

RUS Project Designation:

VERMONT 1103-A40

BROADBAND INITIATIVES PROGRAM

LOAN/GRANT AND SECURITY AGREEMENT

dated as of September 20, 2010

between

VERMONT TELEPHONE COMPANY, INC.,

VTEL WIRELESS, INC.,

and

THE UNITED STATES OF AMERICA

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL UTILITIES SERVICE

**BROADBAND INITIATIVES PROGRAM
LOAN/GRANT AND SECURITY AGREEMENT**

THIS LOAN/GRANT AND SECURITY AGREEMENT (this "Agreement"), dated as of September 20, 2010 is between **VERMONT TELEPHONE COMPANY, INC.**, a corporation existing under the laws of DELAWARE, **VTEL WIRELESS, INC.**, a corporation existing under the laws of DELAWARE, (hereinafter both the "Awardees"), and the **UNITED STATES OF AMERICA**, acting through the Administrator of the Rural Utilities Service ("RUS").

The Awardees have applied for financial assistance ("Application") from RUS to finance the construction of a broadband infrastructure project to serve areas that are at least 75% rural.

RUS is willing to extend financial assistance, in the form of a loan and grant to the Awardees, pursuant to the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, 123 Stat. 115 (2009) (the "Recovery Act"), the Notice of Funds Availability published at 75 Fed. Reg. 3820 and Title VI of the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*), and all applicable federal regulations, on the terms and conditions stated herein.

The Awardees are willing to secure the loan and grant and its other obligations to RUS on the terms stated herein.

THEREFORE, in consideration of the promises and mutual covenants herein contained, the parties agree and bind themselves as follows:

ARTICLE I - DEFINITIONS

The terms defined herein include both the plural and the singular. Unless otherwise specifically provided, all accounting terms not otherwise defined herein shall have the meanings assigned to them, and all determinations and computations herein provided for shall be made in accordance with Accounting Requirements.

"Accounting Requirements" shall mean compliance with U.S. Generally Accepted Accounting Principles (GAAP) acceptable to RUS as well as compliance with the requirements of the following applicable regulations: 7 C.F.R. 3015 (and, by adoption, 48 C.F.R. 31.2 of the Federal Acquisition Regulations), 3016, or 3019 and applicable OMB Circulars, or the system of accounting prescribed by RUS Bulletin 1770B-1.

"Advance" or "Advances" shall mean the disbursement of Loan and/or Grant funds in accordance with this Agreement.

"Affiliate" or "Affiliated Company" of any specified person or entity means any other person or entity directly or indirectly controlling of, controlled by, under direct or indirect common control with, or related to, such specified person or entity, or which exists for the sole purpose of providing any service to one company or exclusively to companies which otherwise meet the definition of affiliate. This definition includes Variable Interest Entities as described in Financial Accounting Standards Board Interpretation (FIN) No. 46(R), *Consolidation of Variable Interest Entities*. For the purpose of this definition, "control" means the possession directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, whether such power is exercised through one or more intermediary companies, or alone, or in conjunction with, or pursuant to an agreement with, one or more other companies, and whether such power is established through a majority or minority ownership voting of securities, common directors, officers, or stockholders, voting trust, holding trusts (other than money exchanged) for property or services.

"Application" shall have the meaning as defined in the second paragraph hereof.

"Award" shall mean the Loan or Loan/Grant Combination described in Article III.

"Awardees" shall mean the Loan or Loan/Grant Combination recipients named in the first paragraph hereof.

"BIP" shall mean the Broadband Initiatives Program, administered by RUS and created pursuant to the Recovery Act.

"BIP Contracting, Work Order and Advance Procedures Guide" shall mean the procedures for construction and Advances, attached hereto as Attachment 1.

"Business Day" shall mean any day that RUS and the Department of Treasury are both open for business.

"Collateral" shall mean any and all property pledged as security for the Obligations, including, without limitation, security for the Loan, and other amounts owing to RUS under the Loan-Grant Documents, including, without limitation, the property described in Article IX and on Schedule 2.

"Composite Economic Life" means the weighted (by dollar amount of each class of facility in the Award) average economic life of all classes of facilities in the Award, as determined by RUS.

"Distribution" shall have the meaning as defined in Section 7.9.

"Eligible Purposes" shall mean purposes and expenses which are specified in the NOFA as being eligible for funding.

"Event of Default" shall have the meaning as defined in Article X.

"Expiration Date" shall have the meaning as defined in Paragraph (d) of Section 3.1.

"Form 481" shall have the meaning as defined in Section 4.3(d).

"GAAP" shall mean generally accepted accounting principles in the United States.

"Grant" shall mean the grant described in Section 3.1.

"Interest Expense" shall mean the accrual of interest on all classes of indebtedness, including capital leases and securities issued by the Awardees and shall also include the amortization of debt issuance expenses, premiums, and discounts.

"Laws" shall have the meaning as defined in paragraph (e) of Article II.

"Loan" shall mean the loan described in Section 3.1.

"Loan/Grant Combination" shall mean, collectively, the loan and grant described in Section 3.1.

"Loan-Grant Documents" shall mean, collectively, this Agreement, Security Documents and the Note(s).

"Material Adverse Effect" shall mean a material adverse effect on, or change in, the condition, financial or otherwise, operations, properties, business or prospects of the Awardees or on the ability of the Awardees to perform their obligations under the Loan-Grant Documents as determined by RUS.

"Net Income" or "Net Margins" shall mean the amount equal to the income that the Awardees have after subtracting costs and expenses from the total revenue. Costs and expenses include but are not

limited to all operations and maintenance expenses, corporate operations, taxes, interest, dividends, depreciation, and gains and losses on the disposition of property.

"Net Worth" (equity) shall mean Total Assets less total liabilities of the Awardees. Net worth includes the recorded value of capital stock, additional paid-in capital, treasury stock, retained earnings and other comprehensive income.

"NOFA" shall mean the Notice of Funds Availability, published in the Federal Register at 75 Fed. Reg. 3820.

"Note(s)" shall have the meaning as defined in Paragraph (a) of Section 3.2.

"Obligations" shall mean any and all indebtedness, obligations and liabilities of the Awardees to RUS, of every kind and description, direct or indirect, secured or unsecured, joint or several, absolute or contingent, due or to become due, whether for payment or performance, now existing or hereafter arising, howsoever evidenced or created, including, without limitation, all loans (including any loan by renewal or extension); all indebtedness, all Notes, all undertakings to take or refrain from taking any action; and all interest, taxes, fees, charges, expenses, and attorney's fees chargeable to Awardees or incurred by RUS under this Agreement or in any other document or instrument delivered hereunder or as a supplement hereto.

"Permitted Encumbrances" shall mean:

- (1) liens for taxes, assessments and other governmental charges which are not delinquent;
- (2) liens for taxes, assessments and other governmental charges already delinquent which are currently being contested in good faith by appropriate proceedings; PROVIDED the Awardees shall have set aside on their books adequate reserves with respect thereto;
- (3) mechanics', workmen's, repairmen's, materialmen's, warehousemen's and carriers' liens and other similar liens arising in the ordinary course of business and which are not delinquent, or which are being contested in good faith and have not proceeded to judgment; PROVIDED the Awardees shall have set aside on their books adequate reserves with respect thereto;
- (4) liens in respect of judgments or awards with respect to which the Awardees shall in good faith currently be prosecuting an appeal or proceedings for review and with respect to which the Awardees shall have secured a stay of execution pending such appeal or proceedings for review; PROVIDED the Awardees shall have set aside on their books adequate reserves with respect thereto;
- (5) liens or privileges of any employees of the Awardees for salary or wages earned but not yet payable;
- (6) any obligations or duties, affecting the property of the Awardees, to any municipality or governmental or other public authority with respect to any franchise, grant, license or permit;
- (7) any right which any municipal or governmental authority may have by virtue of any franchise, license, contract or statute to purchase, or designate a purchaser of or order the sale of, any property of the Awardees upon payment of cash or reasonable compensation therefor or to terminate any franchise, license or other rights or to regulate the property and business of the Awardees; PROVIDED, HOWEVER, that

nothing in this clause 7 is intended to waive any claim or rights that RUS may otherwise have under Federal laws; and

- (8) any lien required by law or governmental regulations as a condition to the transaction of any business or the exercise of any privilege or license, or to enable the Awardees to maintain self-insurance or to participate in any fund established to cover any insurance risks or in connection with workmen's compensation, unemployment insurance, old age pensions or other social security, or to share in the privileges or benefits required for companies participating in such arrangements; PROVIDED, HOWEVER, that nothing in this clause 8 is intended to waive any claim or rights that RUS may otherwise have under Federal laws.

"Pledged Deposit Account" shall have the meaning as defined in Section 5.4.

"Project" shall have the meaning as defined in Paragraph (a) of Section 3.4.

"Project Completion" shall mean that all Award funds have been advanced to the Awardees by RUS.

"RE Act" shall mean the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*).

"Security Documents" shall mean, collectively, any mortgage, security agreement, financing statement, deposit account control agreement or other document providing collateral for the Obligations, including without limitation, repayment of the Loan.

"Service Rates" shall mean the rates charged for data, video, voice or any other service proposed in the RUS approved Application.

"Subsidiaries" shall mean the subsidiaries listed in Schedule 1.

"Substantially Complete" shall mean that 67% of Award funds have been advanced to the Awardees by RUS.

"System Design" shall mean the system as described in the RUS approved Application.

"TIER" shall mean the Awardees' consolidated total Net Income or Net Margins plus Interest Expense payable for any year divided by Interest Expense payable for such year, as set forth in Section 5.8 hereof.

"TIER Commencement Date" shall have the meaning as defined in Section 5.7.

"Timeline" shall mean the detailed schedule describing the Project build out, submitted with the RUS approved Application, as may be amended from time to time with prior written RUS consent.

"Total Assets" shall mean all property owned by the Awardees. Total assets include current and noncurrent assets such as cash, receivables, material and supplies, prepayments, deferred charges, and investments; fixed assets (plant) such as buildings and equipment, both in service and under construction; as well as capital leases and intangibles.

ARTICLE II - REPRESENTATIONS AND WARRANTIES

Recognizing that RUS is relying hereon, the Awardees represent and warrant, as of the date of this Agreement, as follows:

- (a) *Organization; Power, Etc.* The Awardees: (i) are the type of organization specified in the first paragraph hereof, duly organized, validly existing, and in good standing under the laws of the State identified in the first paragraph hereof; (ii) are duly qualified to do business and are in good standing in each jurisdiction in which the transaction of their business make such qualification necessary; (iii) has legal power to own and operate their assets and to carry on their business and to enter into and perform their obligations under the Loan-Grant Documents; (iv) has duly and lawfully obtained and maintained all material licenses, certificates, permits, authorizations and approvals necessary to conduct their business or required by applicable Laws; and (v) are eligible to obtain the financial assistance from RUS contemplated by this Agreement.
- (b) *Authority.* The execution, delivery and performance by the Awardees of this Agreement and the other Loan-Grant Documents and the performance of the transactions contemplated hereby and thereby have been duly authorized by all necessary actions and do not violate any provision of law or any charter, articles of incorporation, organization documents or bylaws of the Awardees or result in a breach of, or constitute a default under, any agreement, security agreement, note or other instrument to which the Awardees are a party or by which they may be bound. The Awardees have not received any notice from any other party to any of the foregoing that a default has occurred or that any event or condition exists that with the giving of notice or lapse of time or both would constitute such a default.
- (c) *Consents.* No consent, approval, authorization, order, filing, qualification, license, or permit of any governmental authority is necessary in connection with the execution, delivery, performance or enforcement of the Loan-Grant Documents, except such as have been obtained and are in full force and effect.
- (d) *Binding Agreement.* Each of the Loan-Grant Documents is, or when executed and delivered will be, the legal, valid, and binding obligation of the Awardees, enforceable in accordance with its terms, subject only to limitations on enforceability imposed in equity or by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally.
- (e) *Compliance with Laws.* The Awardees are in compliance in all material respects with all federal, state and local laws, rules, regulations, ordinances, codes and orders (collectively, "Laws.").
- (f) *Litigation.* There are no pending or threatened legal, arbitration or governmental actions or proceedings to which the Awardees are a party or to which any of their property is subject which, if adversely determined, could have a Material Adverse Effect.
- (g) *Information Submitted with Application.* All information, reports, and other documents and data submitted to RUS in connection with the Application were, at the time the same were furnished, complete, and correct in all material respects. Any financial statements or data submitted to RUS in connection with the Application present fairly, in all material respects, the financial position of the Awardees and the results of their operations in conformity with Accounting Requirements. Since the date thereof, there has been no material adverse change in the financial condition or operations of the Awardees.
- (h) *Principal Place of Business.* The principal place of business and chief executive office of the Awardees are at the address of the Awardees specified in Schedule 1 hereto.

- (i) *Organization Number.* The Awardees' organization numbers are correctly identified in Schedule 1 hereto.
- (j) *Subsidiaries and Parent.* Any subsidiaries or parent of the Awardees are disclosed on the attached Schedule 1.
- (k) *Defaults Under Other Agreements.* No default by the Awardees have occurred under any agreement or instrument to which the Awardees are a party or to which any of their property is subject that could have a Material Adverse Effect.
- (l) *Title to Property.* Except as disclosed in writing in the opinion of counsel, the Awardees hold good and marketable title to all of the Collateral, free and clear of any liens, security interests or other encumbrances except for Permitted Encumbrances.
- (m) *Additional Representations and Warranties.* The Awardees further represent and warrant as set forth in Schedule 1.

ARTICLE III – THE LOAN AND GRANT

Section 3.1 Loan and Grant Amounts, Interest Rate, and Expiration Date.

- (a) *Loan Amounts.* RUS agrees to make and the Awardees agree to accept, on the terms and conditions stated in this Agreement and subject to 31 U.S.C. 1551 and 1552, a loan, in the amount specified in Schedule 1 hereto (the "Loan").
- (b) *Grant Amount.* RUS agrees to make and the Awardees agree to accept, on the terms and conditions stated in this Agreement and subject to 31 U.S.C. 1551 and 1552, a grant, in the amount specified in Schedule 1 hereto (the "Grant").
- (c) *Interest Rate.* The amount of the Loan specified in Schedule 1 hereto will bear interest on each Advance at the Treasury rate for comparable loans with comparable maturities.
- (d) *Expiration Date.* The obligation of RUS to advance the Award, or any portion thereof, shall expire on a date ("Expiration Date") three (3) years from the date of this Agreement.

Section 3.2 Loan-Grant Documents

- (a) The debt created by the Loan will be evidenced by a note(s) ("Note(s)") executed by the Awardees and payable to the United States of America. The Awardees shall repay the Loan in accordance with the Note(s) which shall be payable and bear interest in accordance with its (their) terms.
- (b) The Awardees shall execute the Security Documents, in form and substance satisfactory to RUS, and such other security instruments as required by RUS.

Section 3.3 Payment

Except as otherwise prescribed by RUS, the Awardees shall make all payments on the Note(s) utilizing electronic fund transfer procedures as specified by RUS.

Section 3.4 Project

- (a) *Loan and Grant Purpose.* The Loan and Grant have been made solely to finance the broadband infrastructure project specifically described in the RUS approved Application ("Project").
- (b) *Changes to Project.* The Awardees shall obtain the prior written approval of RUS for any material change to the system design, construction, Timeline, delivery of services, and/or objective(s) of the Project.

Section 3.5 ACH Payments

The Awardees consent to the use of the Automated Clearing House (ACH) Payment System and to the deposit of award funds directly into the Pledged Deposit Account.

ARTICLE IV – CONDITIONS OF FINANCIAL ASSISTANCE

Section 4.1 Conditions Precedent to Closing

In connection with the execution and delivery of this Agreement, each of the following conditions shall be satisfied (all documents, certificates and other evidence of such conditions are to be satisfactory to RUS in its discretion):

- (a) *Legal Matters.* All legal matters incident to the consummation of the transactions hereby contemplated shall be satisfactory to counsel for RUS;
- (b) *Loan-Grant Documents.* RUS shall receive duly executed originals of the Loan-Grant Documents;
- (c) *Filed and Recorded Security Documents.* RUS shall have received executed, filed and indexed financing statements covering all of the personal property and fixtures of the Awardees;
- (d) *Articles of Incorporation, Charter, Bylaws and Organizational Documents.* With respect to corporate and cooperative Awardees, RUS shall have received certified copies of the Awardees' most recent articles of incorporation or charter and bylaws. With respect to limited liability companies or similar organizations, RUS shall have received certified copies of the Awardees' most recent organization documents containing provisions reflecting the obligations of the Awardees in paragraphs (c) and (d) of Section 7.3;
- (e) *Authorizations.* RUS shall have received satisfactory evidence that all Loan-Grant Documents and proceedings of the Awardees necessary for duly authorizing the execution, delivery and performance of the Loan-Grant Documents have been obtained and are in full force and effect;
- (f) *Approvals.* RUS shall have received satisfactory evidence that the Awardees have duly registered when and where required by law with all state, Federal and other public authorities and regulatory bodies and obtained all authorizations, certificates, and approvals necessary for, or required as a condition of, the validity and enforceability of each of the Loan-Grant Documents;
- (g) *Title Evidence.* RUS shall have received satisfactory evidence that the Awardees have good and marketable title to their property, including the Project, 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 Project;

- (h) *Management, Service, and Operating Agreements.* Except as otherwise provided in Sections 4.2 and/or 4.3 herein, RUS shall have received all management, service, and operating agreements, in form and substance acceptable to RUS, which shall be in accordance with fees or rates presented in the *pro forma* financial statements submitted to RUS in the RUS approved Application;
- (i) *Opinion of Counsel.* RUS shall have received an opinion of counsel for the Awardees (who shall be acceptable to RUS) in form and substance acceptable to RUS for each state in which the Awardees operates; and
- (j) *Additional Conditions.* The Awardees have met all additional conditions specified in Schedule 1 hereto.

Section 4.2 General Conditions Precedent to RUS' Obligations to Release Funds for Advance

The obligations of RUS hereunder are subject to the satisfaction of each of the following conditions precedent (all documents, certificates and other evidence of such conditions are to be satisfactory to RUS in its discretion):

- (a) *Service Rate Evidence.* RUS shall have received satisfactory evidence that the Awardees have duly adopted Service Rates for all proposed services which are designed with a view to (i) paying and discharging all taxes, maintenance expenses, and operating expenses of the Awardees, (ii) making all payments in respect of principal and interest on the Note(s) when and as the same shall become due, (iii) providing and maintaining reasonable working capital of the Awardees, and (iv) producing and maintaining the TIER specified in Section 5.8 hereof;
- (b) *Fidelity Bond or Theft Insurance Coverage.* RUS has received copies of the fidelity bond or theft insurance policy from the Awardees, identifying RUS as a loss payee, from a surety doing business with the United States listed in 31 CFR Part 223, in the amount specified in Schedule 1, covering all officers, employees, or agents of the Awardees authorized to receive, disburse, or receive and disburse the Loan and Grant;
- (c) *Current Financial Information and Certificate of Authority.* RUS has received from the Awardees: (i) their updated balance sheets, statements of cash flow, and income statements and (ii) a duly authorized and executed certification, Form 675, "Certification of Authority," designating an officer, employee, or agent of the Awardees as the person or persons authorized to execute and submit, on behalf of the Awardees, RUS Form 481, "Financial Requirement Statement;"
- (d) *Deposited Funds.* RUS has received from the Awardees evidence, satisfactory to RUS, verifying that the Awardees have maintained on deposit in an account, funds sufficient to complete the Project as specified on Schedule 1; and
- (e) *Additional Conditions.* The Awardees have met all additional conditions specified in Schedule 1 hereto.

Section 4.3 Conditions to Individual Advances

The obligations of RUS to approve any Advance are subject to the satisfaction of each of the following conditions precedent on or before the date of such Advance (all documents, certificates and other evidence of such conditions precedent are to be satisfactory to RUS in its discretion):

- (a) *Continuing Representations and Warranties.* That the representations and warranties of the Awardees contained in this Agreement be true and correct on and as of the date of such Advance as though made on and as of such date;
- (b) *Material Adverse Effect.* That no event has occurred which has had or could have a Material Adverse Effect;
- (c) *Event of Default.* That no Event of Default and no event which with the passage of time or giving of notice, or both, would constitute an Event of Default shall have occurred and be continuing, or shall have occurred after giving effect to any Advances on the books of the Awardees;
- (d) *Requisitions and Supporting Documentation.* That RUS shall have received not more frequently than once a month, unless otherwise agreed to by RUS, a completed RUS Form 481, "Financial Requirement Statement" (hereinafter "Form 481"), bearing the original signature of the officer, employee, or agent of the Awardees authorized to receive, disburse, or receive and disburse the Award, with supporting documentation from the Awardees in accordance with the BIP Contracting, Work Order and Advance Procedures Guide. Advances shall be limited to the minimum amounts required for the Awardees' immediate disbursement needs and shall be requested by the Awardees only for actual immediate cash requirements of the Awardees. Such loan/grant advances shall be provided on a reimbursement basis, or based on unpaid third party invoices for Eligible Purposes, or contracts approved by RUS, in accordance with the BIP Contracting, Work Order and Advance Procedures Guide. Grant funds must be advanced concurrently with Loan funds in the same proportion as the Grant is to the total Award;
- (e) *Flood Insurance.* That for any Advance used in whole or in part to finance the construction or acquisition of any building in any area identified by the Secretary of Housing and Urban Development pursuant to the Flood Disaster Protection Act of 1973 (the "Flood Insurance Act") or any rules, regulations or orders issued to implement the Flood Insurance Act as any area having special flood hazards, or to finance any facilities or materials to be located in any such building, or in any building owned or occupied by the Awardees and located in such a flood hazard area, the Awardees shall have submitted evidence, in form and substance satisfactory to RUS or RUS has otherwise determined, that (i) the community in which such area is located is then participating in the national flood insurance program, as required by the Flood Insurance Act and any related regulations, and (ii) the Awardees has obtained flood insurance coverage with respect to such building and contents as may then be required pursuant to the Flood Insurance Act and any related regulations;
- (f) *Current Financial Information.* That RUS has received from the Awardees: their current, updated balance sheets, income statements and statements of cash flow;
- (g) *Compliance with Timeline.* That RUS has received from the Awardees evidence, satisfactory to RUS, that the Project is being constructed in accordance with the Timeline;
- (h) *Compliance with Loan-Grant Documents.* That the Awardees are in material compliance with the Loan-Grant Documents;

- (i) *Permits, Licenses and Franchises.* That RUS shall have received satisfactory evidence that the Awardees have obtained the permits, licenses, franchises and other approvals identified on Schedule 1;
- (j) *Additional Documents.* That the Awardees agree to provide RUS with such additional documents as RUS may request; and
- (k) *Additional Conditions.* That the Awardees have met all additional conditions specified in Schedule 1 hereto.

Section 4.4 First Advance to Pay Off Pre-Application Expenses and Interim Financing; Restrictions on Subsequent Advances

Funds to pay off certain pre-application expenses, as defined in the NOFA, and expenditures for Eligible Purposes incurred after submission of the Application to RUS, if any, will be included in the first Advance. Thereafter no further Advances will be made unless and until the Awardees have furnished evidence, in form and content satisfactory to RUS, that such interim financing has been paid in full and any associated liens have been duly discharged of record.

ARTICLE V – AFFIRMATIVE COVENANTS

Section 5.1 Generally

Unless otherwise agreed to in writing by RUS, while this Agreement is in effect, the Awardees shall duly observe each of the affirmative covenants contained in this Article V.

Section 5.2 Use of Advances

The Awardees shall expend Award funds only for Eligible Purposes in accordance with the RUS approved line item Project budget and Form(s) 481 submitted to RUS prior to the advance of funds.

Section 5.3 Unused and Disallowed Advances

- (a) The Awardees shall return to RUS forthwith all or any advanced portion of the Loan and Grant not disbursed by the Awardees for the Project or not needed to complete the Project with any interest earned thereon when deposited in the Pledged Deposit Account.
- (b) The Awardees shall reimburse RUS for any advanced funds whose original expenditure has been disallowed by an RUS loan and grant audit. Disallowances shall be satisfied, as directed by RUS, by either administrative offset against other approved purposes on Form(s) 481 or repaying the disallowed amount directly to the United States Treasury. Such disallowed amounts shall accrue interest payable to RUS from the date RUS delivers to the Awardees a written demand for payment. Interest shall accrue on disallowed Loan Advances at the lesser of the following: the interest rate of the disallowed Advance or the then current United States Treasury rate as prescribed by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletin. Interest shall accrue on disallowed Grant Advances at the then current United States Treasury rate as prescribed by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletin. Closeout of the Loan and Grant will not affect the right of RUS to disallow expenditures and recover, in full, any amount on the basis of a subsequent audit or other review or the Awardees' obligation to return any disallowed expenditures.

Section 5.4 Deposit of Advances into Pledged Deposit Account

- (a) The Awardees shall open and maintain a deposit account pledged to RUS ("Pledged Deposit Account,") in a bank or depository whose deposits are insured by the Federal Deposit Insurance Corporation or other federal agency acceptable to RUS and shall be identified by the RUS' designation of the Awardees followed by the words "Pledged Deposit Account." The Awardees shall promptly deposit proceeds from all Advances, including previously advanced funds whose original expenditure has been disallowed by an RUS audit into the Pledged Deposit Account. Moneys in the Pledged Deposit Account shall be used solely for the purposes for which Advances were made, or for such other purposes as may be approved in writing by RUS. Deposits and disbursements from the Pledged Deposit Account shall be made and recorded in accordance with the BIP Contracting, Work Order and Advance Procedures Guide.
- (b) *First Lien on Pledged Deposit Account.* The Awardees shall perfect and maintain a first and prior lien in the Pledged Deposit Account (pursuant to a deposit account agreement or similar agreement or mechanism for perfecting as provided by applicable law) in form acceptable to RUS.

Section 5.5 Additional Project Funding

The Awardees shall ensure that adequate funding is in place to complete the Project and will, after obtaining the prior written approval of RUS, obtain additional loans or funds or receive binding commitments for supplemental funding in an amount needed to ensure completion of the Project.

Section 5.6 Miscellaneous Notices

The Awardees shall furnish to RUS:

- (a) *Notice of Default.* Promptly after becoming aware thereof, notice of the occurrence of any default under the Loan-Grant Documents or the receipt of any notice given pursuant to the Loan-Grant Documents with respect to the occurrence of any event which with the giving of notice or the passage of time, or both, could become an Event of Default hereunder or under the other Loan-Grant Documents.
- (b) *Notice of Litigation.* Promptly after the commencement thereof, notice of the commencement of all actions, suits or proceedings before any court, arbitrator, or governmental department, commission, board, bureau, agency, or instrumentality affecting the Awardees or any Affiliate which, if adversely determined, could have a Material Adverse Effect.
- (c) *Regulatory and Other Notices.* Promptly after receipt thereof, copies of any notices or other communications received from any governmental authority with respect to any matter or proceeding which could have a Material Adverse Effect.
- (d) *Material Adverse Effect.* Promptly after becoming aware thereof, notice of any matter which has resulted or may result in a Material Adverse Effect.
- (e) *Corporate Document Changes.* Thirty (30) days prior to their effectiveness, any amendments, supplements or modifications to the Awardees' Articles of Incorporation, Charter, Bylaws, Operating Agreement, Members Agreements or other Organizational Documents.

- (f) *Other Information.* Such other information regarding the condition, financial or otherwise, or operations of the Awardees as RUS may, from time to time, reasonably request.

Section 5.7 Rates and Financial Performance Criteria

The Awardees shall design, charge and maintain rates in effect which (i) pay and discharge all taxes, maintenance expenses and operating expenses of its system (ii) make all payments in respect of principal of and interest on the Note(s) when and as the same shall become due, (iii) provide and maintain reasonable working capital for the Awardees, and (iv) maintain the TIER specified in Section 5.8 hereof, commencing on the date specified on Schedule 1 hereto (the "TIER Commencement Date") and ending when the Loan is repaid in full.

Section 5.8 TIER

The Awardees will maintain a TIER of (b)(4) beginning on the TIER Commencement Date until the Loan is repaid in full.

Section 5.9 Corrective Action

Within thirty (30) days of (i) sending the financial reports required by Section 6.3 hereof that shows the TIER specified in Section 5.8 was not achieved for the reported fiscal period or (ii) being notified by RUS that the TIER specified in Section 5.8 was not achieved for the reported fiscal period, whichever is earlier, the Awardees, in consultation with RUS, shall provide a written plan satisfactory to RUS setting forth the actions that shall be taken to achieve the specified TIER on a timely basis and shall promptly implement said plan.

Section 5.10 Service Obligation

The Awardees shall provide the broadband service described in the RUS approved Application commencing from the date the Project is Substantially Complete until the longer of (i) the Composite Economic Life of the facilities financed by the Award as specified on Schedule 1 or (ii) as long as the Note(s) is outstanding.

Section 5.11 Obligations with Respect to the Construction, Operation and Maintenance of the Project

- (a) *Project Management and Operation.* The Awardees shall be responsible for the management of the Project and will operate the Project in an efficient and economic manner as well as maintaining the Project in good repair.
- (b) *Construction in Accordance with System Design and Timeline.* The Awardees shall cause the Project to be constructed and/or built out, and completed in accordance with the system design submitted with the RUS approved Application, as such design may be amended with prior RUS consent, and the Timeline.
- (c) *General Insurance Requirements.* The Awardees shall take out and maintain insurance on the Project and any other property acquired with the Loan and Grant in accordance with 7 CFR Section 1788 as well as maintaining the fidelity bond or theft insurance coverage required in Section 4.2(b) hereof.
- (d) *Contracting.* The Awardees may, in accordance with the BIP Contracting, Work Order and Advance Procedures Guide, contract for goods and services to be funded by the Award, using RUS form contracts or private contracts; provided that private contracts must comply with equal employment opportunity and civil rights requirements, as well as the Davis Bacon Act.

- (e) *Commencement and Completion of Construction and/or Installation.*
 - (1) Awardees are required to commence construction and/or installation of the Project within 180 days from the date hereof, and
 - (2) The Project shall be Substantially Complete within two years of the date hereof, and Project Completion shall occur within three years of the date hereof.

Section 5.12 Preservation of Existence and Rights

The Awardees shall take or cause to be taken all such actions as from time to time may be necessary to preserve their existence and to preserve and renew all franchises, contracts, rights of way, easements, permits, and licenses now or hereafter to be granted or conferred upon it, with respect to the Project, the loss of which would have a Material Adverse Effect.

Section 5.13 Compliance with Laws

Awardees shall comply with all applicable federal and state laws, including but not limited to: (i) The nondiscrimination and equal employment opportunity requirements of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000e *et seq.*, 7 CFR pt. 15); (ii) Section 504 of the Rehabilitation Act (29 U.S.C. § 794 *et seq.*; 7 CFR pt. 15b); (iii) The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*; 45 CFR pt. 90); (iv) Executive Order 11375, amending Executive Order 11246, Relating to Equal Employment Opportunity (3 CFR pt. 102). *See* 7 CFR pts. 15 and 15b and 45 CFR pt. 90, RUS Bulletin 1790-1 (“Nondiscrimination among Beneficiaries of RUS Programs”), and RUS Bulletin 20-15:320-15 (“Equal Employment Opportunity in Construction Financed with RUS Loans”). The RUS Bulletins are available at <http://www.broadbandusa.gov>; (v) The Architectural Barriers Act of 1968, as amended (42 U.S.C. § 4151 *et seq.*); (vi) The Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR subpart 101-19.6); (vii) The Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA and certain related federal environmental laws, statutes, regulations, and Executive Orders found in 7 CFR1794; and (viii) The Communications Act of 1934, as amended, (47 U.S.C. § 151 *et seq.*), the Telecommunications Act of 1996, as amended (Pub. L. 104-104, 110 Stat. 56 (1996)), and the Communications Assistance for Law Enforcement Act (47 U.S.C. § 1001 *et seq.*) (CALEA).

Section 5.14 Equal Opportunity Requirements

- (a) *Equal Opportunity Provisions in Construction Contracts.* The Awardees shall incorporate or cause to be incorporated into any construction contract, as defined in Executive Order 11246 of September 24, 1965 and implementing regulations, which is paid for in whole or in part with funds obtained from RUS or borrowed on the credit of the United States pursuant to a grant, contract, loan, insurance or guarantee, or undertaken pursuant to any RUS program involving such grant, contract, loan, insurance or guarantee, the equal opportunity provisions set forth in Attachment 2 hereto, entitled Equal Opportunity Contract Provisions.
- (b) *Equal Opportunity Contract Provisions Also Bind the Awardees.* The Awardees further agrees that they shall be bound by such equal opportunity clause in any federally assisted construction work which they perform themselves other than through the permanent work force directly employed by an agency of government.
- (c) *Sanctions and Penalties.* The Awardees agree that they shall cooperate actively with RUS 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 they shall furnish RUS and the Secretary of Labor such information as they may require for the supervision of such

compliance, and that they shall otherwise assist the administering agency in the discharge of RUS' primary responsibility for securing compliance. The Awardees further agrees that they shall refrain from entering into any contract or contract modification subject to Executive Order 11246 with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to Part II, Subpart D of Executive Order 11246 and shall carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by RUS or the Secretary of Labor pursuant to Part II, Subpart D of Executive Order 11246. In addition, the Awardees agrees that if they fail or refuse to comply with these undertakings RUS may cancel, terminate or suspend in whole or in part this Agreement, may refrain from extending any further assistance under any of its programs subject to Executive Order 11246 until satisfactory assurance of future compliance has been received from the Awardees, or may refer the case to the Department of Justice for appropriate legal proceedings.

Section 5.15 Purchases with Award Funds

Except as specifically authorized in writing in advance by RUS, all facilities, materials, equipment, supplies, replacements and all other items purchased with Award funds shall be purchased outright, and not subject to any conditional sales agreement, chattel mortgage, bailment lease or other agreement reserving to the seller any right, title or lien.

Section 5.16 Awardees to Defend Title and Remove Liens

Except for Permitted Encumbrances, the Awardees will maintain and preserve the lien of this Agreement superior to all other liens affecting the Collateral, and will forever warrant and defend the title to the Collateral against any and all claims and demands whatsoever. The Awardees shall make, execute, acknowledge, deliver, file and record all such mortgages, financing statements, continuation statements, security agreements, instruments and conveyances as is necessary to preserve the lien of this Agreement against the Collateral superior to all other liens. The Awardees shall maintain the Collateral free of all liens except for Permitted Encumbrances, and will promptly pay or discharge any and all obligations for or on account of which any such lien or charge might exist or could be created and any and all lawful taxes, rates, levies, assessments, liens, claims or other charges imposed upon or accruing upon any of the Collateral, as and when the same shall become due and payable; and whenever called upon so to do by RUS will furnish to RUS adequate proof of such payment or discharge; provided, however that this provision shall not be deemed to require the payment or discharge of any tax, rate, levy, assessment or other governmental charge while the Awardees is contesting the validity thereof by appropriate proceedings in good faith and so long as they shall have set aside on their books adequate reserves with respect thereto.

Section 5.17 Further Assurances

- (a) The Awardees shall from time to time upon written demand of RUS make, execute, acknowledge and deliver or cause to be made, executed, acknowledged and delivered all such further and supplemental financing statements, continuation statements, security agreements, instruments and conveyances as may be requested by RUS and take or cause to be taken all such further action as may reasonably be requested by RUS to provide for the securing and payment of the principal of, interest on, and any and all other amounts payable hereunder and under the Note(s) according to the terms thereof and for the purpose of fully conveying, transferring and confirming the property hereby conveyed and pledged or intended so to be, whether now owned by the Awardees or hereafter acquired by it.
- (b) The Awardees shall cause this Agreement, financing statement, continuation statement and every additional instrument which shall be executed pursuant to subsection (a) immediately above, to forthwith upon execution to be filed and

recorded and refiled and rerecorded as conveyances and security interests in personal property in such manner and in such places as may be required by law or requested by RUS in order to fully preserve the security for the Obligations, including the Loan, and to perfect and maintain the superior lien of this Agreement and all supplemental security instruments.

Section 5.18 Buy American - General Prohibition and Waiver

For Awardees that are States, local governments, or any agency, subdivision, instrumentality, or political subdivision thereof, pursuant to § 1605 of the Recovery Act, no Loan or Grant funds may be used for the construction, alteration, maintenance, or repair of a public building or public work (as such terms are defined in 2 CFR § 176.140) unless all of the iron, steel, and manufacturing goods used in the project are produced in the United States, except as provided in OMB regulations at 75 Fed. Reg. 14323 (Mar. 25, 2010). Notwithstanding, such Awardees have been granted a general waiver by the Secretary of Agriculture with respect to certain broadband equipment, as outlined in the Federal Register at 74 Fed. Reg. 31402 (July 1, 2009). All other waivers must be requested of RUS pursuant to 2 CFR § 176.60

Section 5.19 Nondiscrimination and Interconnection Obligations

The Awardees agrees to (i) adhere to the principles contained in the FCC's Internet Policy Statement (FCC 05-151, adopted August 5, 2005); (ii) not favor any lawful Internet applications and content over others; (iii) display any network management policies in a prominent location on the service provider's webpage, provide notice to customers of changes to these policies, such policies include any business practices or technical mechanisms they employ, other than standard best efforts Internet delivery, to allocate capacity; differentiate among applications, providers, or sources, limit usage and manage illegal or harmful content; (iv) connect to the public Internet directly or indirectly, such that the project is not an entirely private closed network; and (v) offer interconnection, where technically feasible without exceeding current or reasonably anticipated capacity limitations, on reasonable rates and terms to be negotiated with requesting parties. This includes both the ability to connect to the public Internet and physical interconnection for the exchange of traffic.

- (a) Notwithstanding the above, the Awardees may not offer interconnection to anyone that will provide services that duplicate services provided by projects funded by outstanding telecommunications loans made under the RE Act. Further, interconnection may not be used for an ineligible purpose under the Recovery Act.
- (b) These obligations are subject to the needs of law enforcement and reasonable network management. As such, the Awardees may employ generally accepted technical measures to provide acceptable service levels to all customers, such as caching and application-neutral bandwidth allocation, as well as measures to address spam, denial of service attacks, illegal content, and other harmful activities.
- (c) In the event the Awardees contract with another entity to operate the Project, the Awardees shall require such entity to comply with the terms of this Section, expressly including this Section in their contractual arrangement.
- (d) These obligations do not apply to the Awardees' existing network.

Section 5.20 Davis-Bacon Wage Requirements

The Awardees shall comply with the Davis-Bacon Act, and the guidance found at 29 C.F.R. pts. 1, 3, and 5, such that any covered contract with a contractor or subcontractor in excess of \$2,000 for construction, alteration or repair (including painting and decorating) shall contain the contract clauses found in 29 C.F.R. 5.5(a), to ensure that all laborers and mechanics employed on the Project receive payment of not less than the prevailing wage.

Section 5.21 Additional Affirmative Covenants

The Awardees shall comply with the additional affirmative covenants set forth in Schedule 1 hereto.

ARTICLE VI – ACCOUNTING AND REPORTING

Section 6.1 Financial Records

- (a) Awardees must establish an accounting system satisfactory to RUS in compliance with Accounting Requirements. Such a system of accounts must account for all funds advanced under this Agreement separately from all other funds for the Project, as required by the Recovery Act.
- (b) The Awardees shall maintain, at their premises, such books, documents, papers, or other records and supporting documents, including, but not limited to, invoices, receipts, payroll records and bills of sale, adequate to identify the purposes for which, and the manner in which Loan, Grant, and other funds were expended on the Project. The Awardees shall at all times keep, and safely preserve, proper books, records and accounts in which full and true entries shall be made of all dealings, business, and affairs of the Awardees and its Subsidiaries, in accordance with its system of accounts complying with Paragraph (a) immediately above. The Awardees shall maintain copies of all documents submitted to RUS in connection with the Award until the later of (i) the Loan being paid in full and all audits have been completed, or (ii) three years subsequent to close-out of the Award.

Section 6.2 Rights of Inspection

The Awardees shall afford RUS, the Office of the Inspector General of USDA, and the Government Accountability Office, through their representatives, reasonable opportunity, at all times during business hours and upon prior notice, to have access to and right to inspect the Project, any other property encumbered by the Security Documents, and any and all books, records, accounts, including electronic books, records, accounts and electronic mail messages, regardless of the physical form or characteristics, invoices, contracts, leases, payroll records, canceled checks, statements, and other documents, and papers of every kind belonging to or in any way pertaining to its property or business, including its Subsidiaries, if any, and to make copies or extracts therefrom.

Section 6.3 Annual Audit

Effective after an Advance has been made, one hundred twenty (120) days from the end of the Awardees' current fiscal year and, thereafter, one hundred twenty (120) days from the close of each subsequent fiscal year, the Awardees must submit annual audited financial statements along with a report on compliance and on internal control over financial reporting, and a management letter in accordance with the requirements of 7 CFR 1773. The CPA conducting the annual audit must meet the requirements for a qualified CPA as set forth in 7 CFR § 1773.5. However, if the Awardees are a state, local government, or non-profit organization that expends \$500,000 or more of federal funds during its fiscal year, an audit must be performed in accordance with OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, located at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. Awardees are also responsible for ensuring that sub-recipient audit reports are received and for resolving any audit findings.

Section 6.4 BIP Reporting

- (a) *Quarterly Report.* No later than thirty (30) calendar days after the end of each calendar year quarter the Awardees must submit to RUS utilizing RUS's online

Broadband Collection and Analysis System (BCAS), the following information: balance sheets, income statements, statements of cash flow, summaries of its rate packages, the number of customers taking broadband service on a per community basis, the completion status of the build-out and whether the project is Substantially Complete. In addition the Awardees must provide RUS with such other reports concerning the financial condition or operation of the Awardees, including their Subsidiaries, as RUS may request.

- (b) *Annual Report.* For the lesser of five years or as long as the Awardees are required to provide service hereunder, on each January 31st, starting the first January 31st after Project Completion, the Awardees must submit the following information to RUS utilizing BCAS:
 - (i) Number of households and businesses subscribing to broadband service;
 - (ii) Number of households and businesses subscribing to broadband service that receive improved access; and
 - (iii) Number of educational, library, healthcare, and public safety providers receiving either new or improved access to broadband service.
- (c) *Annual Compliance Certificate.* Within forty-five (45) days after the close of each calendar year, or more often if requested in writing by RUS, the Awardees shall deliver to RUS a written statement signed by their general manager, managing member, or equivalent corporate official satisfactory to RUS, stating that, during such year the Awardees have fulfilled their obligations under the Loan-Grant Documents throughout such year in all material respects or, if there has been a material default in the fulfillment of such obligations, specifying each such default known to such official and the nature and status thereof.
- (d) *Close Out Report.* The Awardees shall deliver a close out report to RUS no later than ninety (90) days after the expiration or termination of the Award, or the completion of the Project and expenditure of all Award funds. The close out report shall address: (i) a comparison of actual accomplishments to the objectives set forth in the Application; (ii) a description of problems, delays, or adverse conditions that occurred, or which affected the attainment of overall Project objectives, prevented the meeting of time schedules or objectives, or precluded the attainment of particular Project work elements during established time periods; and (iii) a comparison of how funds were spent against the original general budget submitted with the RUS approved Application.

Section 6.5 Recovery Act Reporting

No later than ten (10) calendar days after each calendar quarter in which the Awardees receive the assistance award funded in whole or part with Award funds, the Awardees shall submit through <http://www.federalreporting.gov> the information required by 2 C.F.R. 176. The final report should summarize the Awardees' quarterly filings and state whether the project's goals have been satisfied.

ARTICLE VII – NEGATIVE COVENANTS

Section 7.1 General

Unless otherwise agreed to in writing by RUS, while this Agreement is in effect, the Awardees shall duly observe each of the negative covenants set forth in this Article VII.

Section 7.2 Merger, Consolidation, Transfer of Property, or Change in Control

The Awardees shall not, without the prior written consent of RUS, take or suffer to be taken any steps to reorganize, consolidate with or merge into any other corporation, or to sell, lease or transfer (or make any agreement therefor) all or any substantial part of their property, including, without limitation, the Project.

Section 7.3 Covenants for Limited Liability Companies and Similar Awardees

Awardees which are limited liability or similar organizations agree that:

- (a) The death, retirement, resignation, expulsion, termination, bankruptcy or dissolution of any member or the occurrence of any other event that terminates the continued membership of any member shall not cause the Awardees to be dissolved or its affairs to be wound up;
- (b) Prior to the date on which any and all obligations owed to RUS, including the Note evidencing the Loan, are discharged in full, the Awardees shall not be dissolved or terminated;
- (c) The organizational documents of the Awardees shall contain provisions reflecting the obligations of the Awardees in paragraphs (a) and (b) immediately above and such provisions shall not be amended without the prior written consent of RUS; and
- (d) No direct or indirect addition or issuance of any membership units (or any other ownership interest) in the Awardees may be made by the Awardees or their members without the prior written consent of RUS and no transfer, whether individually or in the aggregate, of any membership units (or any other ownership interest) in the Awardees which will result in the transfer of more than 49% of the equity interests (of whatever nature, including voting and non-voting) in the Awardees may be made by the Awardees or their members without the prior written consent of RUS.

Section 7.4 Additional Indebtedness

The Awardees shall not, without the prior written consent of RUS, incur additional secured or unsecured indebtedness other than (b)(4)

(b)(4)
(b)(4)

Section 7.5 Negative Pledge

The Awardees shall not create, incur or suffer any lien, mortgage, pledge, assignment, or other encumbrance on, or security interest on their property, other than Permitted Encumbrances.

Section 7.6 Contracts

The Awardees shall not, without the prior written consent of RUS, enter into any contract or contracts for the operation or management of all or any substantial part of the Awardees' system, including, without limitation, the Project, and shall not enter into any contract for the use by others of all or any substantial part of their system, including, without limitation, the Project.

Section 7.7 Salaries

Salaries, wages, and other compensation paid by the Awardees for services, and directors', members', managers' or trustees' fees, shall be reasonable and in conformity with the usual practice of entities of the size and nature of the Awardees.

Section 7.8 Extension of Credit

Except as specifically authorized in writing in advance by RUS, the Awardees will make no advance payments or loans, or in any manner extend their credit, either directly or indirectly, with or without interest, to any of their directors, trustees, officers, employees, stockholders, members, managers, Affiliates or Affiliated companies; provided, however, that the Awardees may make an investment for any purpose described in section 607(c)(2) of the Rural Development Act of 1972 (including any investment in, or extension of credit, guarantee, or advance made to an Affiliated Company that is used by such Affiliate for such purpose) to the extent that, immediately after such investment: (1) the aggregate of such investments does not exceed one-third of the Net Worth and (2) the Awardees' Net Worth is at least twenty (20) percent of their Total Assets.

Section 7.9 Distributions or Withdrawals

(a)



(b)

Section 7.10 Changing Principal Place of Business, Place of Conducting Business, or Type of Organization

The Awardees shall not change their principal place of business, place of conducting business, or type of organization without the prior written consent of RUS.

Section 7.11 Changing Name or Place of Incorporation or Organization

The Awardees shall not change their legal name or place of incorporation or organization without giving RUS sixty (60) days prior written notice.

Section 7.12 Historic Preservation

The Awardees shall not, without the prior written consent of RUS, use any Advance to construct any facility which shall involve any district, site, building, structure or object which is included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior pursuant to the Historic Sites Act of 1935 and the National Historic Preservation Act of 1966.

Section 7.13 Affiliated Transactions

With regard to the Project, the Awardees shall not enter into any transaction, contract, or dealing with an Affiliate of the Awardees or with the Awardees' or Affiliate's directors, trustees, officers, managers, members (if the Awardees are limited liability companies), or other corporate officials, without the prior written consent of RUS. RUS' consent to advance award funds for affiliated transactions will be limited to an amount which is the lower of cost or market rate and which is subject to verification by RUS and its representatives having access to the books and records of the Affiliate.

Section 7.14 Preferred Stock

The Awardees shall not issue any new or additional preferred stock without the prior written approval of RUS, which approval shall not be unreasonably withheld if such stock issuance, in RUS' sole opinion, would not be considered a debt instrument under GAAP.

Section 7.15 Restrictions on Transfers of Property

- (a) Except as provided in Paragraph (b), and excluding any property which the Awardees must sell to customers in the ordinary course of business, the Awardees shall not sell, lease or transfer any Collateral to any other person or entity (including any subsidiary or affiliate of the Awardees) without the prior written consent of the RUS.
- (b) So long as the Awardees are not in default hereunder, the Awardees may, without obtaining the consent of RUS, sell or otherwise dispose of, free from the lien hereof, any of their property which is neither necessary to, nor useful for, the operation of the Awardees' business, or which has become obsolete, worn out, damaged, or otherwise unsuitable for the purposes of the Awardees; provided, however, that the Awardees shall to the extent necessary: (1) replace the same with other property of the same kind and nature, or substitute thereof, which shall be subject to the lien hereof, free and clear of all prior liens, and apply the proceeds, if any, derived from the sale or disposition of such property, which are not needed for the replacement thereof, to the prepayment of the indebtedness on the outstanding Notes; (2) immediately upon the receipt of the proceeds of any sale or disposition of said property, apply the entire amount of such proceeds to the prepayment of the indebtedness evidenced by the Notes; or (3) deposit all or such part of the proceeds derived from the sale or disposition of said property into the Pledged Deposit Account, and shall use the same only for such additions to, or improvements in, the Collateral, on such terms and conditions as RUS shall specify.

Section 7.16 Restrictions on Changes to Line Item Budget

The Awardees agrees that the budget for the Project is a line item budget and agrees not to make any revisions to the RUS approved line item Project budget, including, without limitation, the part of the budget for construction, without the prior written approval of RUS.

Section 7.17 Additional Negative Covenants

The Awardees shall comply with the additional negative covenants set forth in Schedule 1 hereto.

ARTICLE VIII - LENDER'S RIGHTS

Section 8.1 Termination of Award Offer

RUS, in its sole discretion, may terminate the offer to make the Loan or Loan/Grant Combination if it does not receive the Loan-Grant Documents, duly executed on behalf of the Awardees and all conditions in Section 4.1 hereof are not satisfied within sixty (60) days from the date hereof.

Section 8.2 Audits and Compliance Reviews

After giving prior notification to the Awardees, RUS has the right to conduct compliance reviews and audits of the Awardees to assure compliance with the Loan-Grant Documents, NOFA and the Accounting Requirements.

Section 8.3 Disallowed Expenditures

Upon a determination by RUS that the Awardees did not expend Award funds on Eligible Purposes in accordance with the RUS approved line item Project budget and the Form(s) 481 approved by RUS prior to the advance of funds, RUS may, in its sole discretion:

- (a) Disallow all or a part of the expenditures and disbursements of the Award and require the Awardees to deposit such funds in the Pledged Deposit Account to be applied toward other approved Project purposes on Form(s) 481 or to reimburse the Government, as provided in Section 5.3 hereof;
- (b) Suspend making Advances;
- (c) Take any other action RUS determines to be necessary including, without limitation, exercising any right or remedy available under the Loan-Grant Documents or law.

Section 8.4 Suspension of Advances

RUS may, in its absolute discretion, suspend making Advances on the Award upon its making a determination that an event has occurred that is likely to have a Material Adverse Effect. RUS may also suspend making advances of the Award upon the occurrence of an Event of Default.

Section 8.5 Payment Extensions

RUS may, at any time or times in succession without notice to or the consent of the Awardees and upon such terms as RUS may prescribe, grant to any person, firm or entity who shall have become obligated to pay all or any part of the principal of or interest on any note held by or indebtedness owed to RUS or who may be affected by the lien created by the Loan-Grant Documents, an extension of the time for the payment of such principal or interest, and after any such extension the Awardees will remain liable for the payment of such note or indebtedness to the same extent as though it had at the time of such extension consented thereto in writing.

Section 8.6 Right to Expend Money

RUS shall have the right (without prejudice to any of its rights with respect to any Event of Default) to advance or expend moneys for the purpose of procuring insurance, or for the payment of insurance premiums as required hereunder, or to advance or expend moneys for the payment of taxes, assessments or other charges, or to save the Collateral from sale or forfeiture for any unpaid tax or assessment, or otherwise, or to redeem the same from any tax or other sale, or to purchase any tax title thereon, or to remove or purchase any mechanics' liens or other encumbrance thereon, or to make repairs thereon or to comply with any covenant herein contained or to prosecute and defend any suit in relation to the Collateral or in any manner to protect the Collateral and the title thereto, and all sums so advanced for any of the aforesaid purposes with interest thereon at the highest legal rate, but not in excess of twelve per centum (12%) per annum shall be deemed a charge upon the Collateral and shall be forthwith paid to RUS upon demand. It shall not be obligatory for RUS in making any such advances or expenditures to inquire into the validity of any such tax title, or of any such taxes or assessments or sales therefor, or of any such mechanics' liens or other encumbrance.

Section 8.7 Right to File Financing Statements

RUS shall have the right to file such financing statements and continuation statements on its behalf, as secured party, and on behalf of the Awardees, as debtors, as RUS deems necessary to perfect a first lien on the Collateral and to maintain and preserve such perfected first lien as long as the Loan remains outstanding. The Awardees shall reimburse RUS for any expenses incurred in the exercise of this right.

ARTICLE IX - GRANT OF SECURITY INTEREST

To secure the payment and performance of the Obligations, including without limitation, the Note, the Awardees hereby pledge, assign, and transfer to RUS, and grant to RUS a continuing security interest in and to all fixtures and personal property, tangible and intangible, of every kind, nature or description, acquired by the Awardees with Award funds, wherever located, including but not limited to, facilities, towers, structures, goods, inventory, equipment, materials, supplies, replacements, as well as all accounts and revenues derived from any source and proceeds, products, and accessions, and the property described in Schedule 2 hereto.

ARTICLE X - EVENTS OF DEFAULT

Section 10.1 Events of Default

The following shall be events of default (each an "Event of Default") under this Agreement:

- (a) Representations and Warranties. Any representation or warranty made by the Awardees in Loan-Grant Documents, Form(s) 481 or any certificate furnished to RUS under the Loan-Grant Documents, or in the Application shall prove to have been incorrect in any material respect at the time made;
- (b) Non-Payment. The nonpayment of any required and due installment of interest on, or principal of, any Note, whether by acceleration or otherwise, which continues for five (5) Business Days, as such term is herein defined;
- (c) Corrective Actions. Default by the Awardees in the observance or performance of Section 5.9;
- (d) Limited Liability Companies. Default by the Awardees or their members in the observance or performance of Section 7.3;
- (e) Improper Expenditures. The Awardees expend Award funds on costs which are not Eligible Purposes in accordance with the RUS approved line item Project budget and the Form(s) 481 approved by RUS prior to the advance of funds;
- (f) Failure to Keep Adequate Records. The Awardees fail to keep adequate records, including the failure to document Award fund expenditures for Eligible Purposes as required herein;
- (g) Failure to Build in Accordance with Timeline. The Awardees fail to commence build out of the Project within 180 days from the date hereof or otherwise fails to meet or exceed milestones established in the Timeline, as it may be amended with prior written RUS consent;
- (h) Failure to Comply with Accounting and Reporting Requirements. The Awardees fail to comply with the accounting and reporting requirements in Article VI;
- (i) Other Covenants. Default by the Awardees in the observance or performance of any other covenant or agreement contained in any of the Loan-Grant Documents, which shall remain unremedied for thirty (30) calendar days after written notice thereof shall have been given to the Awardees by RUS;

- (j) Adverse Effects. The Awardees shall forfeit or otherwise be deprived of their charter, articles of organization, franchises, permits, easements, consents or licenses required to carry on any material portion of their business or the Awardees files for or an event occurs which can reasonably be expected to result in their dissolution or termination;
- (k) Other Obligations. Default by the Awardees in the payment of any obligation, whether direct or contingent, for borrowed money in excess of ten thousand dollars (\$10,000.00) or in the performance or observance of the terms of any instrument pursuant to which such obligation was created or securing such obligation which default shall have resulted in such obligation becoming or being declared due and payable prior to the date on which it would otherwise be due and payable;
- (l) Bankruptcy. A court having jurisdiction in the premises shall enter a decree or order for relief with respect to the Awardees in an involuntary case under any applicable bankruptcy, insolvency, or other similar law now or hereafter in effect: (1) appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator, or similar official, or (2) ordering the winding up or liquidation of its affairs; or the Awardees shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or under any such law, or consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian or trustee, of a substantial part of its property, or make any general assignment for the benefit of creditors;
- (m) Dissolution or Liquidation. Other than as provided in the immediately preceding subsection, the dissolution or liquidation of the Awardees, or the filing of such by the Awardees;
- (n) Impaired Business. The failure by the Awardees to promptly forestall or remove any execution, garnishment or attachment of such consequence as shall impair their ability to continue their business or fulfill their obligations and such execution, garnishment or attachment shall not be vacated within thirty (30) days; and/or
- (o) Payment of Final Judgment. A final judgment in an amount of ten thousand dollars (\$10,000.00) or more shall be entered against the Awardees and shall remain unsatisfied or without a stay in respect thereof for a period of thirty (30) days.

ARTICLE XI - REMEDIES

Section 11.1 Generally

Upon the occurrence of an Event of Default, RUS may pursue all rights and remedies available to RUS that are contemplated by the Loan-Grant Documents in the manner, upon the conditions, and with the effect provided in the Loan-Grant Documents, and may pursue such other remedies that are generally available at law or in equity including, without limitation, a suit for specific performance, injunctive relief or damages. Nothing herein shall limit the right of RUS to pursue all rights and remedies available to a creditor following the occurrence of an Event of Default listed in Article X hereof. Each right, power and remedy of RUS shall be cumulative and concurrent, and recourse to one or more rights or remedies shall not constitute a waiver of any other right, power or remedy.

Section 11.2 Remedies

In addition to the remedies referred to in Section 11.1 hereof, upon the occurrence of an Event of Default, RUS may:

- (a) Refuse to make any advance or further advance on account of the Award, but any advance thereafter made by RUS shall not constitute a waiver of such default;
- (b) Declare all unpaid principal of and all interest accrued on the Note(s) to be immediately due and payable and upon such declaration all such principal and interest shall become due and payable immediately;
- (c) Terminate the obligation to further advance on account of the Award;
- (d) Take immediate possession of the Collateral, collect and receive all credits, outstanding accounts and bills receivable of the Awardees and all rents, income, revenues and profits pertaining to or arising from the Collateral, or any part thereof, and issue binding receipts therefor; manage and control and operate the Collateral as fully as the Awardees might do if in possession thereof; RUS, any employee or agent of RUS is hereby constituted and appointed as true and lawful attorney-in-fact of the Awardees with full power to (i) notify or require the Awardees to notify any and all Customers that the Collateral has been assigned to RUS and/or that RUS has a security interest in the Collateral; (ii) endorse the name of the Awardees upon any notes, checks, acceptances, drafts, money orders, or other instruments or payment (including payments made under any policy of insurance) that may come into possession of RUS in full or part payment of any amount owing to RUS; (iii) sign and endorse the name of the Awardees upon any invoice, freight, or express bill, bill of lading, storage or warehouse receipt, assignment verification or notice in connection with receivables; (iv) send requests for verifications of Collateral to customers or account debtors; (v) sell, assign, sue for, collect, or compromise payment of all any part of the Collateral in the name of the Awardees or in its own name, or make any other disposition of Collateral, or any part thereof, which disposition may be for cash, credit, or any combination thereof, and RUS may purchase all or any part of the Collateral at public or, if permitted by law, private sale, and in lieu of actual payment of such purchase price may set off the amount of such price against the Obligations; granting to RUS, as the attorney-in-fact of the Awardees, full power of substitution and full power to do any and all things necessary to be done in and about the premises fully and effectually as the Awardees might or could do but for this appointment, hereby ratifying all that said attorney-in-fact shall lawfully do or cause to be done by virtue hereof. Neither RUS, its employees, nor its agents shall be liable for any act or omissions or for any error of judgment or mistake of fact or law in its capacity as such attorney-in-fact. This power of attorney is coupled with an interest and shall be irrevocable during the term of this Agreement and so long as any Obligations shall remain outstanding;
- (e) RUS shall have the right to enter and/or remain upon the premises of the Awardees without any obligation to pay rent to the Awardees or others, or any other place or places where any of the Collateral is located and kept and: (i) remove the Collateral therefrom in order to maintain, collect, sell, and/or liquidate the Collateral or, (ii) use such premises, together with materials, supplies, books, and records of the Awardees, to maintain possession and/or the condition of the Collateral, and to prepare the Collateral for sale, liquidation, or collection. RUS may require the Awardees to assemble the Collateral and make it available to RUS at a place to be designated by RUS;
- (f) RUS shall have the right, without prior notice to the Awardees, to exercise rights of setoff or recoupment and apply any and all amounts held or hereafter held, by RUS or owed to the Awardees or for the credit of the Awardees against any and all of the Obligations. RUS agrees to notify the Awardees promptly after any such setoff or recoupment and the application thereof, provided that the failure to give such notice

shall not affect the validity of such setoff, recoupment or application. Awardees waives all rights of setoff, deduction, recoupment or counterclaim; and/or

- (g) RUS shall have, in addition to any other rights and remedies contained in this Agreement, and in any other agreements, guarantees, notes, mortgages, instruments, and documents heretofore, now, or at any time or times hereafter executed by the Awardees and delivered to RUS, all of the rights and remedies of a secured party under the Uniform Commercial Code in force in the state identified in the first paragraph hereof, as well as the state where the Collateral is located, as of the date hereof, all of which rights and remedies shall be cumulative, and nonexclusive.

ARTICLE XII - MISCELLANEOUS

Section 12.1 Notices

All notices, requests and other communications provided for herein including, without limitation, any modifications of, or waivers, requests or consents under, this Agreement shall be given or made in writing (including, without limitation, by telecopy) and delivered to the intended recipient at the "Address for Notices" specified below; or, as to any party, at such other address as shall be designated by such party in a notice to each other party. Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given when transmitted by telecopier or personally delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as provided for herein. The Addresses for Notices of the respective parties are as follows:

<u>RUS</u> Rural Utilities Service United States Department of Agriculture 1400 Independence Avenue, S.W. Washington, D.C.20250-1510 Attention: Administrator Fax: (202) 720-1725	<u>Awardees</u> See Schedule 1
<u>With a copy to:</u> Rural Utilities Service United States Department of Agriculture 1400 Independence Avenue, S.W. Stop 1599, Room No. 2868 Washington, D.C. 20250-1599 Attention: Kenneth Kuchno Fax: (202) 690-4389	<u>With a copy to:</u> See Schedule 1

Section 12.2 Notices of Actions Against Collateral

Any notice required to be given by RUS of a sale or other disposition or other intended action by RUS with respect to any of the Collateral, or otherwise, made in accordance with this Agreement at least five (5) days prior to such proposed action, shall constitute fair and reasonable notice to the Awardees of any such action.

Section 12.3 Application of Proceeds

Any proceeds or funds arising from the exercise of any rights or the enforcement of any remedies herein provided after the payment or provision for the payment of any and all costs and expenses in connection with the exercise of such rights or the enforcement of such remedies shall be applied first, to

the payment of indebtedness hereby secured other than the principal of or interest on the Notes; second, to the ratable payment of interest which shall have accrued on the Notes and which shall be unpaid; third, to the ratable payment of or on account of the unpaid principal of the Notes, and the balance, if any, shall be paid to whosoever shall be entitled thereto.

Section 12.4 Expenses

To the extent allowed by law, the Awardees shall pay all costs and expenses of RUS, including reasonable fees of counsel, incurred in connection with the enforcement of the Loan-Grant Documents or with the preparation for such enforcement if RUS has reasonable grounds to believe that such enforcement may be necessary.

Section 12.5 Late Payments

If payment of any amount due hereunder is not received at the United States Treasury in Washington, DC, or such other location as RUS may designate to the Awardees within five (5) Business Days after the due date thereof or such other time period as RUS may prescribe from time to time in its policies of general application in connection with any late payment charge (such unpaid amount being herein called the "delinquent amount", and the period beginning after such due date until payment of the delinquent amount being herein called the "late-payment period"), the Awardees shall pay to RUS, in addition to all other amounts due under the terms of the Notes, the Mortgage and this Agreement, any late payment charge as may be fixed from time to time on the delinquent amount for the late-payment period by regulations adopted by RUS.

Section 12.6 Filing Fees

To the extent permitted by law, the Awardees agree to pay all expenses of RUS (including the fees and expenses of its counsel) in connection with the filing or recordation of all financing statements and instruments as may be required by RUS in connection with this Agreement, including, without limitation, all documentary stamps, recordation and transfer taxes and other costs and taxes incident to recordation of any document or instrument in connection herewith. Awardees agree to save harmless and indemnify RUS from and against any liability resulting from the failure to pay any required documentary stamps, recordation and transfer taxes, recording costs, or any other expenses incurred by RUS in connection with this Agreement. The provisions of this section shall survive the execution and delivery of this Agreement and the payment of all other amounts due hereunder or due on the Notes.

Section 12.7 No Waiver

No failure on the part of RUS to exercise, and no delay in exercising any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise by RUS of any right hereunder preclude any other or further exercise thereof or the exercise of any other right.

Section 12.8 Governing Law

This Agreement shall be governed by and construed in accordance with applicable federal law and, in the absence of controlling federal law, by the laws of the State identified in the first paragraph herein, except those that would render such choice of law ineffective.

Section 12.9 Consent to Jurisdiction

The Awardees hereby irrevocably submit to the jurisdiction of the U.S. District Court for the District of Columbia and the US Court of Appeals for the Federal Circuit (both the "DC Federal Courts") for any action or proceeding arising out of or relating to this Agreement, and hereby irrevocably agrees that all claims in respect of such action or proceeding shall be heard and determined in such federal courts. The Awardees irrevocably consent to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to the

Awardees' address set forth in Schedule 1. The Awardees hereby irrevocably waive any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Agreement brought in the DC Federal Courts and hereby further irrevocably waive and agree not to plead or claim in such court that any such action or proceeding brought in any such court has been brought in a forum *non conveniens*. Nothing herein shall affect the right of the Government to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against the Awardees in its own jurisdiction.

Section 12.10 Waiver of Jury Trial

EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, SECURED PARTY, OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 12.11 Holiday Payments

If any payment to be made by the Awardees hereunder shall become due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in computing any interest in respect of such payment.

Section 12.12 Rescission

The Awardees may elect to rescind the Award, in which event RUS shall release the Awardees from their obligations hereunder, provided the Awardees comply with such terms and conditions as RUS may impose for such release.

Section 12.13 Successors and Assigns

- (a) This Agreement shall be binding upon and inure to the benefit of the Awardees and RUS and their respective successors and assigns, except that the Awardees may not assign or transfer their rights or obligations hereunder without the prior written consent of RUS.
- (b) Pursuant to federal claims collection laws, RUS' claims hereunder may be transferred to other agencies of the United States of America; in the event of such a transfer, all rights and remedies hereby granted or conferred on RUS shall pass to and inure to the benefit of any such successor agency.

Section 12.14 Complete Agreement; Waivers and Amendments

Subject to RUS Regulations, this Agreement and the other Loan-Grant Documents are intended by the parties to be a complete and final expression of their agreement. However, RUS reserves the right to waive its rights to compliance with any provision of this Agreement and the other Loan-Grant Documents. No amendment, modification, or waiver of any provision hereof or thereof, and no consent to any departure of the Awardees herefrom or therefrom, shall be effective unless approved in writing by RUS in the form of either a RUS Regulation or other writing signed by or on behalf of RUS, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 12.15 Headings

The headings and sub-headings contained in the titling of this Agreement are intended to be used for convenience only and do not constitute part of this Agreement.

Section 12.16 Severability

If any term, provision, condition, or any part thereof, of this Agreement, Note(s) or the Security Documents shall for any reason be found or held invalid or unenforceable by any governmental agency or court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of such term, provision, or condition nor any other term, provision, or condition, and this Agreement, the Note(s), and the Security Documents shall survive and be construed as if such invalid or unenforceable term, provision or condition had not been contained therein.

Section 12.17 Right of Setoff

Upon the occurrence and during the continuance of any Event of Default, RUS is hereby authorized at any time and from time to time, without prior notice to the Awardees, to exercise rights of setoff or recoupment and apply any and all amounts held or hereafter held, by RUS or owed to the Awardees or for the credit or account of the Awardees against any and all of the obligations of the Awardees now or hereafter existing hereunder or under the Note(s). RUS agrees to notify the Awardees promptly after any such setoff or recoupment and the application thereof, provided that the failure to give such notice shall not affect the validity of such setoff, recoupment or application. The rights of RUS under this section are in addition to any other rights and remedies (including other rights of setoff or recoupment) which RUS may have. Awardees waive all rights of setoff, deduction, recoupment or counterclaim.

Section 12.18 Schedules and Attachments

Each Schedule and Attachment attached hereto and referred to herein is each an integral part of this Agreement.

Section 12.19 Authority of Representatives of RUS

In the case of any consent, approval or waiver from RUS that is required under this Agreement or any other Loan-Grant Document, such consent, approval or waiver must be in writing and signed by an authorized RUS representative to be effective. As used in this section, "authorized RUS representative" means the Administrator of RUS, and also means a person to whom the Administrator has officially delegated specific or general authority to take the action in question.

Section 12.20 Prepayment of Loan

In the event the Awardees prepay the entire Loan portion of the Loan within three (3) years from the date hereof, the Awardees shall, within thirty (30) days of making such prepayment, execute a standard grant agreement with the RUS.

Section 12.22 Term

This Agreement shall remain in effect until one of the following two events has occurred:

- (a) The Awardees and RUS replace this Agreement with another written agreement; or
- (b) All of the Awardees' obligations under this Agreement have been discharged and paid.

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

VERMONT TELEPHONE COMPANY

by _____
Name:
Title:

(Seal)

Attested to by: _____
Secretary

VTEL WIRELESS, INC.

by _____
Name:
Title:

(Seal)

Attested to by: _____
Secretary

UNITED STATES OF AMERICA

by _____
Administrator
of the Rural Utilities Service

SCHEDULE 1

Article II Representations and Warranties

1. Paragraph (h) Awardees' principal place of business: **Vermont Telephone Company, Inc.
and VTel Wireless, Inc.
354 River Street
Springfield, Vermont 05156**
2. Paragraph (i) Awardees' Organization Numbers:
**Vermont Telephone Company, Inc.: 2356163
VTel Wireless, Inc.: 2558397**
3. Paragraph (j) Awardees' Subsidiaries:
**Vermont Telephone Company, Inc.: VTel Wireless, Inc.
VTel Wireless, Inc.: None**
4. Paragraph (j) Awardees' Parent:
**Vermont Telephone Company, Inc.: Vermont National Telephone Company, Inc.
VTel Wireless, Inc.: Vermont Telephone Company, Inc.**
5. Paragraph (n) Additional Representations and Warranties:
The Awardees represent and warrant that they are primarily engaged in the business of transmitting communications electrically, electromagnetically, or by light.

Article III The Loan

1. Section 3.1(a) Loan amount: **\$35,166,081**
2. Section 3.1(b) Grant amount: **\$81,664,754**

Article IV Conditions Precedent to Loan Closing

1. The additional conditions referred to in Section 4.1(j) are as follows:
RUS, Awardees (Vermont Telephone Company, Inc., and VTel Wireless, Inc.) and Awardees' secured creditors have entered into an intercreditor arrangement satisfactory to RUS.

Conditions Precedent to Release of Funds

2. Section 4.2(b) amount of fidelity bond coverage: **\$17,524,625**
3. Section 4.2(d) funds deposited for Project completion: **\$0**

4. The additional conditions referred to in Section 4.2(e) are as follows:

The obligations of RUS hereunder are subject to the satisfaction of the following additional conditions precedent:

- a. **The Awardees have provided RUS with documentation of its consultation with its local U.S. Fish and Wildlife Services (USFWS) Ecological Services office (<http://www.fws.gov/offices>) with respect to the affect of the Project on any listed threatened or endangered species, candidate species or their critical habitat; and**
- b. **The consultation process referred to immediately above in paragraph (a) has concluded.**
- c. **RUS shall have received the following executed agreements, in form and substance satisfactory to RUS, which incorporate the fees and rates projected for each respective agreement in the Application:**
 - i. **Franchise Agreement to provide video services in the communities identified in the application;**
 - ii. **Agreement with a video content provider for the provision of video services; and**
 - iii. **Management and Operations agreement between Vermont National Telephone Company, Inc., Vermont Telephone Company, Inc., and VTel Wireless, Inc. for shared services.**

Conditions Precedent to Individual Advances

5. Section 4.3(i) Required permits, licenses, franchise, and other approvals: **None**

6. The additional conditions to advance referred to in Section 4.3(k) are as follow:

- a. **No funds will be advanced for tower sites as identified in the Application until the Awardees have submitted, in form and substance acceptable to RUS, the respective lease agreements and/or site acquisition agreements.**
- b. **No funds will be advanced for construction that disturbs ground or involves land clearing, until the Awardees have received written confirmation from RUS that the requirements of Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) have been met in accordance with implementing regulations, “Protection of Historic Properties” (36 C.F.R. Part 800).**

Article V Affirmative Covenants

1. Section 5.7 TIER Commencement Date: **December 31, 2015**

2. Section 5.10 Composite Economic Life of RUS financed facilities: **15 years**

3. The additional affirmative covenants referred to in Section 5.21 are as follows:

- a. **Within sixty (60) days from the date hereof, the Grantee shall provide Project construction plans to their local U.S. Fish and Wildlife Service (USFWS) Ecological Services office (<http://www.fws.gov/offices/>) to initiate the consultation process as to whether Project construction will affect any listed threatened or endangered species, candidate species or their critical habitat.**

- b. Within sixty (60) days from the date hereof the Awardees shall provide all information necessary to the applicable organizations to complete the review and approval processes required by Section 106 of the National Historic Preservation Act (16 U.S.C. 470f), in accordance with implementing regulations, “Protection of Historic Properties” (36 C.F.R. 800), relating to construction that disturbs ground or involves land clearing.
- c. The Awardees shall insert the following language in all construction contracts:

If previously unidentified historic properties (that is, properties listed on or eligible for listing on the National Register of Historic Places) or unanticipated effects to historic properties are discovered during Project construction, the construction contractor shall immediately halt all activity within a one hundred (100) foot radius of the discovery, notify *Vermont Telephone Company, Inc. and VTel Wireless, Inc.*, and law enforcement of the discovery and implement interim measures to protect the discovery from further impact, especially looting and vandalism. Construction shall not resume within a 100 foot radius of the discovery until the construction contractor has received written instructions to proceed from *Vermont Telephone Company, Inc. and VTel Wireless, Inc.*
- d. Immediately upon receipt of notification from the construction contractor that a discovery of unidentified historic properties (properties listed or eligible for listing on the National Register of Historic Places) or unanticipated effects to historic properties are discovered during Project construction, the Awardees shall :
 - (i) Inspect the construction site to determine the scope of the discovery and to ensure that construction activities have halted;
 - (ii) Clearly mark the area of the discovery;
 - (iii) Implement additional measures, as appropriate, to protect the discovery from further impact, especially looting and vandalism;
 - (iv) Notify USDA Rural Utilities Service (RUS), Engineering and Environmental Staff, Federal Preservation Officer at 202-720-9583; and
 - (iv) If the discovery contains human remains, comply with all applicable state laws, notify the State Historic Preservation Office(s) and any Indian Tribes or Hawaiian organizations which might be interested in the discovery.

Article VII Negative Covenants

- 1. The additional negative restrictions on Distributions and Withdrawals referred to in Section 7.9(b) are as follows: **None**
- 2. The additional negative covenants referred to in Section 7.17 are as follows:
 - a. The Awardees agree not to start or proceed with any ground breaking construction activities relating to the Project prior to completing the consultation process required by the Endangered Species Act and referred to on this Schedule under Article IV, Paragraphs 5(a) and (b).
 - b. The Awardees agree not to engage in construction activities which disturb ground or involves land clearing until the Awardees have received written confirmation from RUS that the requirements of Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) have been met in accordance with implementing regulations, “Protection of Historic Properties” (36 C.F.R. Part 800).

- c. **The Awardees agree not to resume construction or authorize a construction contractor to resume construction within a 100 foot radius of a discovery of unidentified historic properties (properties listed or eligible for listing on the National Register of Historic Places) or unanticipated effects to historic properties until receipt of written notification from RUS that the requirements of the National Historic Preservation Act (16 U.S.C. 470f) have been met.**

Article XII Miscellaneous

1. Section 12.1 Awardees' address for purposes of notification:

**Mr. Michel Guite
President
Vermont Telephone Company, Inc.
VTel Wireless, Inc.
354 River Street
Springfield, Vermont 05156
Phone: 802-885-7000**

2. Section 12.1 Address for Awardees' notification copy: **Same as Above**

SCHEDULE 2

COLLATERAL

1. Collateral shall include the following:

All personal property, assets, rights, and fixtures of the Awardees acquired with Award funds, of every kind and description, tangible and intangible, of the kind or nature specifically mentioned herein, or any other kind or nature now owned or hereafter acquired, or built by the Awardees, wherever located, including without limitation all or in part the following (hereinafter the "Collateral:")

I

All right, title, and interest of the Awardees in and to fixtures and personal properties acquired with Award funds, whether tangible or intangible, of every kind or description, now or hereafter owned, leased, constructed, or acquired by the Awardees, wherever located, and in and to all extensions, improvements, and additions thereto, including but not limited to all structures, towers, antennas, fixtures, apparatus, materials, supplies, machinery, tools, implements, poles, posts, crossarms, conduits, ducts, lines, wires, cables, whether underground, overhead, or otherwise, exchanges, switches, including, without limitation, host and remote switches, desks, testboards, frames, racks, motors, generators, batteries, and other items of central office equipment, pay stations, protectors, instruments, connections and appliances, office furniture, equipment, and any and all other fixtures and personal property of every kind, nature, and description;

II

All right, title, and interest of the Awardees in, to, and under all personal property and fixtures of every kind and nature acquired with Award funds, including without limitation all goods (such as inventory, equipment and any accessions thereto), , documents, accounts (such as deposit accounts or trust accounts pursuant hereto) software, general intangibles (such as payment intangibles), supporting obligations, contract rights or rights to the payment of money, insurance claims, and proceeds (as such terms are presently and hereafter defined in the UCC);

III

All right, title, and interest of the Awardees in, to, and under any and all agreements, leases or contracts heretofore or hereafter executed by and between the Awardees and any person, firm, corporation, or other corporate entity relating to the Collateral (including contracts for the lease, occupancy, or sale of the Collateral, or any portion thereof);

IV

All right, title, and interest of the Awardees in, to, and under any and all books, records and correspondence relating to the Collateral, including, but not limited to, all records, ledgers, leases, computer and automatic machinery, software, programs, databases, disc or tape files, print-outs, batches, runs, and other electronically-prepared information indicating, summarizing, evidencing, or otherwise necessary or helpful in the collection or realization on the Collateral;

V

Also, all right, title, and interest of the Awardees in, to, and under all other fixtures and personal property acquired with Awards funds, tangible or intangible, of every kind, nature, and description, and wherever situated, now or hereafter owned or leased by the Awardees, it being the intention hereof that all such property paid for with Award funds now owned or leased but not specifically described herein, or acquired or held by the Awardees after the date hereof, shall be as fully embraced within and subjected to the lien hereof as if the same were now owned by the Awardees and were specifically described herein to the extent only, however, that the subjection of such property to the lien hereof shall not be contrary to law;

Together with all rents, income, accounts receivable, revenues, proceeds, products, profits and benefits at any time derived, received, or had from any and all of the property of the Awardees whether or not part of the Collateral;

Provided, however, no automobiles, trucks, trailers, tractors or other vehicles (including without limitation aircraft or ships, if any) owned or used by the Awardees shall be included in the Collateral.

2. Additionally, property pledged as Collateral shall also include the following specifically described property, if any: **None**