematic & Splicing Dia. | Grays Ferry |
| 25340429 | 29 | FO System Schematic & Splicing Dia. | Downtown-24th & Walnut-ATX POP |
| 25340430 | 30 | FO System Schematic & Splicing Dia. | Southpoint & Chesterbrook complexes |
| 25340431 | 31 | FO System Schematic & Splicing Dia. | Downtown |
| 25340432 | 32 | FO System Schematic & Splicing Dia. | Downtown |
| 25340433 | 33 | FO System Schematic & Splicing Dia. | Telespectrum loop |
| 25340434 | 34 | FO System Schematic & Splicing Dia. | Conshohocken |
| 25340435 | 35 | FO System Schematic & Splicing Dia. | City line |
| 25340436 | 36 | FO System Schematic & Splicing Dia. | Glenhardie Corp. Center |
| 25340437 | 37 | FO System Schematic & Splicing Dia. | Swarthmore College (Baltimore Pk.) |
| 25340438 | 38 | FO System Schematic & Splicing Dia. | Great Valley loop & Valleybrook |
| 25340439 | 39 | FO System Schematic & Splicing Dia. | Downtown-401N. Broad St. |
| 25340440 | 40 | FO System Schematic & Splicing Dia. | Bala Cynwyd |
| 25340441 | 41 | FO System Schematic & Splicing Dia. | Blue Bell loop |
| 25340442 | 42 | FO System Schematic & Splicing Dia. | Somerton loop |
| 25340443 | 43 | FO System Schematic & Splicing Dia. | Abbott Dr. & Pilot Air loops |
| 25340444 | 44 | FO System Schematic & Splicing Dia. | Downtown-Penn Hospital |
| 25340445 | 45 | FO System Schematic & Splicing Dia. | Welsh Rd. loop |
| 25340446 | 46 | FO System Schematic & Splicing Dia. | Downtown-2400 Market |

| | | | |
|----------|----|-------------------------------------|--------------------|
| 25340447 | 47 | FO System Schematic & Splicing Dia. | Hamilton INS. Loop |
| 25340448 | 48 | FO System Schematic & Splicing Dia. | Fiber Relief 2000 |
| 25340449 | 49 | FO System Schematic & Splicing Dia. | Fiber Relief 2001 |
| 25340450 | 50 | FO System Schematic & Splicing Dia. | Fiber Relief 2002 |
| 253405S1 | 1 | FO Block Diagram | |

Fiber Optic Cable Data - Part of Schedule 1

| Lease ID# | Description | Right-of-Way Mileage | | | Other Mileage | Total Cable Mileage |
|--------------|--|--|--|---|---------------|---------------------|
| | | Fiber installed in underground duct & inner duct | Fiber Installed within optical-ground-wire | Fiber installed upon distribution poles | | |
| A002224 | Center City, Philadelphia fiber optic backbone | 7.47 | - | 1.66 | 1.63 | 10.76 |
| A002297 | Center City, Philadelphia fiber optic backbone, U/G facilities to Market LSO (PHLAPAMK) | 0.48 | - | - | - | 0.48 |
| A002298 | Suburban Philadelphia fiber optic backbone, segment 1 (new construction from Morton Area to Warminster via West Chester, Berwyn, and Plymouth Meeting (includes Wayne area) | 2.13 | - | 81.59 | 2.31 | 86.03 |
| A002333 | Suburban Philadelphia, fiber optic backbone, segment 2 (new construction located in South Philadelphia (Dewey Building), Poplar Building to Evergreen Building Loop, and Pottstown Loops) | 4.24 | - | 88.84 | 3.11 | 96.19 |
| A002345 | Suburban Philadelphia, fiber optic backbone, segment 3 (new construction relating to the Tullytown Loop, Lansdale Loop, Trooper Loop and Exton Loops) | 0.21 | - | 70.82 | 0.28 | 71.31 |
| A002362 | Suburban Philadelphia, fiber optic backbone, segment 4 (new construction relates to Schuylkill River Crossing; Plymouth to Germantown Spur via Chestnut Hill; Germantown to Baldwin Building Spur, Fort Washington, Dresher, and Horsham Business Parks) | 0.05 | - | 22.54 | 1.96 | 24.55 |
| A002539 | Philadelphia fiber optic backbone, segment 5 (relates to Center City, Phila. (Market St., 6th St.); Blue Bell Area; Egypt Rd., Trooper; Abbottsford/Wissahickon; Swedesford Rd.; Plymouth Mtg. Hub; Paoli Pike/E. Goshen; Great Valley; Lincoln HW/Pottstown) | 4.43 | - | 38.99 | 0.29 | 43.71 |
| A002540 | Philadelphia fiber optic backbone, segment 6 (relates to Robbins/Bustleton; Plymouth Mtg. Hub; Belmont Rd.; Dungan SB Loop; E. Hunting Park; Byberry Hub; Chesterbrook Blvd.; Ardmore SB) | 5.14 | - | 35.23 | 4.97 | 45.34 |
| A002541 | Phila. fiber optic backbone, segment 7 (relates to Center City, Phila. (6th/Race-11th/Market; 9th/Market-6th/Walnut; Broad/Walnut-12th/Market); Conestoga Rd. Loop; Street Rd.; 17th/Tioga; Ridge Pike/Allenwood; Marshall/Whitehall; Grays Ferry/39th/Sansom) | 6.72 | - | 29.37 | 0.24 | 36.33 |
| A002780/2797 | Installation of 88.4 miles of fiber optic cable to support 64 customer buildings. | 5.36 | 0 | 67.22 | 15.79 | 88.37 |
| A002796 | Installation of 31.6 miles of fiber optic cable to support 44 customer buildings as well as provide additional capacity in high traffic areas | 3.09 | - | 26.67 | 1.83 | 31.59 |
| A002889 | Installation of 169.2 miles of fiber optic cable to support 32 customer buildings as well as provide additional capacity in high traffic areas | 4.98 | - | 100.17 | 63.98 | 169.13 |
| A002980 | Installation of 74.48 miles of fiber optic cable to support 46 customer buildings as well as provide additional capacity in high traffic areas | 1.53 | - | 40.65 | 32.3 | 74.48 |
| A003044 | Installation of 23.55 miles of fiber optic cable to support 46 customer buildings as well as provide additional capacity in high traffic areas | 1.92 | - | 16.4 | 5.23 | 23.55 |

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Schedule 3.1(d)

Schedule 3.1(d)

Required Approvals

1. The Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.
2. Federal Communications Commission.
3. Commonwealth of Pennsylvania Public Utility Commission.

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Schedule 3.1(f)

| FIBER SEGMENT | Route Distance | | | Cable Fiber Count | Fibers Used By JV |
|------------------------------------|----------------|-------------------|----------|-------------------|-------------------|
| | OPGW Miles | ADSS AERIAL Miles | UG Miles | | |
| Main Office to Girard College | | | 2.13 | 72 | 42 |
| Pencoyd to Roxborough | 2.99 | | | 24 | 2 |
| Roxborough to Plymouth Sub | 5.91 | | | 24 | 2 |
| Plymouth Meeting Ring | | | | | |
| Substation to Ops. Center | | 0.15 | | 36 | 2 |
| Ops. Center to Service Bldg. | | 0.52 | | 36 | 2 |
| Service Bldg. To Allenwood Rd. | | | 0.34 | 36 | 6 |
| Allenwood Rd. to Substation | | 0.51 | | 36 | 6 |
| Berwyn to Ardmore | | 16.34 | | 36 | 22 |
| Ardmore to Morton | | | | | |
| Ardmore Ave to Earlington Rd. | | 4.38 | | 36 | 22 |
| Earlington Rd. to Sproul Rd. | | 5.44 | | 36 | 22 |
| Sproul Rd. to Morton SB | | 2.85 | | 72 | 50 |
| McCall Field Service Lateral | | 0.28 | | 36 | 10 |
| Morton to Ridley | 1.56 | | | 36 | 10 |
| Ridley to MacDade | 1.48 | | | 24 | 10 |
| MacDade to Christian St. SB | | | | | |
| MacDade to Paschall | | 7.32 | | 36 | 10 |
| Paschall to CSSB | | | 1.62 | 72 | 34 |
| Christian St. to ATX | | 0.95 | 0.38 | 72 | 48 |
| ATX to Main Office | | | 0.59 | 72 | 46 |

Schedule 3.1(f)

| Exelon Job # | Dist. | Units | Fibers Aerial or U/G | PECO TelCove Customer Name and Address | From | To |
|--------------|-------|-------|----------------------|---|---|---|
| 405 | 4.5 | miles | 4 fibers - aerial | Delaware County Community College, 901 S. Media Line Rd., Media | PECO Pole #193, W. Baltimore Ave. & S.Olive St., Media (EC Map 56AB12) | PECO Pole # 93774, Newtown St. & Media Line Rd., Marple (EC Map 49CD12) |
| 425 | 1 | miles | 4 fibers - aerial | Marple Newtown High School, 120 Media Line Rd., Broomall | PECO Pole # 93774, Newtown St. & Media Line Rd., Marple (EC Map 49CD12) | PECO Pole # 67, Media Line Rd. & Highland Ave., Marple (EC Map 49CD12) |
| 471 | 7.5 | miles | 2 fibers - aerial | Penn Delco School District, 95 Concord Rd., Aston | Bell Pole #91, Chester Heights & Spring Valley Way, Aston (EC Map 55EF78) | PECO Pole # 3478, W. 9th St. & Barkley Ave., Chester (EC Map 56EF12) |
| 507 | 13 | miles | 12 fibers - aerial | COPA - Dept. of Public Welfare, 100 James Buchanan Dr., Thorndale | Bell Pole # 26, Whiteford Rd., & W. Schoen Rd., Whiteford (EC Map 38EF34) | PECO Pole # 57797, Strasburg Rd. & Harvey's Bridge, West Bradford (EC Map 46EF78) |
| 556 | 0.86 | miles | 4 fibers - aerial | Chester County Intermediate Unit, 535 James Hance Ct., Exton | Pole not tagged, next to PECO Pole # 85334, Lincold Hwy. (U.S. HWY. #30) (EC Map 38EF34) | PECO Pole # 84057, Whitford Rd. & Route #30, W. Whiteland (EC Map 38EF34) |
| 556 | 710 | feet | 4 fibers - U/G | Chester County Intermediate Unit, 535 James Hance Ct., Exton | Lincoln Hwy. (U.S. HWY. #30), South of south curb line, manhole, W. Whiteland (EC Map 38EF34) | Data room at customer's address (EC Map 38EF34) |
| 488 | 0.55 | miles | 4 fibers - aerial | Cheyeny University, 372 Cheyney Rd., Cheyney | PECO Pole # 158, Street Rd., & Cheyney Rd., Thornbury (EC Map 48GH12) | Data room at customer's address (EC Map 48GH12) |
| 554 | 1.80 | miles | 2 fibers - aerial | Crozer-Chester Medical Center, One Medical Center Blvd., 19013 | PECO Pole # 14, Edgemont Rd. & E.Brookhaven Rd., Brookhaven BORO (EC Map 56EF12) | PECO Pole # 3901, Upland Rd., & Diamond Rd., Chester (EC Map 56EF34) |
| 583 | 7.834 | miles | 2 fibers - aerial | COPA - Dept. of Public Welfare - 845 Main Street, Darby | PECO Pole # 373, Morton Ave. & Hancock Rd., Ridley (EC Map 56EF56) | Pole not tagged, Highland Ave. & E. Steward Ave., Lansdowne (EC Map 50GH12) |

Schedule 4.1(d)

CONFIDENTIAL

Schedule 4.1(d)

ABIZ Required Approvals

1. The Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.
2. Federal Communications Commission.
3. Commonwealth of Pennsylvania Public Utility Commission.

CONFIDENTIAL

Schedule 5.11

Schedule 5.11 - Amounts Owed to PECO by PECO Telcove & Telcove

April 2, 2004

| Amount | Invoice # | Invoice Date | Description | Due From | Notes |
|---------------|-------------|--------------|---|-----------------|-------|
| \$ 294,122.07 | OSP 2003-1 | 12/31/2003 | OSP fiber construction for period from 1/1/03 through 11/30/03 | PECO Telcove | 1 |
| \$ 113,845.38 | ISP 2003-1 | 12/9/2003 | ISP fiber construction for period from 1/1/03 through 11/30/03 | PECO Telcove | 1 |
| \$ 44,582.64 | Maint 12-03 | 1/21/2004 | ISP, OSP & Maintenance charges for month of December 2003 | PECO Telcove | 1 |
| \$ 7,700.42 | Legal 2003 | 12/9/2003 | Legal Support for Fastnet, Plymouth House and Teligent Bankruptcies | PECO Telcove | 1 |
| \$ 37,421.94 | 2004-1 Main | 3/25/2004 | Maintenance & Restoration charges for month of January 2004 | PECO Telcove | |
| \$ 26,024.83 | 2004-2 Main | 3/29/2004 | Maintenance & Restoration charges for month of February 2004 | PECO Telcove | |
| \$ 26,010.23 | 2004-3 Main | 4/7/2004 | Maintenance & Restoration charges for month of March 2004 | PECO Telcove | |
| \$ 207,551.62 | N/A | N/A | Reimbursement to Exelon for Protiviti invoice # 005029 | PECO Telcove | |
| \$ 51,755.00 | N/A | N/A | Reimbursement to Exelon for Protiviti invoice # TBD | PECO Telcove | |

\$ 809,014.13 Total

Notes

1. Amount includes late payment interest charges. Interest charges will continue at 1.5%/month until total is paid in full.