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December 18, 2003

Terri Carlock  
Idaho Public Utilities Commission  
472 W. Washington  
P.O. Box 83720  
Boise, ID 83720-0074

ALB-T-02-2

RECEIVED  
FILED  
2003 DEC 19 AM 8:50  
IDAHO PUBLIC  
UTILITIES COMMISSION

Re: Direct Communications Rockland, Inc., Rural Utilities Service and  
Rural Telephone Bank Loans

Our File:

Dear Terri:

Pursuant to Idaho Public Utilities Commission ("IPUC") Order No. 29378, amending Order No. 29058, which authorized Albion Telephone Company ("Albion") to borrow from the Rural Utilities Service ("RUS") and the Rural Telephone Bank ("RTB"), Albion was required to file with the IPUC copies of all final executed RUS and RTB loan documents. Enclosed herewith are copies of the following final RUS and RTB loan documents:

1. Amending Telephone Loan Contract, dated as of November 3, 2003;
2. Mortgage Note, made by Albion Telephone Company, dated as of November 3, 2003 (RUS Variable Rate Note);
3. Mortgage Note, made by Albion Telephone Company, dated as of November 3, 2003 (RUS Hardship Note);
4. Mortgage Note, made by Albion Telephone Company, dated as of November 3, 2003
5. Restated Mortgage, Security Agreement and Financing Statement, dated November 3, 2003;
6. Copy of UCC 1 financing statement filed with the Idaho Secretary of State; and
7. Copy of UCC1 financing statement filed with the Utah Department of Commerce, Division of Corporations and Commercial Code.

Terri Carlock  
December 18, 2003  
Page 2

If you have any questions or comments regarding the enclosed, or if you need any additional information, please do not hesitate to contact me.

Sincerely,

Cynthia A. Melillo

CAM/kn  
Enclosures

cc: Mike Creamer (w/o enclosures)  
Richard Redman (w/o enclosures)

S:\CLIENTS\5261\3\CAM to IPUC re loan documents.DOC

RUS Project Designation:  
IDAHO 504-H12 & K11 ALBION

AMENDING TELEPHONE LOAN CONTRACT

Dated as of November 3, 2003

among

ALBION TELEPHONE COMPANY,

UNITED STATES OF AMERICA

and

RURAL TELEPHONE BANK

UNITED STATES DEPARTMENT OF AGRICULTURE  
RURAL UTILITIES SERVICE

No. 1

Generated: October 14, 2003

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AGREEMENT, made as of November 3, 2003, pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 et seq., hereinafter called the "Act"), among ALBION TELEPHONE COMPANY (hereinafter called the "Borrower"), a corporation existing under the laws of the State of Idaho, UNITED STATES OF AMERICA (hereinafter called the "Government"), acting through the Administrator of the Rural Utilities Service (hereinafter called the "Administrator"), and RURAL TELEPHONE BANK (hereinafter called the "Bank"), a corporation existing under the laws of the Government, acting through the Governor of the Bank (hereinafter called the "Governor").

WHEREAS, pursuant to Public Law No. 103-354, the Rural Utilities Service (hereinafter sometimes called "RUS") is the successor to the Rural Electrification Administration (hereinafter sometimes called "REA") and the Administrator of the Rural Utilities Service is the successor to the Administrator of the Rural Electrification Administration and, for the purposes of the Prior Loan Contract (hereinafter defined), as amended, the terms "REA" and "Administrator" shall be deemed to mean respectively "RUS" and "Administrator of the RUS"; and

WHEREAS, the Borrower has heretofore entered into a certain telephone loan contract, amending telephone loan contract, consolidating telephone loan contract, or consolidating and amending telephone loan contract, dated as of April 5, 1954, with the Bank, the Government, or the Bank and the Government (such agreement, as it may have been amended, being hereinafter called the "Prior Loan Contract"); and

WHEREAS, pursuant to the Prior Loan Contract the Borrower and/or its predecessor(s) in interest have heretofore borrowed funds from the Government in the aggregate principal amount of \$4,130,000.00 (hereinafter called "Prior RUS Loan"), from the Bank in the aggregate principal amount of \$0 (hereinafter called the "Prior Bank Loan"), except such portion of the Prior Bank Loan used for the purchase of Class B stock of the Bank, and from the Federal Financing Bank (hereinafter called "FFB"), a body corporate and instrumentality of the Government, in the aggregate principal amount of \$0 (hereinafter called the "Prior FFB Loan", and together with the Prior RUS Loan and the Prior Bank Loan being hereinafter collectively called the "Prior Loans"), the Prior FFB Loan being guaranteed by the Government pursuant to the Act, to finance pursuant to the provisions of the Act, the improvements and operation of the initial telephone facilities owned and operated by the Borrower and/or its predecessor(s) in interest (hereinafter called the "Existing Facilities"); and

WHEREAS, the parties to this agreement and the parties to the Prior Loan Contract desire to amend the Prior Loan Contract in certain respects, and it is intended that the entire agreement among such parties, containing such amendments and covering the terms upon which the "Loan" (hereinafter defined) shall be made and expanded, shall be expressed in this agreement, except to the extent such parties have heretofore performed obligations under the Prior Loan Contract in accordance with the terms thereof and except as may hereinafter otherwise be provided; and

WHEREAS, it is intended that the Borrower shall use the proceeds of the loan(s) as provided for in section 1.1 of this agreement to finance partially the improvement and operation of the Existing Facilities, as previously expanded and added to by facilities financed with the proceeds of the Prior Loans, and the construction and operation of additional telephone facilities to serve approximately five hundred seventeen subscribers in addition to those now being served (the improvements and additional telephone facilities so financed being hereinafter collectively called the "Project", and the Existing Facilities, as the same has previously been expanded and added to, and as improved and added to by the Project or otherwise, being hereinafter called the "System"); and

WHEREAS, it is contemplated that the amounts of such loans may be increased from time to time for purposes permitted by the provisions of the Act, as from time to time amended, and upon the terms and conditions contained in this agreement, as from time to time amended (the RUS Concurrent Loan, the RUS Hardship Loan and the Guaranteed Loan (to be made to the Borrower by FFB), all as provided for in section 1.1 of this agreement, and any such increases in the amounts thereof, and together with the Prior RUS Loan and the Prior FFB

Loan, being hereinafter collectively called the "RUS Loan", the Bank Concurrent Loan as provided for in section 1.1 of this agreement and any such increases in the amount thereof, and together with the Prior Bank Loan, being hereinafter collectively called the "Bank Loan", and the RUS Loan and the Bank Loan being hereinafter collectively called the "Loan"); and

WHEREAS, the Government and the Bank, in determining to enter into this agreement, have relied upon the representation of the Borrower to them that it is willing to furnish adequate telephone service to the widest practicable number of persons in rural areas whom it is possible to serve, and the Borrower has agreed to do so as hereinafter provided;

NOW, THEREFORE, for and in consideration of the mutual agreements herein contained, the Borrower, the Government and the Bank agree as follows:

## ARTICLE I

### LOAN, NOTES AND SECURITY

**SECTION 1.1. RUS Concurrent Loan:** For the purposes provided in section 305(d)(2)(A) of the Act (7 U.S.C. §935(d)(2)(A)), the Government shall lend and the Borrower shall borrow not in excess of \$4,046,000.00 to partially finance the Project.

**Bank Concurrent Loan:** For the purposes provided in section 408(a)(2) of the Act (7 U.S.C. §948(a)(2)), the Bank shall lend and the Borrower shall borrow not in excess of \$2,355,150.00, (1) to partially finance the Project and (2) to purchase Class B stock from the Bank for \$112,150.00.

**RUS Hardship Loan:** Pursuant to section 305(d)(1) of the Act (7 U.S.C. §935(d)(1)), the Government shall lend and the Borrower shall borrow not in excess of \$7,500,000.00 to partially finance the Project. RUS Hardship Loan funds shall be used for the purposes provided in section 201 of the Act (7 U.S.C. §922).

**Guaranteed Loan - FFB** shall lend and the Borrower shall borrow not in excess of \$0, the repayment of which shall be guaranteed by the Government pursuant to section 306 of the Act (7 U.S.C. §936), to partially finance the Project.

**SEC. 1.2. Notes.** The debt created by the RUS Loan shall be evidenced by notes previously executed by the Borrower and/or its predecessor(s) in interest to evidence the Prior RUS Loan and the Prior FFB Loan and to be executed by the Borrower, payable to the order of the Government or payable to FFB, as the case may be. The debt created by the Bank Loan shall be evidenced by notes previously executed by the Borrower and/or its predecessors in interest to evidence the Prior Bank Loan and to be executed by the Borrower payable to the order of the Bank (the notes evidencing the Prior RUS Loan and the Prior FFB Loan and the notes payable to the order of the Government or payable to FFB, as the case may be, and any notes executed and delivered to refund, or in substitution for, such notes being hereinafter collectively called the "RUS Notes", and the notes evidencing the Prior Bank Loan and the notes payable to the order of the Bank and any notes executed and delivered to refund, or in substitution for, such notes being hereinafter collectively called the "Bank Notes", and the RUS Notes and the Bank Notes being hereinafter collectively called the "Notes"). The Notes shall be in form and substance satisfactory to the Administrator. Interest shall accrue on the principal of each Note only in respect of amounts which shall have been advanced to the Borrower from time to time on account of the Loan, shall have been charged against such Note and shall remain unpaid.

The Loans provided for in section 1.1 of this agreement shall bear interest as follows:

**RUS Concurrent Loan** - Each advance of funds included in the RUS Concurrent Loan shall bear interest at the "Cost-of-Money Interest Rate" determined by the Government pursuant to section

305(d)(2)(A) of the Act (7 U.S.C. §935(d)(2)(A)) and the implementing regulations, as amended from time to time (7 C.F.R. §1735.31(c)).

Bank Concurrent Loan - Each advance (a "Bank Concurrent Loan Advance") of funds included in the Bank Concurrent Loan shall bear interest at the various rates determined by the Bank for that Bank Concurrent Loan Advance in accordance with section 408(b)(3) of the Act (7 U.S.C. §948(b)(3)), and the implementing regulations, as amended from time to time (7 C.F.R. 1610.10).

RUS Hardship Loan - Each advance of funds included in the RUS Hardship Loan shall bear interest at the rate of five per cent per year.

Guaranteed Loan - Each advance (a "Guaranteed Loan Advance") of funds included in the Guaranteed Loan shall bear interest at the rate established by FFB at the time such Guaranteed Loan Advance is made on the basis of the determination made by the Secretary of the Treasury pursuant to section 6(b) (12 U.S.C. §2285(b)) of the Federal Financing Bank Act of 1973, as amended (12 U.S.C. §2281 *et seq.*).

SEC. 1.3. Loan Closing. The parties may from time to time determine by agreement the amount required to enable the Borrower to perform its obligations hereunder. If any reduction in the maximum amount of the RUS Loan or of the Bank Loan is thus agreed upon, the Administrator shall cause such one or more of the Notes as may be agreed upon, to be appropriately credited with an amount equal to such reduction, and the principal amount of such Note or Notes shall, for the purposes of this agreement, be deemed to be correspondingly reduced. When the Administrator and the Borrower shall agree that no further funds are required to be advanced on account of the RUS Loan or the Bank Loan, as the case may be, in order to enable the Borrower to perform its obligations hereunder to the Government or the Bank, the Administrator shall execute and deliver to the Borrower a loan closing certificate (hereinafter called the "loan closing certificate") which shall, among other things, specify the date of the closing of the RUS Loan or the Bank Loan, as the case may be, and the amount of the unpaid principal of and any accrued interest on each of the RUS Notes or the Bank Notes, as appropriate.

SEC. 1.4. Security. The Notes shall be secured by a security instrument (hereinafter called the "Mortgage"), in form and substance satisfactory to the Administrator, covering all the property of the Borrower now owned or hereafter acquired, as supplemented by such supplemental mortgages, deeds of trust, supplemental deeds of trust, chattel mortgages or additional chattel mortgages and by such other action on the part of the Borrower as may be required to confirm, fully convey, preserve or renew the lien of the Mortgage as security for the Notes and to effectuate the intention to these presents that the Mortgage shall cover all property of the Borrower, whether now owned or hereafter acquired (any such supplemental mortgage, supplemental deed of trust, supplemental or additional chattel mortgage, and any such other action, as the case may be, being hereinafter called a "supplemental mortgage").

## ARTICLE II

### ADVANCES AND DISPOSITION OF FUNDS

SECTION 2.1. Prerequisites to Advances. (A) Neither the Government nor the Bank shall be under any obligation to advance funds from time to time on account of the RUS Loan or the Bank Loan, as the case may be, unless and until the Borrower shall have delivered to the Administrator and the Governor, in form and substance satisfactory to them, the following:

(a) one or more of the Notes, the Mortgage, and such supplemental mortgages as may be required pursuant to section 1.4 hereof, all duly executed and accompanied by proof of the due recordation and filing of the Mortgage and any supplemental mortgage in such places as may be required by law in order fully to perfect and maintain the lien of the Mortgage and any supplemental mortgage;

(b) evidence of appropriate corporate action authorizing the execution and delivery of the Notes, the Mortgage, and any supplemental mortgage and amendment to this agreement;

(c) evidence that the Borrower has duly registered when and where required by law with all state, Federal and other public authorities and regulatory bodies and obtained therefrom all authorizations, certificates, permits, and approvals to the extent required by law in order to enable the Borrower to enter into this agreement, to execute and deliver the Notes, the Mortgage, and any supplemental mortgage and amendment to this agreement; to construct and operate the System, and to perform all other acts to be performed by it hereunder;

(d) evidence that the Borrower has duly adopted a tariff which (1) will provide for such grades of service as the Administrator may approve, (2) does not include mileage or zone charges for any telephone service provided by the Project and (3) is designed to produce net income or margins before interest but after taxes in an amount at least great enough, when divided by the amount of the interest requirements on all of the Borrower's outstanding and proposed loans, to produce the ratio required by section 2.8 hereof;

(e) evidence that there has been no substantial adverse change in the Borrower's financial condition or plant since the date of the last financial statement submitted by the Borrower to the Administrator and the Governor;

(f) evidence that the Borrower is not involved in or threatened with any litigation which may substantially and adversely affect the Borrower's financial condition and that there are no liens or clouds on title except the liens of the Mortgage and any underlying security instruments referred to in the Mortgage and any supplemental mortgage on any of its property;

(g) evidence that the Borrower has duly adopted articles of incorporation and bylaws in form and substance adequate to enable the Borrower to perform all acts to be performed by it hereunder;

(h) such opinions as the Administrator and the Governor may require, by counsel (who may be a member of the Borrower's legal staff, if any, or an attorney regularly employed by the Borrower) selected by the Borrower and approved by the Administrator and the Governor; and

(i) evidence that the Borrower has good and marketable title to the Existing Facilities, subject only to the lien of the Mortgage and any underlying security instruments referred to in the Mortgage, and holds such franchises, permits, leases, easements, rights, privileges, licenses or right-of-way instruments, reasonably adequate in form and substance, as may be required by law for the continued maintenance and operation of the Existing Facilities, and every part thereof, in their present location.

(B) Notwithstanding the provisions set forth in (A) above of this section 2.1 the Government shall not cause to be advanced any funds on account of any Guaranteed Loan unless and until the following special conditions applicable to the Guaranteed Loan have been satisfied:

(a) the Government, acting through the Administrator, has entered into a contract with FFB and FFB has agreed to make the Borrower the Guaranteed Loan;

(b) the Borrower has submitted evidence to the Administrator, in form and substance satisfactory to him, that conditions in the contract of guarantee referred to in subsection (a) above have been satisfied to the extent and in the manner prescribed by the Administrator; and

(c) the Borrower has duly authorized, executed and has delivered to the Administrator a promissory note payable to FFB in the amount of the Guaranteed Loan and a reimbursement note payable to the order of the Government in the manner prescribed by the Administrator.

(C) The first advance of funds on account of the RUS Concurrent Loan, the Bank Concurrent Loan and/or any RUS Hardship Loan and/or any Guaranteed Loan provided for in section 1.1 of this agreement shall include, but shall not be limited to:

- (a) an amount to be determined by the Administrator for the cost of preloan engineering services (as such term is defined at 7 C.F.R. Section 1753.15); and
- (b) an amount to be determined by the Administrator for costs of construction which were incurred subsequent to April 11, 2002, and which have been approved by the Government and the Bank;
- (c) an amount for the purchase of any applicable Class B stock of the Bank.

Thereafter no further advances of funds shall be made unless and until the Borrower has furnished evidence to the Administrator, in form and substance satisfactory to him, that all indebtedness incurred for any interim construction referred to in subsection (b) above has been paid in full and any associated liens have been duly discharged of record.

SEC. 2.2. Requisitions. The Borrower shall from time to time submit to the Administrator requisitions, on forms furnished by the Administrator, requesting advances on account of the Loan. Each requisition shall be accompanied by the following:

- (a) evidence that the construction of the Project effected to the date of the requisition complies with the provisions hereof;
- (b) a certificate signed by a duly authorized officer or employee of the Borrower, which shall specify all payments not previously accounted for theretofore made by the Borrower from funds in the Special Construction Account provided for in section 2.4 hereof;
- (c) a statement, on a form to be furnished by the Administrator, setting forth the purposes for which it is intended the requested advance will be used by the Borrower; and
- (d) such additional information, opinions, documents, and proofs relating to the construction of the Project, the expenditure of Loan funds and the security for the Loan, as may reasonably be requested by the Administrator.

SEC. 2.3. Advances. Loan funds shall be advanced to the Borrower only if the Borrower has (1) complied with section 2.1 hereof and all other conditions precedent to advance of Loan funds, (2) furnished the Administrator with a requisition and accompanying documents complying with section 2.2 hereof and (3) notified the Administrator whether such Loan funds are to be advanced on account of the RUS Loan, the Bank Loan, or both. Within a reasonable time thereafter, the Government or the Bank, or both, as requested by the Borrower, shall advance Loan funds to the Borrower sufficient in the aggregate for such of the purposes specified in the statement accompanying the requisition as the Administrator shall approve. The Administrator may at any time, as a condition to making any advance on account of the Loan, require compliance by the Borrower with any one or more of the covenants, terms or conditions of this agreement and any amendment thereto to be performed by the Borrower. Neither the Government nor the Bank shall be obligated to make advances on account of a loan after the date of the closing of such loan specified in a loan closing certificate.

At the time of each advance of Bank Loan funds, the Borrower shall purchase Class B stock of the Bank in an amount equal to five percent of the amount of Bank Loan funds advanced, exclusive of the amount advanced for Class B stock. The Borrower may purchase the Class B stock with either (1) non-Loan funds or (2) funds included in the Bank Loan. If the initial Bank Loan or any additional Bank Loan includes funds for the purchase of Class B stock, each advance of such Bank Loan funds shall include an appropriate amount to purchase



Class B stock. Evidence of such purchase in such form as the Bank may prescribe shall be promptly issued to the Borrower.

SEC. 2.4. Special Construction Account. The Borrower shall promptly deposit all moneys advanced to it by the Government or the Bank hereunder in a special construction account (hereinafter called "Special Construction Account") in a bank, institution or other depository, which shall meet the requirements specified in section 4.3 hereof, and shall hold such moneys in trust for the Government and the Bank as their interests may appear until disbursed. Any Special Construction Account shall be designated by the corporate name of the Borrower, followed by the words "Trustee, RUS Construction Fund Account". All Loan funds in any Special Construction Account shall be used solely for the purposes specified in section 1.1 hereof. Moneys in any Special Construction Account may be withdrawn only upon checks, drafts or orders signed on behalf of the Borrower. The Borrower shall expend each advance on account of the Loan only for such of the purposes specified in the statement of purposes accompanying the requisition for such advance as shall have been approved by the Administrator.

SEC. 2.5. Unexpended Loan Funds. Any funds advanced on account of the RUS Loan or on account of the Bank Loan remaining in any Special Construction Account upon the closing of such loan shall be forthwith remitted to the Government, if such unexpended funds were advanced on account of the RUS Loan, or to the Bank, if such unexpended funds were advanced on account of the Bank Loan. A credit in the amount of such remittance shall be allowed against such one or more of the RUS Notes or the Bank Notes (depending upon whether the unexpended advances were made on account of the RUS Loan or the Bank Loan) as shall be agreed upon by the Administrator and the Borrower.

SEC. 2.6. Compliance with Restrictions on Use of Materials. No advances will be made on account of the Loan for the construction of any part of the Project with respect to which the Borrower shall have failed to submit to the Administrator and the Bank satisfactory evidence that the Borrower has obtained from the appropriate agency or agencies of the Government all necessary orders or approvals with respect to the use of the materials required for the construction of such part of the Project. No construction shall be undertaken except in accordance with authorizations or regulations of any such agency or agencies having jurisdiction in the premises.

SEC. 2.7. Loan Rescissions. The Borrower may request rescission of all or part of the unadvanced portion of the RUS Loan or the Bank Loan at any time. The Administrator or the Governor, as the case may be, shall comply with such request if the Borrower demonstrates, to the satisfaction of the Administrator or the Governor, that (1) the purposes intended to be financed by the unadvanced Loan funds have been completed, (2) sufficient funds are available from non-governmental sources to complete such purposes, or (3) the Loan funds being rescinded are no longer required to extend or improve telephone service in rural areas. The Administrator or the Governor, as the case may be, shall not initiate rescission of the unadvanced portion of the RUS Loan or the Bank Loan, unless all of the purposes for which telephone loans have been made to the Borrower under the Act have been accomplished with funds provided under such Act. Loan funds that have been rescinded are no longer available to the Borrower.

SEC. 2.8. Tariff. (a) The Borrower shall, during the period ending on December 31, 2005 (hereinafter called the "Forecast Period") (1) seek and use its diligent best efforts to obtain all regulatory body approvals necessary to place in effect and thereafter to maintain in effect a tariff which (i) provides for such grades of service as the Administrator shall approve, (ii) does not include mileage or zone charges for any telephone service provided by the Project, and (iii) is designed to produce net income or margins, before interest but after taxes, in such amounts that when divided by the amount of interest requirements on all of the Borrower's outstanding and proposed loans, produces a ratio of at least 1.0, and (2) place such tariff into effect as soon as permitted by applicable laws and regulations. The Borrower shall use its diligent best efforts to obtain all necessary regulatory body approvals of such revisions of its tariff as may be necessary from time to time to satisfy the requirements of this provision.

(b) The Borrower shall continue to comply with the requirements of this provision after the Forecast Period except that the ratio required by (a) above shall be changed to 1.50.

(c) The Borrower shall provide the Administrator with evidence, in form and substance satisfactory to him, that the Borrower is in full compliance with this section 2.8 whenever the Administrator shall so request.

### ARTICLE III

#### CONSTRUCTION

SECTION 3.1. Labor and Materials Contract. The Borrower shall cause the Project to be constructed under labor and materials contract by a responsible contractor or contractors selected by the Borrower and approved by the Administrator, except to the extent that the Administrator may in writing authorize other methods of construction. The Borrower shall keep accurate and detailed records of all costs and expenses in connection with construction of the Project.

SEC. 3.2. Commencement and Completion. The Project shall be constructed in accordance with the approved plans and specifications hereinafter provided for, the provisions of this agreement and all contracts and subcontracts made pursuant hereto. Construction of the Project or any portion thereof shall be commenced promptly after the Administrator shall have notified the Borrower of approval to commence such construction, and the Borrower shall cause such construction to be prosecuted diligently and to be completed within a reasonable time, unless prevented from so doing by causes beyond the control and without the fault or negligence of the Borrower. The Borrower shall cause the Project to be completed in such manner that the System shall be free and clear of all liens and lawful claims for liens except the liens of the Mortgage and any supplemental mortgage.

SEC. 3.3. Bidding. The Borrower shall invite bids for construction of outside plant and buildings, for installation of station equipment, and for purchase and installation, or either, of central office equipment, included in the Project, unless otherwise authorized in writing by the Administrator. The Borrower shall open all bids publicly at the time and place which shall have been specified in the notice to bidders, after reasonable prior written notification of such time and place has been given by the Borrower to the Administrator. The Borrower shall award each contract to the lowest responsible bidder, unless all bids are rejected.

SEC. 3.4. Inspection by Administrator. The Administrator may inspect the construction and equipment of the Project, and shall have the right to examine and test all work and materials, and the Borrower shall provide reasonable facilities therefor for the use of the Administrator and his agents. The Administrator may reject any defective material or workmanship and require that any such material shall be replaced with proper material and that any such workmanship shall be corrected, to the end that all material and workmanship shall conform with the approved plans and specifications hereinafter provided for.

SEC. 3.5. Certificates and Maps. The Borrower shall, at the request of the Administrator, furnish to the Government and the Bank: (a) such certificates of the approved engineer and of the officers and employees of the Borrower as the Administrator shall reasonably require with respect to construction of the Project, or any portion thereof, and the cost thereof; (b) a complete inventory by construction units, in sufficient detail to reflect accurately all construction costs, and a description of the Project, or any portion thereof; and (c) a map or maps, in the same form as contained in the approved plans and specifications hereinafter provided for, corrected to show actual locations and classifications of all exchanges, lines and other properties of the Borrower except those, if any, not directly connected with the Project.

### ARTICLE IV

#### PARTICULAR COVENANTS

SECTION 4.1. Appointments by Borrower. The Borrower shall designate: (a) one or more engineers who shall perform the engineering services involved in the construction of the Project or the several portions thereof, and execute all certificates and other instruments pertaining to engineering details required hereunder to be delivered to the Administrator; and (b) a person (who may be regularly employed by the Borrower) who, subject to the general policies fixed by the board of directors for the conduct of the Borrower's business, shall have active charge of the management and operations of the Borrower (hereinafter called the "Manager"). Persons so designated by the Borrower shall be subject to the approval of the Administrator; provided that if any such person is disapproved by the Administrator, the Administrator shall notify the Borrower in writing of the reasons why the designated person is deemed not qualified to perform the proposed duties properly; and provided further that the Administrator's approval shall not be required for a person designated as the Manager by the Borrower if, for each of the five years immediately preceding such designation, the Borrower has owned and operated the Existing Facilities and has not had a deficit in net income or net margins as determined in accordance with methods of accounting prescribed by the state regulatory body having jurisdiction over the Borrower, or in the absence of such regulatory body or such prescription, by the Federal Communications Commission.

SEC. 4.2. Submission of Plans, Specifications and Contracts With Third Parties. The Borrower shall submit, when requested by the Administrator and subject to the Administrator's approval:

- (a) a contract or contracts with one or more approved engineers for all necessary engineering services in connection with the construction of the Project;
- (b) plans and specifications for the construction of each portion of the Project, identified by the signatures of the approved engineer for such portion or portions, and of a duly authorized and responsible officer or employee of the Borrower;
- (c) a contract or contracts for the construction of outside plant and buildings, for installation of station equipment, and for purchase and installation, or either, of central office equipment, included in the Project, together with any contractor's or subcontractor's bond relating thereto;
- (d) a contract or contracts for such toll traffic and operator assistance services, to be furnished by connecting companies, as may be necessary for the proper operation of the System; provided, however, that the Administrator's approval shall not be required for any such contract or contracts, submitted to the Administrator, which in form and substance conform with contracts in general use in the telephone industry;
- (e) a contract or contracts for the purchase by the Borrower of materials, equipment and supplies for use in connection with the Project;
- (f) a contract or contracts for the purchase, lease, or other acquisition of land for use in connection with the construction or operation of the System; and
- (g) a contract or contracts for extended area service to be provided by or for other companies, as may be necessary for the proper operation of the System.

SEC. 4.3. Deposit of Funds. The Borrower shall not deposit or allow to remain on deposit any of its funds, regardless of the source thereof, in any bank, institution or other depository which is not fully insured by the Federal government. The Borrower shall inform the Administrator of the names of the banks, institutions or other depositories which it has selected for deposit of its funds.

SEC. 4.4. Easements and Permits. The Borrower shall submit to the Government and the Bank, when requested by the Administrator, evidence satisfactory to the Administrator that the Borrower has obtained such easements from landowners and releases from lienors and such franchises, authorizations, permits, licenses, certificates of convenience and necessity, approvals, and orders from public bodies and others, reasonably adequate in form and substance, as may be required by law for the construction of the Project and the operation of the System.

If requested so to do by the Administrator, the Borrower shall cause such easements and releases to be recorded in appropriate offices of record. Except with the consent of the Administrator, none of the funds advanced on account of the Loan shall be used by the Borrower to pay for easements obtained from landowners or for releases of liens affecting easements.

SEC. 4.5. Area Coverage. The Borrower shall furnish adequate telephone service to the widest practicable number of rural users in the Borrower's telephone service area, as such area is shown on the map which is a part of the Borrower's application for the Loan, and which map, as revised by agreement between the Borrower and the Administrator, is incorporated herein by reference thereto. In the performance of this obligation, the Borrower shall (except to the extent that the Administrator, upon request of the Borrower, may in writing authorize deviations therefrom):

(a) furnish service to all applicants for service included in the Project, without payment by such applicants of any extra charge as a contribution to the cost of construction of facilities to provide such service; and

(b) take all action that may be required to enable it to extend service, with the use of such funds as may from time to time be available to it, either from surplus earnings, increased equity capital, additional loans made by lenders other than the Government or the Bank, or otherwise as the Borrower may elect, and without payment to the Borrower of any extra charge as a contribution to construction of facilities to provide such service, to every other unserved rural applicant for service in its telephone service area if the cost of constructing the required line extension for such applicant will not exceed seven times the estimated annual local service revenues from such applicant. Such service shall be furnished pursuant to terms and conditions set forth in the Borrower's tariff, as duly filed with or approved by regulatory bodies having jurisdiction in the premises, or in the absence of any such regulatory body, as adopted by the Borrower; provided that the Borrower shall not file with or submit for approval of appropriate regulatory bodies or adopt any proposed tariff, or continue in effect any existing tariff not required to be continued by any regulatory body, unless under such tariff the Borrower will be obligated to serve unserved rural applicants as provided herein.

The furnishing of service to applicants for service under the conditions provided in this section is of the essence of the Borrower's obligations under this agreement, and the failure or neglect of the Borrower to perform such obligation shall be deemed to be an event of default hereunder.

SEC. 4.6. Mortgage Covenants. The Borrower shall perform all covenants by it to be performed under the Mortgage and any supplemental mortgage.

SEC. 4.7. Representations and Warranties. The Borrower represents and warrants as follows:

(a) it is an organization of the type indicated in the introductory paragraph and duly organized, existing and in good standing under the laws of the State specified in the introductory paragraph of this agreement and has the power to enter into this agreement and to perform every act required to be performed by it hereunder;

(b) all proceedings prerequisite to the valid execution of this agreement by it have been duly taken and all required authorizations therefor have been secured;

(c) it has not entered into any contract (not heretofore fully performed) for the construction of any portion of the Project, or for engineering or for other services pertaining to the construction or operation of the System, unless such contract has (1) been approved by the Administrator; (2) will be submitted for the approval of the Administrator; or (3) the effectiveness thereof has been made subject to the approval of the Administrator;

(d) the capital structure of the Borrower is as shown in a certified copy of its articles of incorporation last submitted to the Administrator; the Borrower has issued and has outstanding only such numbers and classes of shares of its capital stock and such bonds and other evidences of indebtedness, if any, as shown in the statement thereof last submitted to the Administrator; and the Borrower has not entered into any agreement for the issuance of any other shares of its capital stock, or of bonds or other evidences of indebtedness;

(e) every statement contained in this agreement and in every other document, statement, certificate and opinion submitted to the Government or to the Bank by it or in its behalf is true and correct;

(f) the Borrower's exact legal name is that indicated on the signature page hereof;

(g) Schedule C accurately sets forth the Borrower's organizational identification number or accurately states that the Borrower has none; and

(h) Schedule C hereto accurately sets forth the borrower's place of business or, if more than one, its chief executive office as well as the Borrower's mailing address if different.

SEC. 4.8. Fees and Commissions. No fee or commission has been or shall be paid and no agreement therefor has been or shall be entered into by the Borrower or any of its officers, employees, agents, or representatives in order to obtain the Loan.

SEC. 4.9. "Buy American" Clause. The Borrower shall use or cause to be used in connection with the expenditures of funds advanced on account of the Loan only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States or in any eligible country, and only such manufactured articles, materials, and supplies as have been manufactured in the United States or in any eligible country substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States or in any eligible country, except to the extent the Administrator shall determine that such use shall be impracticable or that the cost thereof shall be unreasonable. For purposes of this section, an "eligible country" is any country that applies with respect to the United States an agreement ensuring reciprocal access for United States products and services and United States suppliers to the markets of that country, as determined by the United States Trade Representative.

SEC. 4.10. Equal Opportunity Clause. The Borrower hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in Executive Order 11246 of September 24, 1965, or in the rules and regulations of the Secretary of Labor, which is paid for in whole or in part with funds obtained from the Government or the Bank or borrowed on the credit of the Government or the Bank pursuant to a grant, contract, loan, insurance or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance or guarantee, the following equal opportunity clause:

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The Borrower further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the Borrower so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The Borrower agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the administering agency's primary responsibility for securing compliance.

The Borrower further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to Executive Order 11246, of September 24, 1965, and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of Executive Order 11246, of September 24, 1965.

In addition, the Borrower agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: cancel, terminate or suspend in whole or in part this contract; refrain from extending any further assistance to the Borrower under the program with respect to which the failure or refusal occurred until satisfactory assurance of further compliance has been received from such Borrower; and refer the case to the Department of Justice for appropriate legal proceedings.

SEC. 4.11. Evidence of Feasibility. The Borrower shall, whenever requested so to do by the Administrator, submit evidence satisfactory to the Administrator of the economic and engineering feasibility of each portion of the System designated by the Administrator.

SEC. 4.12. Proof of Title. No funds shall be advanced on account of the Loan to finance the acquisition of any real property by the Borrower, or any construction thereon, until the Borrower shall have submitted evidence satisfactory to the Administrator that it has acquired or will acquire good and marketable title to such real property and owns or will own or has other rights in all of its properties and assets.

SEC. 4.13. Commencement of Operation. The Borrower shall not operate any portion of the Project until the Borrower shall have furnished evidence that (a) such portion of the Project has been properly constructed and is ready to be operated, (b) there are sufficient subscribers ready to take service to permit the economical operation of such portion of the Project, and (c) the Borrower has complied with the provisions of the Mortgage concerning insurance in respect of such portion of the Project.

SEC. 4.14. Operating and Maintenance Procedures. The Borrower shall, subject to applicable laws and rules, regulations and orders of regulatory bodies, operate and maintain the System in accordance with standards of operation and maintenance generally accepted for corporations of the size and character of the Borrower.

SEC. 4.15. Compliance with Environmental Requirements. The Borrower shall, with respect to all facilities which may be part of the System, comply with all applicable water and air pollution control standards and other environmental requirements imposed by Federal or state statutes, regulations, licenses or permits.

SEC. 4.16. Historic Preservation. The Borrower shall not use any portion of the RUS Loan or the Bank Loan without the prior written approval of the Administrator or the Governor, as the case may be, for any project, activity or program that can result in changes in the character or use of any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior pursuant to the National Historic Preservation Act, as amended.

SEC. 4.17. Historic Landmarks. The Borrower shall not use any portion of the RUS Loan or the Bank Loan, without the prior written approval of the Administrator or the Governor, as the case may be, for any project, activity or program that may directly and adversely affect any property that the Secretary of the Interior has designated a National Historic Landmark pursuant to the National Historic Preservation Act, as amended.

SEC. 4.18. Electronic Funds Transfer. Except as otherwise prescribed by the Administrator and the Governor, the Borrower shall make all payments on all notes issued by the Borrower pursuant to this agreement and any subsequent amendment, utilizing electronic funds transfer procedures as specified by the Administrator and the Governor for payments to the Government or to the Bank, respectively.

SEC. 4.19. Uniform Relocation and Acquisition Act. The Borrower hereby covenants that it shall, in acquiring real property, comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the "Uniform Act"), as amended by the Uniform Relocation Act Amendments of 1987, and 49 C.F.R. Part 24, referenced by 7 C.F.R. Part 21, to the extent the Uniform Act is applicable to such acquisition.

