

SECURITIES AND EXCHANGE COMMISSION

FORM 10-KT

Transition report pursuant to Rule 13a-10 or 15d-10

Filing Date: **2002-11-21** | Period of Report: **2002-06-30**
SEC Accession No. [0001047469-02-003861](#)

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FILER

USA BROADBAND INC

CIK: **1105947** | IRS No.: **841592698** | State of Incorporation: **DE** | Fiscal Year End: **0930**
Type: **10-KT** | Act: **34** | File No.: **000-29433** | Film No.: **02835589**
SIC: **9995** Non-operating establishments

Mailing Address
6975 SOUTH 1300 EAST
MIDVALE UT 84047

Business Address
6975 SOUTH 1300 EAST
MIDVALE UT 84047
8012569600

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
Form 10-KSB

(Mark One)

- ANNUAL REPORT PURSUANT TO SECTION 13 or 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
- TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from October 1, 2001 to June 30, 2002

Commission File Number 0-29433

USA BROADBAND, INC.

(Name of small business issuer in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

84-1592698

(IRS Employer Identification No.)

1111 Orange Avenue, Coronado, California

(Address of principal executive offices)

92118

(Zip Code)

Issuer's telephone number, including area code: (619) 435-2929

Securities registered under Section 12(b) of the Exchange Act: None

Securities registered under Section 12(g) of the Exchange Act:

Shares of Common Stock, par value \$.001

(Title of class)

Check whether the issuer (1) filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act during the past 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Check if disclosure of delinquent filers in response to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-KSB or any amendment to this Form 10-KSB.

Transitional Small Business Disclosure Format (check one): Yes No

State issuer's revenues for its most recent fiscal year: \$1,261,000.

Revenue for the nine months ended June 30, 2002: \$2,995,000.

As of September 30, 2002, the aggregate market value of the voting and non-voting common equity held by non-affiliates was \$8,693,020.

As of September 30, 2002, the number of shares outstanding of the registrant's common stock was 6,187,940.

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INFORMATION REGARDING FORWARD-LOOKING STATEMENTS

This Transition Report on Form 10-KSB contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. The forward-looking statements are contained principally in the sections entitled "Business" and "Management's Discussion and Analysis or Plan of Operation." These statements involve known and unknown risks, uncertainties and other factors which may cause our actual results, performance or achievements to be materially different from any future results, performances or achievements expressed or implied by the forward-looking statements.

In some cases, you can identify forward-looking statements by terms such as "may," "will," "should," "could," "would," "expect," "plan," "anticipate," "believe," "estimate," "project," "predict," "potential" and similar expressions intended to identify forward-looking statements. These statements reflect our current views with respect to future events and are based on assumptions and subject to risks and uncertainties. Given these uncertainties, you should not place undue reliance on these forward-looking statements. We discuss many of these risks in greater detail under the heading "Factors Affecting Future Performance" in Item 6 of this Form 10-KSB. These

forward-looking statements represent our estimates and assumptions only as of the date of this report, and we do not assume any obligation to update any of these statements.

PART I

ITEM 1. DESCRIPTION OF BUSINESS

Overview

We are seeking to position ourselves as an industry leader in providing digital television, entertainment, data, Internet and broadband services. We initially targeted the multiple dwelling unit market and served subscribers through our primary operating subsidiary, Cable Concepts, Inc., which does business as Direct Digital Communications, or "DDC." DDC provides "private cable" television services to subscribers residing in multiple dwelling units, or "MDU," buildings such as apartments, condominiums and other shared housing facilities. As of June 30, 2002, DDC served approximately 11,300 subscribers in seven states. See "DDC's Operations."

Proposed Merger with Las Americas Broadband, Inc.

On April 23, 2002, we entered into a definitive merger agreement with Las Americas Broadband, Inc. under which Las Americas will merge with and into us, with Las Americas' shareholders receiving approximately .125 shares of our common stock for each share of Las Americas' common stock. Las Americas develops and operates cable television systems and broadband networks for video, data, and Internet.

One of the conditions to Las Americas' obligation under the merger agreement was that we advance Las Americas up to \$2,000,000 within 180 days of the date of the merger agreement. On May 3, 2002, Las Americas issued a promissory note to us in the amount of \$750,000. As of June 30, 2002 we had advanced \$500,000 to Las Americas under the note. In addition, after the end of the transition period we advanced an additional \$350,000 to Las Americas. However, we have not advanced the full \$2,000,000 required.

Under the merger agreement, our obligation, and that of Las Americas, to proceed with the merger are each subject to various conditions. Some of the conditions to Las Americas' obligations have not been satisfied, including our receipt of a fairness opinion with respect to the transaction by July 15, 2002 and, as discussed above, our providing \$2,000,000 in bridge financing to Las Americas by 180 days from the date of the merger agreement. Similarly, we believe that some of the conditions to our obligation to complete the merger have not been satisfied by Las Americas. However, we are in discussions with Las Americas regarding a completion of the merger notwithstanding a failure of these

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conditions. There is no assurance that these discussions will lead to a successful completion of the merger.

Cable California S.A. de C.V., an entity organized under the laws of the United Mexican States and managed by Las Americas, has a 30-year advanced telecommunications broadband concession from the Mexican government to construct and operate a 750-MHz fiber-optic network providing high-speed Internet, telephone, data and multi-channel cable television to residents and businesses. Cable California is constructing a 1,300-mile broadband network in the Northern Baja California region of Mexico for the delivery of cable television, data and Internet service. Cable California has completed the first phase of this cable build, including its head-end, central operations center, and over 100 miles of cable plant now serving 2,000 customers.

Las Americas has a management contract managing Cable California and a condition to the merger is that Las Americas acquire majority control of Cable California through a Mexican subsidiary. Las Americas, through a wholly-owned operating subsidiary, also owns and operates a 450-MHz cable television system serving approximately 1,800 subscribers in Kern County, California and doing business under the name "Country Cable."

After the merger with Las Americas, we will continue to manage the approximately 3,600 MDU subscribers we presently serve in California, as well as approximately 1,800 Las Americas franchise cable subscribers, also in California, we will acquire through the proposed merger.

After the completion of the proposed merger, Las Americas founder Richard G. Lubic, a thirty-year cable veteran, will serve as our Chairman and CEO. We also are moving our headquarters to Coronado, California.

Our Strategy

As a result of the proposed merger with Las Americas, we will concentrate our efforts on concession-based cable television services in Baja, Mexico, with initial operations in Tijuana, Mexico. In order to focus our operational and financial resources, we have begun a program to divest DDC's MDU operating assets in non-core markets, with the intention of using the proceeds of these sales to repay debt and other obligations associated with the acquisition of Cable Concepts, Inc. in July, 2001, and to reinvest excess net

proceeds of these asset sales in our new business strategy. As of the date of this report, we have entered into letters of intent for the sale of a portion of our non-strategic assets, and have retained various brokers and advisors to assist in system sales.

Following the merger with Las Americas, our primary focus will be on expanding the cable build in Northern Baja, Mexico. In addition, we may seek to increase our subscriber base in California through the potential acquisition of additional franchise cable systems. In particular, we may explore acquisitions of franchise cable systems and additional MDU systems in areas with high concentrations of Hispanic-Americans in order to leverage our Spanish-language programming from our Mexico cable television system.

DDC's Operations

We acquired Cable Concepts, Inc., which does business under the name DDC, in July 2001. DDC markets its services to apartment owners and condominium developments. In some areas, DDC provides "private cable" television services to MDUs.

DDC generates revenue via a revenue-sharing agreement with DirecTV as well as through the delivery of its own local programming and related services. DDC secures the right to deliver its service to MDU customers through exclusive Right of Entry, or "ROE," marketing agreements. DDC deploys its in-building systems using a fiber/coaxial hybrid distribution infrastructure, which offers up to 3,000 Megahertz of bandwidth, coupled with interdigitation and Ethernet connectivity. We believe that this

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allows for a cost effective "last mile" delivery of services, including digital television and high-speed data, that are in high demand by customers. DDC typically has provided system design and installation, systems management, and ongoing customer service. In most cases, once a system is installed in a multi-tenant building, DDC markets its television services directly to building residents.

Over the past nine years, DDC has expanded its operations to include a full range of services which includes the provision of broadband telecommunications services. DDC's strategy has focused on combining specialized industry knowledge with technical expertise and a localized approach to providing customer sales and service and high quality, high-demand products and services, such as DirecTV.

As noted above, we have begun a program of divesting DDC's MDU operating assets in areas other than our core markets of California and Northern Baja, Mexico. As of December 31, 2001, DDC was a party to 169 ROE agreements and was operating, or in the process of installing, 169 cable network systems in 26,939 apartment units in eleven states. As of December 31, 2001, DDC had 12,393 owned and 665 managed subscribers. As of June 30, 2002, DDC was a party to 148 ROE agreements and was operating, or in the process of installing, 148 cable network systems in approximately 25,600 apartment units in seven states. As of June 30, 2002, DDC had approximately 11,300 subscribers.

From time to time DDC receives notices from owners of properties for which it has ROE agreements claiming that it is in default of the agreements. DDC attempts to respond to these default notices as promptly as possible, and to cure any defaults described in the notices. However, the default notices sometimes lead to a termination of service. During the transition period DDC lost approximately 968 subscribers as a result of terminations of service resulting from alleged defaults under these ROE agreements.

DDC receives direct payments from subscribers for local and community programming and revenue-sharing payments from DirecTV for premium programming. Roughly three-quarters of DDC's MDU properties have been "takeovers" from previous system operators, including cable television system operators, and "overbuilds" of existing cable systems; the remaining one-quarter have been new installations of intra-building broadband infrastructure.

Competition

We compete with other multi-channel programming distributors, including other direct broadcast satellite operators, cable operators, wireless cable operators, Internet providers and local and long-distance telephone companies, which may be able to offer more competitive packages or pricing than us. In addition, the direct broadcast satellite industry is still evolving and recent or future competitive developments could adversely affect us. Franchise cable operators typically have an exclusive franchise to provide wire-line cable television within a particular municipality. The average franchise cable offering has between 50 and 70 channels and is dominated by large competitors such as AT&T/TCI, Time Warner, Cox Cable, Media One and Comcast. Historically, the franchise cable offerings have been delivered via a 550Mhz, one-way coaxial wire that limited the number of channel offerings and prohibited the franchise cable companies from offering other value added services, such as high-speed Internet access, telephone service and video offerings. Digital cable services offer broader channel line-ups and premium services.

Franchise cable operators have not historically focused on the MDU market and also have been reluctant to offer a revenue-sharing program. However, despite the lack of focus on the MDU market and the general reluctance to embrace the profit-sharing business

model, we believe that, due to their financial resources, franchise cable operators may provide a significant source of competition in our MDU markets.

Employees

As of September 30, 2002, we had nineteen full-time employees, including three in marketing, sales and customer support, six in administration and finance, and ten in field operations.

History

We were originally incorporated under the name Double Ought Green Corporation on November 22, 1985 in the State of Utah for the purpose of acquiring business entities or other investment activities. We changed our name to Sumex Corporation in February 1999 and to EZIX.COM, Inc. in March 1999. In July 1999, we acquired Ecenter, Inc., and we changed our name to Merlin Software Technologies, Inc. in December 1999. We changed our name to Optika Investment Company, Inc. in January 2000. In July 2001, following our acquisition of DDC, we changed our name to USA Broadband, Inc. and became a Delaware corporation.

ITEM 2. DESCRIPTION OF PROPERTY

None.

ITEM 3. LEGAL PROCEEDINGS

In September 2001 Van Raden Properties, Inc., Greystone Manor Limited Partnership and Southmoor Limited Partnership filed an action against our subsidiary, Direct Digital Communications, Inc., in the District Court, County of Cass, State of North Dakota. The plaintiffs, which own and operate apartment buildings and mobile homes throughout North Dakota and Minnesota, entered into several contracts with Direct Digital for provision of satellite television services. The plaintiffs sought a declaratory judgment that, due to Direct Digital's alleged failure to provide quality service, the contracts should be terminated. On August 13, 2002, the court issued an order terminating the contracts between Direct Digital and the plaintiffs and ordered that it pay a total of approximately \$81,000, consisting of damages and costs and expenses, to the plaintiffs.

On April 19, 2002, Fairway Center Associates, L.L.C. filed a complaint against Direct Digital in the Superior Court of the State of Washington for King County. The complaint purports to state a claim for breach of contract against Direct Digital arising out of a commercial lease entered into between Fairway and Direct Digital, and seeks, among other relief, damages of approximately \$114,000. We believe that this action is without merit and intend to vigorously defend it. In June 2002, OnePath Networks filed an action against Direct Digital in New Jersey state court located in Essex County, New Jersey, seeking the sum of \$138,000 in connection with an alleged breach of contract.

On July 15, 2002, The Telecom Group, which does business under the name Gale Telecom Services, filed a complaint against Direct Digital in the Superior Court for Sacramento County, California. In the lawsuit The Telecom Group alleges that Direct Digital owes approximately \$89,000 for satellite video construction and maintenance services provided by The Telecom Group.

On August 16, 2002, L.A. Commercial Group, Inc., which does business under the name Continental Commercial Group, filed a lawsuit against Cable Concepts, Inc., seeking a judgment in the amount of approximately \$62,000 for money allegedly owed to the plaintiff for television programming. On October 24, 2002, the plaintiff made a request for entry of default and entry of judgment in the amount of approximately \$67,000, which includes the money allegedly owed, plus interest, costs and attorneys' fees.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITIES HOLDERS

None.

PART II

ITEM 5. MARKET PRICE FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS

Our shares have historically traded on the Over-the-Counter Bulletin Board or "OTCBB," under the symbol USBU.OB. Our shares are not currently eligible for trading on the OTCBB because this report was not filed within the deadline established by the SEC. However, after we make this filing we intend to seek to have the shares of our common stock declared eligible for trading on the

OTCBB. The table below shows the high and low closing prices for each quarter for the nine months ended June 30, 2002 and the fiscal years ended September 30, 2001 and 2000.

NINE MONTHS ENDED JUNE 30, 2002

2002

| <u>Quarter Ended</u> | | <u>Share Price</u> |
|----------------------|------|--------------------|
| 6/30/02 | High | \$ 3.20 |
| | Low | \$ 2.05 |
| 3/31/02 | High | \$ 3.45 |
| | Low | \$ 2.60 |
| 12/31/01 | High | \$ 3.75 |
| | Low | \$ 3.00 |

2001

| <u>Quarter Ended</u> | | <u>Share Price</u> |
|----------------------|------|--------------------|
| 9/30/01 | High | \$ 4.50 |
| | Low | \$ 3.50 |
| 6/30/01 | High | \$ 5.00 |
| | Low | \$ 3.00 |
| 3/31/01 | High | n/a |
| | Low | n/a |
| 12/31/00 | High | n/a |
| | Low | n/a |

2000

| <u>Quarter Ended</u> | | <u>Share Price</u> |
|----------------------|------|--------------------|
| 9/30/00 | High | n/a |
| | Low | n/a |
| 6/30/00 | High | n/a |
| | Low | n/a |
| 3/31/00 | High | n/a |
| | Low | n/a |
| 12/31/99 | High | n/a |
| | Low | n/a |

As of September 30, 2002, we had approximately 263 record holders of our shares of common stock. We have not declared any cash dividends on our common stock since inception and our board of directors has no present intention of declaring any dividends. For the foreseeable future, we intend to retain all earnings, if any, to develop and expand our business.

Recent Sales of Unregistered Securities

In April, 2002, we raised approximately \$1,000,000 in an equity offering to private investors. Under the offering, investors purchased shares of common stock at a price of \$2.00 per share. In connection with the offering, an individual holding shares of our common stock who is not affiliated with us agreed to sell a number of shares, pursuant to a plan designed to comply with SEC

Rule 10b5-1, sufficient to provide each investor with the proceeds of one share of common stock sold under the plan for every two shares of common stock sold in the offering. The proceeds of the sales under the 10b5-1 plan will

be directly distributed, on a pro rata basis, to investors in the offering. We have agreed to grant piggyback registration rights to the investors in the offering and, in addition, to register the shares sold in the offering within nine months of the closing of the offering. If we do not register the shares within nine months, we are obligated to pay each investor, in stock, an amount equal to 5% of the dollar value of his or her investment. We paid finders' fees to one entity and one individual in connection with this offering. RTX Securities acted as placement agent for a portion of this offering. In consideration for the services of RTX Securities, we paid it a retainer of \$25,000 and issued a total of 23,161 shares of our common stock to RateXchange Corporation, the parent company of RTX Securities. 9,200 of these shares were issued as compensation for the services of RTX Securities, and the remaining 13,961 shares were issued in lieu of a \$18,000 commission which we had agreed to pay RTX Securities in connection with the offering. Of the shares sold in this offering, we are obligated to issue, but have not yet issued, 10,869 shares.

In April, 2002, we raised a total of \$541,737 through the sale of 406,303 shares of our common stock to private investors. Of the 406,303 shares issued in connection with the offering, 135,434 shares had special registration rights. We have issued 148,369 of these shares to date, and are obligated to issue the remaining 257,934 shares. We paid a finder's fee to an entity in connection with this offering.

In July, 2002, we commenced an offering of up to \$10,000,000 of common stock. To date we have raised \$229,353 in this offering through the sale of 114,676 shares at a price of \$2.00 per share. The price per share of the shares sold in the offering, which is intended to be at a discount to the market value of our common stock, may be reduced below \$2.00. If the price is reduced, we will increase the number of shares to be issued to investors who have already made purchases in the offering. We have not yet issued any of the shares sold in this offering. We have not paid finder's fees in connection with this offering, but may pay these fees in connection with future sales in the offering.

In July, 2002, we agreed to issue, to each of Paul Moore and Theodore Swindells, warrants to purchase 200,000 shares of our common stock, in connection with various loans and advances made by these two individuals to us. In September, 2002, we agreed to issue 30,000 of our shares to The Research Works as consideration for research services. In September 2002 we issued to Corporate Capital Management warrants to purchase 300,000 shares of our common stock in consideration for financial advisory services.

No underwriting commissions or discounts were paid in connection with any of the above transactions, with the exception of the payment to RTX Securities and the issuance of shares to RateXchange Corporation and the payment of the finders' fees discussed above. We relied upon the exemption from the registration requirements of the Securities Act under Section 4(2) of the Securities Act with respect to the offer and sale of the unregistered securities described above. We conducted no general solicitation or advertising in connection with any of the transactions described above. Each of the persons that acquired unregistered securities had a pre-existing relationship with us or one of our placement agents or finders. In addition, each purchaser was required to complete a subscription document and confirm their status as a "sophisticated investor." We provided each potential purchaser with an opportunity to meet with, and ask questions of, our management.

ITEM 6. MANAGEMENT'S DISCUSSION AND ANALYSIS OR PLAN OF OPERATION

The following discussion and analysis should be read in conjunction with our Consolidated Financial Statements and Notes included elsewhere in this Transition Report on Form 10-KSB. This discussion contains certain "forward-looking statements" that involve risks and uncertainties, such as statements of our plans, objectives, expectations and intentions. Our actual results could differ materially from those discussed here. Factors that could cause or contribute to these differences include those discussed under the heading "Factors Affecting Future Performance," as well as those discussed elsewhere in this report.

General

We are seeking to position ourselves as an industry leader in providing digital television, entertainment, data, Internet and broadband services. Our current operations consist of providing video service to MDU subscribers through Cable Concepts, which we acquired in July 2001. We receive revenues from subscriber fees and revenue-sharing payments from DirecTV.

Critical Accounting Policies

Principles of Consolidation. The accompanying financial statements include the accounts of us and our wholly-owned subsidiaries, Cable Concepts, Inc., Direct Digital Midwest and USAB Video Corp II, Inc. All material intercompany transactions and accounts have been eliminated in consolidation.

Revenue Recognition. We recognize revenues as services are provided, generally on a monthly basis.

Cost of Revenues. Our costs of revenues consist primarily of programming fees we pay to the providers of local television signals and costs of installing equipment for new subscribers.

Property and Equipment. We state property and equipment at its historical cost. We capitalize significant additions and improvements, and expense repairs and maintenance as they are incurred. Upon disposition of equipment, gains or losses are reflected in our statement of operations.

Depreciation. We compute depreciation on property and equipment using the straight-line method over the following estimated useful lives:

| | |
|----------------------------------|---|
| Cable equipment: | 3 to 7 years |
| Furniture and equipment: | 3 to 7 years |
| Computer software and equipment: | 3 to 5 years |
| Vehicles: | 5 years |
| Leasehold improvements: | Life of lease (generally 5-10 years) |
| Cable properties: | Life of Right of Entry Agreement (generally 10 to 12 years) |

Impairment of Long-Lived Assets. In the event that facts and circumstances indicate that the stated value of an asset may be impaired, we evaluate the recoverability of the asset. If an evaluation is required, we compare the estimated future undiscounted cash flows associated with the asset to the asset's carrying amount to determine if a write-down to market or discounted cash flow value is required.

Deferred Revenue. Deferred revenues arise from the commissions earned from installation and operation of systems providing video services. These commissions are amortized into income on the straight-line basis over three years, which represents the estimated useful life of the related assets.

Statement of Cash Flows. For purposes of our statements of cash flows, we consider all highly liquid debt instruments purchased with an original maturity of three months or less to be cash equivalents.

Results of Operations

Prior to acquiring DDC in July 2001, we did not have any material operations. DDC is therefore considered our predecessor for accounting purposes. Accordingly, we believe that in assessing our

performance for the years ended September 30, 2001 and September 30, 2000, the most meaningful figures are the pro forma combined operations for us and DDC. Similarly, in comparing results of operations, you should compare our operations for the nine months ended June 30, 2002 with the pro forma combined operations of us and DDC for the nine months ended June 30, 2001.

The selected financial information which follows includes selected pro forma combined operations data for us and DDC for the years ended September 30, 2001 and September 30, 2000 and for the nine months ended June 30, 2001, and our actual operations data for the nine months ended June 30, 2002. This data should be read in conjunction with our financial statements, and the financial statements of DDC, appearing elsewhere in this Form 10-KSB. In the discussion below, references to our results of operations for the years ended September 30, 2001 and September 30, 2000 and the nine months ended June 30, 2001 are to the pro forma combined results of operations for us and DDC. References to our results of operations for the nine months ended June 30, 2002 are to our actual results of operations.

Selected Financial Information for the Years Ended September 30, 2001 and September 30, 2000

(In Thousands)

| | Year Ended 9/30/01 (Pro Forma Combined) | % of Revenues | Year Ended 9/30/00 (Pro Forma Combined) | % of Revenues | % Change from 2000 to 2001 |
|--|--|------------------|--|------------------|----------------------------------|
| Revenues | 4,702 | 100.0% | 2,003 | 100.0% | 134.8% |
| Cost of Revenues | 1,565 | 33.3% | 424 | 21.2% | 269.1% |
| Gross Profit | 3,137 | 66.7% | 1,579 | 78.8% | 98.7% |
| Selling, general & administrative expenses | 10,365 | 220.4% | 3,396 | 169.6% | 205.2% |
| Depreciation | 1,795 | 38.2% | 650 | 32.5% | 176.2% |
| Total Operating Expenses | 12,160 | 258.6% | 4,046 | 202.0% | 200.5% |
| Loss from Operations | (9,023) | -191.9% | (2,467) | -123.2% | 265.8% |

Comparison of Year Ended September 30, 2001 to the Year Ended September 30, 2000

The increase in our revenues from fiscal 2000 to fiscal 2001 resulted in part from our purchase, near the end of fiscal 2000, of ROE agreements governing properties in North Dakota. In addition, during fiscal 2000 and fiscal 2001 we were expanding our business by purchasing ROE agreements and entering into new ROE agreements governing properties in other areas. In January 2001 we purchased ROE agreements governing approximately 1,500 subscribers in Dallas, Texas. Our cost of revenues, as a percentage of revenue, increased from fiscal 2000 to fiscal 2001 because our programming costs in connection with the ROE agreements for North Dakota and Dallas, Texas were higher than for other ROE agreements, while the subscriber fees were about the same.

Our selling, general and administrative expenses increased dramatically from fiscal 2000 to fiscal 2001, partially as the result of the Direct Digital merger in July 2001 and partially from our hiring of additional technical personnel in connection with the expansion of our business. Our depreciation expense increased from fiscal 2000 to fiscal 2001 as the result of our increased purchases of property, consisting primarily of ROE agreements and subscriber equipment, during the expansion of our business.

Selected Financial Information for the Nine Months Ended June 30, 2002 and June 30, 2001

| | Nine Months Ended June 30, 2002 | % of Revenues | Nine Months Ended June 30, 2001 (Pro Forma Combined) | % of Revenues | % Change from 2001 to 2002 |
|--|---------------------------------------|---------------|--|---------------|----------------------------------|
| Revenues | \$ 2,995 | 100.0% | \$ 3,441 | 100.0% | -13.0% |
| Cost of Revenues | 712 | 23.8% | 1,021 | 29.7% | -30.3% |
| Gross Profit | 2,283 | 76.2% | 2,420 | 70.3% | -5.7% |
| Selling, general & administrative Expenses | 6,656 | 222.2% | 5,308 | 154.3% | 25.4% |
| Impairment of Long-Lived Assets | 9,850 | 328.9% | - | - | - |
| Depreciation | 1,314 | 43.9% | 1,320 | 38.4% | -5% |
| Total Operating Expenses | 17,820 | 595.0% | 6,628 | 192.6% | 168.9% |

| | | | | | |
|----------------------|----------|----------|---------|---------|--------|
| Loss from Operations | (15,537) | -518.76% | (4,208) | -122.3% | 269.2% |
|----------------------|----------|----------|---------|---------|--------|

Comparison of Nine Months Ended June 30, 2002 with Nine Months Ended June 30, 2001

The decline in our revenue in the transition period from the nine months ended June 30, 2001 resulted from a decline in subscribers due to the sale of the ROE agreements governing the North Dakota properties and the termination, by mutual agreement, of a contract giving us the right to provide video services in San Diego, California. Our cost of revenues also declined as the result of the reduction in the number of subscribers served. Our costs of revenues declined as a percentage of revenues due to the sale of the North Dakota ROE agreements, which had higher programming costs associated with them.

Our selling, general and administrative expenses were higher for the transition period than for the nine months ended June 30, 2001 because of the increased personnel and other administrative costs resulting from the Direct Digital merger in July 2001. The substantial increase in our total operating expenses was due in large part to our recognition of a loss from impairment of long-lived assets of \$9,850,000. This loss represented the full value of the goodwill we had recognized in connection with the Direct Digital merger.

Liquidity and Capital Resources

Our financial statements are presented on a going-concern basis. This contemplates the realization of assets and liquidation of liabilities in the normal course of business. At June 30, 2002, we had a working capital deficit of approximately \$9,204,000. Our ability to continue as a going concern depends on our ability to raise the capital necessary to successfully implement our business plan and ultimately achieve profitable operations. During the nine-month period ended June 30, 2002, we continued to implement cost-cutting measures designed to increase operational efficiency, focus the geographic concentration of our operations and dispose of assets that are not consistent with our plan, either from a geographic or operational perspective. We intend to use the proceeds of asset sales to repay debt and other obligations, and to reinvest the remaining net proceeds, if any, in existing or new assets.

As part of our strategy of disposing of non-core assets, in May and June 2002 we entered into three separate agreements which together provide for the sale of ROE agreements and related assets relating to up to 1,035 private cable subscribers located in Washington, Tennessee and North Dakota. These subscribers are currently served by Cable Concepts and another subsidiary of ours, Direct Digital Midwest, Inc. The agreements provided for a series of closings, each of which would relate to a portion of the ROE agreements. However, each closing is dependent upon our obtaining the consent of the

owners of the properties to be sold or, in some case, the negotiation of a new ROE agreement. After the end of the transition period we closed on a portion of these sales. See the information under the heading "Subsequent Events" below.

During the nine-month period ended June 30, 2002, we sold contracts under which we received a fee from property owners to provide video services using equipment owned by the property owner. In addition, we agreed to the mutual termination of a contract giving us the right to provide video services to properties located in San Diego, California because this contract did not match our criteria as a core operating asset. This termination resulted in a reduction in our liabilities of approximately \$592,000. We also received cash consideration owed to us through the sale of our California cable operations during the nine months ended June 30, 2002. Substantially all of the proceeds have been or will be used to repay our lines of credit and other indebtedness.

In addition to implementing cost-cutting measures and selling non-core assets, in an effort to improve our balance sheet we are negotiating with creditors, including officers, directors and affiliates of ours, to convert outstanding debt into equity. We cannot make any assurances that any of these negotiations will be successful.

Prior to and after September 11, 2001, we have had limited access to investment capital to support working capital deficits or to expand existing operations. Consequently, the financial condition of our operating subsidiaries deteriorated in the three months ending June 30, 2002 and has deteriorated since then. Prior to and after June 30, 2002, we have been focused on negotiations with prospective lenders and investors as we seek to refinance all outstanding loans and liabilities in order to provide working capital. These negotiations are continuing. We require working capital for existing operations pending their sale or disposition and in connection with the proposed combined business of USA Broadband and Las Americas. See the information under the caption "Proposed Merger with Las Americas Broadband, Inc." in Item 1 of this Form 10-KSB.

As of June 30, 2002, we had a note payable in the amount of \$1,550,000 bearing interest at a rate of 10% per year. This note is due on December 15, 2002. We are required to make principal repayments of between \$100,000 and \$150,000 on this note each month until December 15, 2002, when final repayment is to be made. We intend to make these principal repayments from the net proceeds of assets collateralizing the loan, from funds generated through equity or debt offerings and from a portion of the net proceeds of the sale of

unencumbered, non-core operating assets. We also have a bank line of credit in the amount of \$100,000, which expires in January 2003. This line of credit bears interest at the prime rate, which as of June 30, 2002 was 4.75%.

As of June 30, 2002 we had two unsecured notes payable outstanding in the amount of \$150,000 each. In addition, we owed \$10,000 in accrued interest on these notes at June 30, 2002. The holders of these notes, Theodore Swindells and Paul Moore, each beneficially own over 5% of our common stock. The notes were issued on March 4, 2002, bear interest at the rate of 10% per year and had a due date of October 31, 2002. We are in default under these notes and are seeking a waiver of default from Mr. Swindells and Mr. Moore. See Item 12 of this Form 10-KSB.

As of June 30, 2002, we had a note payable to a bank in the amount of \$1,417,000 which matures in April 2004 and which bears interest at an annual rate equal to prime plus two hundred basis points, or 6.75% as of June 30, 2002. This debt is secured by all of our assets and, in addition, a \$500,000 certificate of deposit. We are in default under the loan agreement relating to the note payable and are seeking a waiver of some of the agreement's covenants from the bank.

As of June 30, 2002, we owed a total of approximately \$1,176,000 to Geneva Associates Merchant Banking Partners, an entity in which Russell Myers, one of our directors, has an interest. See Item 12 of this Form 10-KSB. Of this \$1,176,000, \$828,000 is due under a promissory note held by Geneva Associates Merchant Banking Partners, consisting of the \$750,000 principal value of the note and

\$78,000 in accrued interest. This note was due in October 2002 and bears interest at the rate of 14%. We are currently in default under this note. The remaining \$348,000 owed to Geneva Associates Merchant Banking Partners is due under a reimbursement agreement under which Geneva Associates Merchant Banking Partners, through a financial institution, issued a letter of credit to a bank to be used as security for a line of credit we have with the bank. Of this \$348,000, \$300,000 represents the \$300,000 in principal owed under the agreement, \$18,000 represents accrued and unpaid interest, and \$30,000 represents an unpaid 10% fee in connection with the issuance of the letter of credit. The outstanding balance under the reimbursement agreement bears interest at a rate of 16% per year. We are currently in default under the reimbursement agreement.

The following table sets forth information regarding our contractual obligations as of June 30, 2002 and the periods in which payments are due.

| Contractual Obligations | Payments Due by Period | | | | Total |
|------------------------------------|------------------------|------------|-----------|------------------|--------------|
| | Less than One Year | 1-3 Years | 4-5 Years | After 5 Years | |
| Lines of Credit and Notes Payable | \$ 4,802,000 | – | – | – | \$ 4,802,000 |
| Capital Lease Obligations | 438,000 | – | – | – | 438,000 |
| Operating Lease Obligations | 320,000 | 403,000 | 213,000 | – | 936,000 |
| Total Contractual Cash Obligations | \$ 5,560,000 | \$ 403,000 | 213,000 | 0 | \$ 6,176,000 |

Obligations

In addition to the above obligations, we may have an obligation under an asset purchase agreement with Verizon Media Ventures, Inc. and GTE Southwest Incorporated. During the transition period we decided not to complete the purchase of the rights for some of the properties, located in Texas, included in this asset purchase agreement. We believe that Verizon Media Ventures and GTE Southwest are attempting to sell the properties in question to third parties, and that these entities may seek to collect from us any difference between the price we agreed to pay and the prices received in connection with these sales to third parties. We have also signed a performance guarantee in the amount of \$250,000 with regard to the asset purchase agreement. This guarantee is in the form of a deposit note bearing an interest rate of 19% which will become payable if we fail to perform under the agreement. Verizon Media Ventures and GTE Southwest may seek to hold us liable for the amount of the performance guarantee. Neither entity has made any claim against us as a result of our decision not to purchase the rights for the properties in question.

After the end of the transition period, in September 2002, we issued a promissory note to our outside counsel in connection with unpaid legal fees. This promissory note is secured by all of the assets of USAB Video Corp II, Inc., one of our subsidiaries.

We are required to use 10% of the net proceeds from future sales or grants of equity through July 2004 toward payment of a note payable held by Geneva Associates Merchant Banking Partners, then for redemption of our Series B Preferred Stock, followed by

redemption of our Series C Preferred Stock. We are not currently in compliance with this requirement as it relates to either the note payable or the preferred stock.

Cash Flows from Operating Activities

Our operations utilized net cash of approximately \$1,589,000 for the nine-month period ended June 30, 2002. The use of cash was related primarily to funding the net losses from our operations, reduction of accounts receivable and other liabilities and reduction of deferred revenues, offset by adjustments for non-cash expenses such as impairment of long-lived assets, loss on disposal of fixed

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assets, stock-based compensation, depreciation, amortization and allowance for bad debt and an increase in accounts payable and accrued liabilities.

Cash Flows from Investing Activities

During the nine-month period ended June 30, 2002, investing activities resulted in a reduction of cash of approximately \$477,000. This was the result of our purchases of property and equipment and payment of a note receivable during the period, offset by net proceeds of asset sales.

Cash Flows from Financing Activities

During the nine-month period ended June 30, 2002, financing activities generated cash of approximately \$1,973,000. This resulted from proceeds from the sale of stock and from net borrowings on long-term capital, offset by reductions in a line of credit and reductions in principal on long-term debt and capital lease obligations.

Impact Of Accounting Principles

In June 2001, the Financial Accounting Standards Board finalized Statement of Financial Accounting Standards Nos. 141, Business Combinations ("SFAS 141"), and No. 142, Goodwill and Other Intangible Assets ("SFAS 142"). SFAS 141 requires the use of the purchase method of accounting and prohibits the use of the pooling-of-interests method of accounting for business combinations initiated after June 30, 2001. SFAS 141 also requires that companies recognize acquired intangible assets apart from goodwill if the acquired intangible assets meet certain criteria. SFAS 141 applies to all business combinations initiated after July 1, 2001 and for purchase business combinations completed on or after July 1, 2001. For all business combinations for which the date of acquisition is after June 30, 2001, SFAS 141 also establishes specific criteria for the recognition of intangible assets separately from goodwill and requires unallocated negative goodwill to be written off immediately as an extraordinary gain, rather than deferred and amortized. SFAS 141 also requires, upon adoption of SFAS 142, that companies reclassify the carrying amounts of intangible assets and goodwill based on the criteria in SFAS 141.

One of the requirements of SFAS 142 is that companies no longer amortize goodwill, but instead test goodwill for impairment at least annually. The prohibition on amortization of goodwill was effective immediately upon the adoption of SFAS 142, and in accordance with this requirement we did not amortize goodwill resulting from the Direct Digital merger during the transition period. SFAS 142 also requires that companies identify reporting units for the purposes of assessing potential future impairments of goodwill, reassess the useful lives of other existing recognized intangible assets, and cease amortization of intangible assets with an indefinite useful life. An intangible asset with an indefinite useful life should be tested for impairment in accordance with the guidance in SFAS 142. This aspect of SFAS 142 is required to be applied in fiscal years beginning after December 15, 2001 to all goodwill and other intangible assets recognized at that date, regardless of when those assets were initially recognized. SFAS 142 requires companies to complete a transitional goodwill impairment test six months from the date of adoption. Companies are also required to reassess the useful lives of other intangible assets within the first interim quarter after adoption of SFAS 142. We did not elect for early implementation of the portion of SFAS 142 requiring an annual goodwill impairment test and accordingly did not apply this portion during the transition period. However, as described below, we recognized a loss from the impairment of the full value of the goodwill resulting from the Direct Digital merger as the result of the application of SFAS 121, which was in effect during the transition period.

In June 2001, the FASB also approved for issuance Statement of Financial Accounting Standards No. 143, Asset Retirement Obligations ("SFAS 143"). SFAS 143 establishes accounting requirements for

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retirement obligations associated with tangible long-lived assets, including the timing of the liability recognition, initial measurement of the liability, allocation of asset retirement cost to expense, subsequent measurement of the liability and financial statement disclosures. SFAS 143 requires that an asset retirement cost be capitalized as part of the cost of the related long-lived asset and subsequently

allocated to expense using a systematic and rational method. We will adopt SFAS 143 effective no later than January 1, 2003, as required. The transition adjustment resulting from the adoption of SFAS 143 will be reported as a cumulative effect of a change in accounting principle. We do not believe that the adoption of SFAS 143 will have a material effect on our financial position, results of operations or cash flow.

In October 2001, the FASB approved Statement of Financial Accounting Standards No. 144, Accounting for the Impairment or Disposal of Long-Lived Assets ("SFAS 144"). SFAS 144 replaces SFAS 121, Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of. The new accounting model for long-lived assets to be disposed of by sale applies to all long-lived assets, including discontinued operations, and replaces the provisions of APB Opinion No. 30, Reporting Results of Operations—Reporting the Effects of Disposal of a Segment of a Business, for the disposal of segments of a business. Statement 144 requires that those long-lived assets be measured at the lower of carrying amount or fair value less cost to sell, whether reported in continuing operations or in discontinued operations. Therefore, discontinued operations will no longer be measured at net realizable value or include amounts for operating losses that have not yet occurred. Statement 144 also broadens the reporting of discontinued operations to include all components of an entity with operations that can be distinguished from the rest of the entity and that will be eliminated from the ongoing operations of the entity in a disposal transaction.

The provisions of Statement 144 are effective for financial statements issued for fiscal years beginning after December 15, 2001 and are generally to be applied prospectively. We did not elect early implementation of Statement 144 during the transition period. However, we applied Statement 121, which was still in effect during the transition period, to assess the value of the long-lived assets resulting from the Direct Digital merger, which included a goodwill component. Our evaluation resulted in the recognition of a loss in the amount of \$9,850,000 from an impairment of the value of the Direct Digital assets, consisting entirely of the goodwill that had been allocated to those assets.

In April 2002, the FASB approved Statement of Financial Accounting Standards No. 145, Rescission of FASB No. 4, 44 and 64, Amendment of FASB 13, and Technical Corrections ("SFAS 145"). This statement clarifies, updates and simplifies existing accounting pronouncements related to gain and losses on extinguishments of debt and lease modifications, among other items. We do not believe that the adoption of SFAS 145 will have a material effect on our financial position, results of operations or cash flow.

In July 2002, the FASB issued Statement of Financial Accounting Standards No. 146, Accounting for Costs Associated with Exit or Disposal Activities ("SFAS 146"). SFAS 146 requires companies to recognize costs associated with exit or disposal activities when they are incurred rather than at the date of a commitment to an exit or disposal plan. Examples of costs covered by SFAS 146 include lease termination costs and certain employee severance costs that are associated with a restructuring, discontinued operation, plant closing, or other exit or disposal activity. SFAS 146 is to be applied prospectively to exit or disposal activities initiated after December 31, 2002. We do not expect the adoption of SFAS 146 to have a material effect on our financial position or results of operations.

Subsequent Events

The agreement relating to our acquisition of Cable Concepts called for a potential downward adjustment to the purchase price based on the amount of Cable Concepts' accounts payable as of the effective date of the acquisition, which is July 16, 2001. Accordingly, some of the shares we issued in consideration for the merger were placed in escrow, and were not to be released unless it was determined that a downward adjustment was not appropriate. We have recently conducted an analysis of the accounts payable of Cable Concepts as of July 16, 2001 which indicates that a downward adjustment is appropriate, and that a portion of the shares of our common stock in escrow should revert back to us rather than being released to the former shareholders of Cable Concepts. We have not calculated the exact number of shares which may revert back to us. In addition, there is no assurance that Cable Concepts' former shareholders will agree with our calculations or that all or any of these shares will ultimately revert back to us.

After the end of the transition period we closed on the sale of some of the ROE agreements and related assets for subscribers located in Washington under an agreement entered into in June 2002. See "Liquidity and Capital Resources" above. Of the \$215,000 in total estimated proceeds from these sales, we have closed on approximately \$176,000 worth of sales, approximately \$39,000 was returned to the purchaser as the result of the failure to obtain consents of property owners or other factors, and approximately \$10,000 remains in escrow.

FACTORS AFFECTING FUTURE PERFORMANCE

The market for our common stock is limited and price changes may be volatile.

The shares of our common stock are not traded on an exchange or through the Nasdaq National Market or the Nasdaq SmallCap Market. Instead, our shares are traded over-the-counter and the market for these shares is not as developed as it would be if our shares were listed on an exchange or included in the Nasdaq National or SmallCap markets.

The market price of our common stock is expected to be volatile for the foreseeable future. Factors such as quarterly fluctuations in results of operations, the announcement of new contracts or changes in either earnings estimates or investment recommendations by stock market analysts, among others, may cause the market price of our common stock to fluctuate, perhaps substantially. In addition, in recent years the stock market in general, and the shares of companies in the technology sector in particular, have experienced extreme price fluctuations which may continue for the foreseeable future. These broad market and industry fluctuations may adversely affect the market price of our common stock. Further, a share of our common stock currently falls within the SEC's definition of a "penny stock." The SEC has special disclosure requirements which broker-dealers must follow for most transactions in penny stocks. In addition, many broker-dealers will not deal in penny stocks. These factors may further limit the market for our common stock.

Our Credit Arrangements Limit Our Ability to Pay Dividends

We do not anticipate paying cash dividends on our common stock in the foreseeable future. In addition, our debt instruments restrict our ability to pay cash dividends on our common stock. Moreover, we are a holding company and our ability to pay dividends is dependent upon the receipt of dividends from our direct and indirect subsidiaries.

Our Substantial Indebtedness Could Adversely Affect Any Investment in Securities Outstanding From Time to Time

We have incurred significant indebtedness and may incur significant additional amounts of indebtedness in acquiring other assets or companies. Our operations do not provide enough cash to service our indebtedness. Our indebtedness could have important consequences. For example, it could:

make it more difficult for us to pay our obligations;

increase our vulnerability to general adverse economic and industry conditions;

require us to dedicate a substantial portion of our cash flow from operations to payments on our indebtedness, thereby reducing the availability of our cash flow to fund working capital, capital expenditures, acquisitions and other activities;

limit our flexibility in planning for, or reacting to, changes in our business and the industries in which we operate; and

place us at a competitive disadvantage compared to our competitors that have less debt.

Our ability to make payments on and to refinance our indebtedness or preferred stock and to fund capital expenditures and other activities depends on our ability to generate cash either from operations or from investing or other financing activities. To date, we have generated the bulk of our cash flow from the sale of securities or by borrowing money. There is no assurance that we will be able to continue generating cash in this fashion, particularly if our operating subsidiaries do not begin generating cash. Our ability to generate cash is subject to general economic, financial, competitive, legislative, regulatory and other factors that are beyond our control. We may need to refinance all or a portion of our indebtedness on or before maturity. We cannot assure you that we will be able to refinance any of our indebtedness, including our credit facilities, on commercially reasonable terms, if at all.

A Change of Control May Be Difficult

Our certificate of incorporation contains, among other things, provisions authorizing the issuance of "blank check" preferred stock. We are also subject to provisions of Delaware law which affect merger and other change of control transactions. These provisions could

delay, deter or prevent a merger, consolidation, tender offer, or other business combination or change of control involving us that our stockholders may consider to be in their best interests.

The Sale of a Substantial Number of Shares of Our Common Stock in the Public Market Could Adversely Affect the Market Price of Our Common Stock

As of September 30, 2002, a total of approximately 9.7 million shares of our common stock were issuable on exercise of options or warrants previously issued by us or on conversion of outstanding preferred stock or reserved for issuance under a stock grant plan approved by our board of directors in June 2002. See the information under the heading "Long-Term Incentive and Stock Grant Plans" in Item 10 of this Form 10-KSB. Sales or the expectation of sales of a substantial number of shares of our common stock, including shares issuable upon exercise or conversion of outstanding options, warrants or preferred stock, likely would have an adverse effect on the prevailing trading price of our common stock.

Satellite and Direct Broadcast Satellite Technology Could Fail or Be Impaired

Direct broadcast satellite technology is highly complex and is still evolving. As with any similar product or system, this technology might not function as expected or may not last for its expected life. If any of the DirecTV satellites are damaged or stop working partially or completely for any of a

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number of reasons, DirecTV customers would lose programming. In turn, we likely would lose customers, which could materially and adversely affect our operations, financial performance and the trading price of our common stock.

We do not control DirecTV

We are an intermediary for DirecTV and do not control DirecTV or have any input on its programming. DirecTV generally purchases its programming from third parties. DirecTV's success, and therefore ours, depends in large part on DirecTV's making good judgments about programming sources and ability to obtain programming on favorable terms. We have no control or influence over DirecTV.

Increases in Programming Costs Could Adversely Affect Our Direct Broadcast Satellite Business

Programmers could increase the rates that DirecTV pays for programming. As a result, our costs would increase. We would be faced with either increasing our rates and potentially losing customers or suffering a reduction in our margins. Further, the rules implementing the law requiring programming suppliers that are affiliated with cable companies to provide programming to all multi-channel distributors, including DirecTV, on nondiscriminatory terms are scheduled to expire in 2002. If these rules are not extended, these programmers could increase DirecTV's costs, and therefore our costs. If our costs increase and we therefore increase our rates, we may lose customers. If we do not increase our rates, our costs, revenues and financial performance could be adversely affected.

Replacement Of The Current DirecTV Satellites Could Adversely Affect Our Business

We may or may not be able to continue in the direct broadcast satellite business after the current DirecTV satellites are replaced. If we can continue, we cannot predict what it will cost us to do so. Our revenues and financial performance would be adversely affected if we are not able to continue in the direct broadcast business or if we cannot locate suitable replacement programming for our customers.

The Effect of New Federal Satellite Television Legislation on Our Business Is Unclear

On November 29, 1999, former President Clinton signed the Satellite Home Viewer Improvement Act of 1999. This act contains provisions that will be phased in over time. In addition, the FCC and other federal agencies have undertaken rulemakings and studies in connection with this legislation. We cannot predict the effect of this new law on our business.

The Satellite Home Viewer Improvement Act resolved many of the issues between the networks and the direct broadcast satellite industry regarding retransmission of network programming to direct broadcast satellite subscribers. Generally, the act preserves the satellite industry's right to retransmit distant network programming to subscribers in "unserved" areas. It also extends, through December 31, 2004, the satellite industry's right to retransmit, for a royalty, independent programming, from so-called "superstations," to subscribers as "distant" signals. Further, satellite carriers are required to deliver signals only to households that cannot clearly receive over-the-air network signals with a rooftop antenna.

The Satellite Home Viewer Improvement Act also directs the FCC to take actions to prescribe the picture quality standard that the FCC uses to predict what households do not receive a strong enough network broadcast signal over-the-air and therefore are eligible to receive distant network signals. The FCC has initiated a rulemaking proceeding to consider this standard. The effect on our business of these FCC actions and other studies and rulemakings that the FCC will undertake cannot be predicted at this time. The FCC may define these standards in a manner that negatively affects our business.

We Could Lose Money Because of Signal Theft

Each year, the unauthorized receipt of direct broadcast or cable signals, or "signal theft," costs the industry significant revenues. To date, signal theft has been contained. If, however, signal theft becomes widespread, our revenues likely would suffer. DirecTV uses encryption technology in an effort to prevent people from receiving programming without paying for it. However, the technology is not foolproof, and there is no assurance that we will be protected from signal theft.

Direct Broadcast Satellite Services Face Competition from Cable Operators

Direct broadcast satellite services compete directly with cable operators. Although direct broadcast satellite systems have enjoyed certain competitive advantages, many cable television operators are making significant investments to upgrade their systems from analog to digital. This upgrade will significantly increase the number of channels that cable television operators can provide to their customers and the quality of the transmission, potentially eroding the advantages inuring to direct broadcast satellite systems. In addition, many cable television operators are upgrading their systems to provide their customers with high-speed Internet access. These upgrades could make cable television a more attractive alternative for property owners and consumers, which could have an adverse effect on our direct broadcast satellite business.

Direct Broadcast Satellite Equipment Shortages Could Adversely Affect Our Direct Broadcast Business

There have been periodic shortages of direct broadcast satellite equipment. These shortages may occur in the future. During periods of shortage, we may be unable to accept new subscribers and, as a result, potential revenue could be lost. If we are unable to obtain direct broadcast satellite equipment in the future, or if we cannot obtain this equipment on favorable terms, our business and results of operations could be adversely affected.

We Face Other Regulatory Risks

The direct broadcast satellite, television broadcast, and cable industries are subject to regulation by the FCC under the Communications Act of 1934 and, to a certain extent, by state and local authorities. If the Communications Act is amended or abolished, it may adversely affect our business. In addition, DirecTV depends on FCC licenses to operate its digital broadcast satellite service. If the FCC cancels, revokes, suspends, or fails to renew any of these licenses, our results of operations and financial condition and, hence, the trading price of our common stock would be adversely affected.

We Have a History of Substantial Losses; We Expect Them to Continue; Losses Could Adversely Affect Our Stock Price and Access to Capital Markets

We have never made a profit. Our administrative costs and interest on our debt exceeds our revenues. Continuing losses could adversely affect our access to capital markets and the trading price of our common stock.

We Face Significant Competition; the Competitive Landscape Changes Constantly

We compete with other multichannel programming distributors, including other direct broadcast satellite operators, direct-to-home distributors, cable operators, wireless cable operators, Internet providers and local and long-distance telephone companies. These competitors may be better capitalized than we are and may be able to offer more competitive packages or pricing than we or DirecTV can offer. Many of our competitors have substantially greater financial, technical and marketing resources, larger customer bases, longer operating histories, greater name recognition and more established relationships in the industry. In addition, a number of these competitors may combine or form strategic partnerships. As a result, our competitors may be able to offer, or bring to market

earlier, products and services that are superior to our own in terms of features, quality, pricing or other factors. Our failure to compete successfully with any of these companies would have a material adverse effect on our business and the trading price of our common stock.

Increased competition also may result in reduced commissions and loss of market share. Further, as a strategic response to changes in the competitive environment, we may from time to time make certain pricing, service or marketing decisions or acquisitions that could have a material adverse effect on our business and the trading price of our common stock.

We Expect to Need Additional Capital in the Future and it May Not Be Available on Acceptable Terms

We anticipate incurring substantial costs to install, operate and maintain our direct broadcast satellite systems and to further implement our business plan, including our expansion into Mexico if our proposed merger with Las Americas Broadband is approved.

We expect to need significant amounts of working capital for infrastructure, marketing, personnel and general and administrative costs, and to fund existing losses.

We will need to raise additional capital, either in the form of debt or equity. There is no assurance that additional capital will be available to us on favorable terms, if at all. If we are not able to fund our capital needs, this would adversely affect our business and financial condition and, therefore, the trading price of our common stock.

Our Future Profitability Is Dependent on the Introduction and Acceptance of Our Broadband and Other Online Services in General and the Completion of our Proposed Merger with Las Americas Broadband and Execution of its Business Plan in Particular

We anticipate generating revenues in the future from broadband and other Internet services. Demand and market acceptance for these recently introduced services and products delivered over the Internet is highly uncertain. Critical issues concerning the use of the Internet, such as ease of access, security, reliability, cost and quality of service, exist and may affect the growth of Internet use or the attractiveness of conducting commerce online. In addition, the Internet and online services may not be accepted as viable for a number of reasons, including potentially inadequate development of the necessary network infrastructure or delayed development of enabling technologies and performance improvements. To the extent that the Internet and online services continue to experience significant growth, there can be no assurance that the infrastructure of the Internet and online services will prove adequate to support increased user demands. In addition, the Internet or online services could lose their viability due to delays in the development or adoption of new standards and protocols required to handle increased levels of Internet or online service activity. Changes in, or insufficient availability of, telecommunications services to support the Internet or online services also could result in slower response times and adversely affect usage of the Internet and online services generally and us in particular. If use of the Internet and online services does not continue to grow or grows more slowly than expected, if the infrastructure for the Internet and online services does not effectively support growth that may occur, or if the Internet and online services do not become a viable commercial marketplace, our business and the trading price of our common stock could be adversely affected.

We have entered into a merger agreement with Las Americas Broadband, Inc. See the information under the caption "Proposed Merger with Las Americas Broadband, Inc." in Item 1 of this Form 10-KSB. Our ability to achieve profitability depends, in part, on the approval of this merger by our shareholders and the shareholders of Las Americas Broadband and our ability, following the merger, to execute Las Americas Broadband's business plan calling for, among other things, an expansion into Northern Mexico. If the merger is not approved or we are not able to execute Las Americas Broadband's business plan, we may be unable to achieve profitability.

We Need to Hire and Retain Qualified Personnel to Sustain Our Business

We are currently managed by a small number of key management and operating personnel. Our future success depends, in part, on our ability to recruit and retain qualified personnel. Failure to do so likely would have an adverse impact on our business and the trading price of our common stock. In addition, we do not maintain "key man" insurance on any employee.

We have recently changed our strategy to focus on a limited number of markets, which increases our regulatory risk and will cause any downturn in these markets to have a greater adverse effect on our operations than is currently the case.

We have recently changed our strategy to focus on providing video, data and Internet service in the State of California and in the Northern Baja region of Mexico. As part of this strategy, we have sold assets located in the Pacific Northwest, Midwest and Southeastern United States, and intend to make similar sales in the future. As a result, our success will be tied more closely to the economic prospects of a relatively small number of regions. If the economies of these regions experience difficulties, this will have a greater adverse effect on our operations and financial condition than would be the case if we continued to serve more markets. In addition, we have not previously operated in Mexico, and operating there involves regulatory hurdles not present in the United States and with which we are not familiar. If we are unable to overcome these hurdles, we will not be able to achieve our anticipated revenues from our operations in Mexico, which will have a material adverse effect on our financial condition and results of operations.

Various conditions to the parties obligations to proceed with our planned merger with Las Americas have not been satisfied, and if the merger is not completed we may not be able to execute our business plan.

Under our merger agreement with Las Americas, our obligation, and that of Las Americas, to proceed with the merger are each subject to various conditions. Some of the conditions to Las Americas' obligations have not been satisfied, including our receipt of a fairness opinion with respect to the transaction by July 15, 2002 and our providing \$2,000,000 in bridge financing to Las Americas by 180 days from the date of the merger agreement. Similarly, we believe that some of the conditions to our obligation to complete the

merger have not been satisfied by Las Americas. However, we are in discussions with Las Americas regarding a completion of the merger notwithstanding a failure of these conditions. There is no assurance that these discussions will lead to a successful completion of the merger. If the merger is not completed, we may not be able to execute the business plan described in Item 1 of this Form 10-KSB. In particular, we may not be able to provide cable television services in Northern Baja, Mexico.

ITEM 7. FINANCIAL STATEMENTS

(a) (1) The following financial statements of the Company and its subsidiaries have been filed as part of this report:

Independent Auditors' Report

Consolidated Balance Sheet as of June 30, 2002

Consolidated Balance Sheet as of September 30, 2001

Consolidated Statements of Operations for the Nine Months Ended June 30, 2002 and the year ended September 30, 2001

Consolidated Statements of Stockholders' Equity (Deficit) for the Nine Months Ended June 30, 2002 and the year ended September 30, 2001

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Consolidated Statements of Cash Flows for the Nine Months Ended June 30, 2002 and the year ended September 30, 2001

Notes to Consolidated Financial Statements

(2) Schedules are omitted because of the absence of conditions under which they are required or because the required information is given in the financial statements or notes thereto.

ITEM 8. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

Not Applicable.

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PART III

ITEM 9. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

Our Management

The following table sets forth information regarding our officers and directors as of June 30, 2002:

| <u>NAME</u> | <u>AGE</u> | <u>POSITION</u> |
|------------------|------------|-------------------------|
| Lewis D. Suders | 56 | Chief Operating Officer |
| Grant Miller | 46 | Chief Financial Officer |
| Bhasu Panchal | 53 | Controller |
| Douglas D. Cole | 47 | Director |
| Jon Eric Landry | 56 | Director |
| Edward P. Mooney | 43 | Director |
| Russell R. Myers | 42 | Director |
| Ronald E. Spears | 54 | Director |

Lewis D. Suders. Mr. Suders became our Chief Operating Officer in September 2002. From January 1997 to September 2002, Mr. Suders was employed by Time Warner Cable, where he managed technical and engineering functions for cable television systems. In his position with Time Warner Cable, Mr. Suders was responsible for the development of broadband networks serving subscribers in Texas cities on the Mexican border.

Grant Miller. Mr. Miller became our Chief Financial Officer in June 2002. From April 1999 to October 2001, Mr. Miller was a managing director in charge of financial services at Alitum, Inc., which provides application hosting and business management services. From October 1997 to November 1998, Mr. Miller was International Chief Financial Officer of WorldxChange Corporation, which provides international and local telephone service. From December 1995 to October 1997, Mr. Miller was the Director of International Development for Spain for Time Warner Cable.

Bhasu Panchal. Mr. Panchal has served as our Controller since November 2001. As our Controller, his responsibilities include managing and administering our financial, accounting and information systems. Mr. Panchal also serves as the Managing Director and Controller of our subsidiary, Cable Concepts, Inc. For the three years prior to joining Cable Concepts, Inc., Mr. Panchal worked for L-3 Communications Inc., where he served as a Director of Finance and Administration for the Prime Wave Communications division and Controller for EMP Systems division. Prior to beginning work at L-3 Communications, Mr. Panchal worked for four years at Ceridian Inc., where he was responsible for managing tax filings and tax deposits for Fortune 100 clients.

Douglas D. Cole. Mr. Cole has been a director since October 2001. Since August 2002 Mr. Cole has been Chairman and Chief Executive Officer of Trinity Companies, Inc. which provides technology-enabled learning, training and accreditation services to industry. Mr. Cole served as Interim President and Chief Executive Officer of Cable Concepts, Inc., our subsidiary, from November 2001. From August 1998 to June 2000, Mr. Cole served as a director of RateXchange Corporation and as a director of two of RateXchange's subsidiaries, RateXchange I, Inc. and PolarCap, Inc. Mr. Cole served as Chairman, Chief Executive Officer, President and Principal Accounting Officer of RateXchange from April 1999 to February 2000. He served as the Chief Executive Officer of PolarCap, Inc. from its inception in 1995 until August 1998. From 1995 to 1996, Mr. Cole served as President and Chief Executive Officer of Starpress, Inc. after Great Bear Technology Company, a publicly-held California company, acquired Starpress. He served as President and Chief Executive Officer of Great Bear from 1993 through 1996.

Jon Eric Landry. Mr. Landry has served as a director of USA Broadband, Inc. since September 2001. Since 1974, he has served as President and Chief Executive Officer of Landry Montana Partners, Inc., a firm that specializes in the development of human capital and leadership teams for emerging, high growth companies. Mr. Landry specializes in providing client companies with long-term organizational planning, executive management and board member identification and placement, and coordinates the engagement of local and regional recruiting firms to meet the ongoing human resource needs of client companies. Additionally, from time to time, Mr. Landry has provided consulting services in connection with human capital and leadership building to Maroon Bells Capital, L.L.C. and Maroon Bells Capital Partners, Inc. Mr. Landry is not an officer, director or shareholder of Maroon Bells Capital, L.L.C. or Maroon Bells Capital Partners, Inc.

Edward P. Mooney. Mr. Mooney has served as a director since April 2001. He served as our Executive Vice President from April 2001 and as our Interim President and Interim Chief Executive Officer from December 2001 through September 2002 while we recruited additional executive management. Richard Lubic, the founder of Las Americas, has agreed to serve as our Chairman and CEO following completion of our proposed merger with Las Americas Broadband, Inc. See the information under the heading "Proposed Merger with Las Americas Broadband, Inc." in Item 1 of this Form 10-KSB. Mr. Mooney has served as a director of Trinity Companies, Inc. since August 2002.

Since October 2002, Mr. Mooney has served as President of Trinity Companies, Inc. Mr. Mooney also served as a director of Category 5 Technologies, Inc. during 2001 and 2002 through that company's merger with Mind Arrow, Inc., another public company. Prior to being appointed as our Interim President and Chief Executive Officer in December 2001, Mr. Mooney served as Executive Vice President since April 2001. Prior to becoming our Executive Vice President, Mr. Mooney was self-employed as a corporate development consultant. Mr. Mooney served as Executive Vice President (April 1999 to April 2000) and director (November 1998 to April 2000) of RateXchange Corporation. Mr. Mooney has also served as President (September 1996 to April 1997) and as a director (September 1996 to May 1998) of WorldPort Communications, Inc. From September 1993 to November 1998, Mr. Mooney was an analyst for Maroon Bells Capital Partners, Inc. Additionally, since 1998, Mr. Mooney has provided consulting services to Maroon Bells Capital, L.L.C. and Maroon Bells Capital Partners, Inc. Mr. Mooney is not an officer, director or shareholder of Maroon Bells Capital, L.L.C. or Maroon Bells Capital Partners, Inc.

Russell R. Myers. Mr. Myers has been a director since July 2001. Currently, Mr. Myers serves as Vice President and as a director of Geneva Corporation. Mr. Myers is also a general partner of Blue Ridge Investors Limited Partnership, a private equity fund founded in 1993. Additionally, Mr. Myers is a manager of Geneva Associates Merchant Banking Partners Group I, LLC, which is the manager of Geneva Associates Merchant Banking Partners, a private equity fund founded in 1999.

Ronald E. Spears. Mr. Spears is a Series A Director and has been a director since June 2002. Since March 2002, Mr. Spears has been President, Global Accounts of AT&T Corporation. From March 2000 to January 2002, Mr. Spears was the Chairman and Chief Executive Officer of Vaultus, formerly Mobile Logic, Inc., where he focused on strategic business planning, marketing, communications, financing and business alliances. Mr. Spears joined Vaultus after serving as the President and Chief Executive Officer

of CMGI Solutions from May 1999 to March 2000. Before joining CMGI Solutions, Mr. Spears served as President and Chief Operating Officer of e.spire Communications from February 1998 to April 1999. From June 1995 to January 1998, he was corporate vice president at Citizens Utilities, managing that company's independent telephone company operations in 13 states. Mr. Spears also serves as a director of RateXchange Corporation.

In addition to our current directors, Jack Kemp and Daniel Villanueva have agreed to become members of our board of directors. Mr. Kemp is co-director of Empower America, a public policy and advocacy organization founded in 1993 and formerly served as Secretary of the U.S. Department of

Housing and Urban Development and as a member of the U.S. House of Representatives. Mr. Villanueva is the Managing Director of Bastion Capital Corporation and Bastion Management Corporation, a private equity investment fund.

Section 16(a) Beneficial Ownership Reporting Compliance

Ownership of, and transactions in, our stock by our executive officers and directors are required to be reported to the SEC pursuant to Section 16(a) of the Securities Exchange Act of 1934, as amended. Based on our records and other information, we believe that all filings required under Section 16(a) were timely filed during the transaction period, except for a Form 4 filed by Douglas Cole for one transaction occurring in April 2002, which was filed six days late and a Form 4 for Russell Myers for a transaction occurring in April 2002, which has not yet been filed.

ITEM 10. EXECUTIVE COMPENSATION

Executive Officer Compensation

The tables set forth below describe the compensation paid to our Chief Executive Officer and our other most highly compensated executive officers for the twelve months ended June 30, 2002, the fiscal year ended September 30, 2001, and, to the extent applicable, the two prior fiscal years. Rows in the table designated as "2002" contain compensation information for the twelve months ended June 30, 2002, not just the nine-month transition period, to enhance comparability. As a result, compensation information for the three months ended September 30, 2001 is included both in the "2002" row and the "2001" row.

SUMMARY COMPENSATION TABLE

| Name and Principal Position(1) | Year | Annual Compensation | | | Long-Term Compensation | | |
|--|------|---------------------|--------------------------------|---------|---------------------------|------------------------------------|-----------------------------|
| | | Salary (\$) | Other Annual Compensation (\$) | Bonus | Restricted Stock Award(s) | Securities Underlying Options/SARS | All Other Compensation (\$) |
| <i>Robert R. Wallace</i> (2) Chief Executive Officer and President | 2002 | - | - | - | - | - | - |
| | 2001 | - | - | - | - | - | - |
| | 2000 | - | - | - | - | - | - |
| | 1999 | - | 10,000 | - | - | - | - |
| <i>David M. Lerten</i> Chief Executive Officer and President | 2002 | - | - | - | - | - | - |
| | 2001 | 217,806 | - | - | - | - | 125,000 |
| | 2000 | (3) | - | - | - | - | (3) |
| | 1999 | - | - | - | - | - | - |
| <i>Edward P. Mooney</i> Interim President and Chief Executive Officer | 2002 | 135,000 | - | 120,000 | - | 125,000 | - |
| | 2001 | 71,500 | - | - | (5) | - | - |
| | 2000 | - | - | - | - | - | - |
| | 1999 | - | - | - | - | - | - |

(1) Other than Messrs. Wallace, Mooney and Lerten, we do not have any other executive officers who received compensation in excess of \$100,000 during the 1999, 2000 or 2001 fiscal years fiscal year or the nine months ended June 30, 2002.

- (2) We became a reporting company under the Securities Exchange Act of 1934 upon our filing of a Form 10-SB on February 10, 2000. When we filed the Form 10-SB, Mr. Wallace was our sole officer and director. From February 2000 until April 2001, Mr. Wallace served as our Chief Executive Officer and President.

- (3) Mr. Lerten served as our Chief Executive Officer and President from April 2001 to December 2001, when he resigned to pursue other interests. Rather than paying Mr. Lerten a salary, Mr. Lerten billed us monthly for his services and expenses incurred in connection with serving as our Chief Executive Officer and President. Accordingly, the salary listed in the above table includes amounts paid to Mr. Lerten for services provided to us from April 2001 to December 2001 and reimbursement for business expenses incurred by Mr. Lerten in connection with acting as our Chief Executive Officer and President during the same period. In connection with Mr. Lerten's resignation in December 2001, we entered into a separation agreement with Mr. Lerten. Pursuant to the separation agreement, on December 19, 2001, we granted Mr. Lerten an option to purchase 235,000 shares of Common Stock. Additionally, to offset certain fees and expenses owed by us to Mr. Lerten, we reduced the principal and accrued interest amount of the promissory note delivered to us by Mr. Lerten for his purchase of 166,667 shares of Series A Preferred Stock from \$252,500 to \$127,500, effective January 2, 2002. See the section entitled, "Employment and Change in Control Severance Agreements," for more information concerning Mr. Lerten's separation agreement.
- (4) Mr. Mooney served as our Executive Vice President from April 2001 to December 2001, when he was appointed to serve as our Interim Chief Executive Officer and President. He served as our Interim CEO and President until September 2002. Pursuant to our employment agreement with Mr. Mooney, Mr. Mooney's annual salary for fiscal year 2001 was \$120,000. Beginning in April 2002, Mr. Mooney's salary increased to \$180,000. Our board of directors also authorized the payment to Mr. Mooney of a bonus in the amount of \$120,000. The amounts included in the table represent amounts received by Mr. Mooney or owed by us to Mr. Mooney, including reimbursement of expenses. We currently owe Mr. Mooney approximately \$230,000 in unpaid salary, bonuses and expenses.
- (5) In June 2002, our board of directors approved the issuance of 150,000 shares of stock to Mr. Mooney under a stock grant plan. The grant of these shares is subject to approval by an authorizing agent for the plan, and Mr. Mooney has not yet has been granted any shares. See the information under the heading "Long-Term Incentive and Stock Grant Plans" below.

OPTIONS GRANTED IN TRANSITION PERIOD

| Name | Number of Securities Underlying Options/SARs Granted (#) | % of Total Options/SARs Granted to Employees in Transition Period | Exercise or Base Price (\$/Sh) | Expiration Date |
|------------------|---|---|-----------------------------------|-------------------|
| David M. Lerten | 235,000 common shares(1) | 9.88% | (1) | December 19, 2006 |
| Edward P. Mooney | 125,000 common shares(2) | 5.25% | 2.99 | April 3, 2007 |

- (1) Pursuant to our separation agreement with Mr. Lerten effective December 19, 2001, we issued to Mr. Lerten an option to purchase 235,000 shares of Common Stock. This option is exercisable according to the following schedule: 85,000 shares may be purchased immediately at \$1.50 per share; 75,000 shares may be purchased on or after April 1, 2002 at \$2.50 per share; and 75,000 shares may be purchased on or after April 1, 2003 at \$3.50 per share.
- (2) This option is immediately exercisable.

**AGGREGATED OPTION EXERCISES IN TRANSITION PERIOD
AND AT END OF TRANSITION PERIOD**

| <u>Name</u> | <u>Shares Acquired on Exercise (#)</u> | <u>Value Realized (\$)</u> | <u>Number of Securities Underlying Unexercised Options/SARs at end of Transition Period (#) Exercisable/Unexercisable</u> | <u>Value of Unexercised in- the-money Options/SARs at end of Transition Period (\$) Exercisable/Unexercisable</u> |
|------------------|--|--------------------------------|---|---|
| David M. Lerten | – | – | 235,000(1) \$ | 101,000/0 |
| Edward P. Mooney | – | – | 225,000(2) \$ | 110,000 |

(1) Pursuant to our separation agreement with Mr. Lerten effective December 19, 2001, we issued to Mr. Lerten an option to purchase 235,000 shares of Common Stock. This option is immediately exercisable with respect to 160,000 shares and 75,000 shares may be purchased on or after April 1, 2003.

(2) These options are immediately exercisable.

Long-Term Incentive, Director Option and Stock Grant Plans

Effective July 9, 2001, we adopted the Long-Term Incentive Plan of USA Broadband, Inc. for our key employees and any subsidiary and consultants providing services to us or any of our subsidiaries. The plan authorizes the grant of incentive stock options, non-qualified stock options, stock appreciation rights, restricted stock, performance shares and dividend equivalents. The total number of shares of common stock authorized for awards under the plan is 1,500,000 shares. The plan was adopted with the intent to promote our success by aligning the personal interests of our key employees and consultants to those of our stockholders and by providing our key employees and consultants with an incentive for outstanding performance. We have issued options to purchase approximately 3,500,000 shares of our common stock to employees and consultants. Approximately 2,000,000 of those options were issued outside of our Long-Term Incentive Plan and therefore are considered non-qualified options.

On May 29, 2001 our Director Option Plan became effective. The Director Option Plan provides for the grant of nonstatutory stock options to our non-employee directors under an automatic, non-discretionary grant mechanism. A total of 1,000,000 shares of our common stock have been reserved for issuance under the Director Option Plan. No shares have yet been issued under the Director Option Plan.

Only outside directors are eligible to participate in the Director Option Plan. The exercise price of options granted to outside directors under the plan must be 100% of the fair market value of our common stock on the date of grant. The Director Option Plan provides that each newly appointed or elected outside director, who was not a current director on the date on which the director option Plan became effective, will be granted an option to purchase 25,000 shares of our common stock on January 1 of each year after his or her appointment, if the director has served as a director for at least six months as of this date and remains an outside director. Alternatively, the Director Option Plan allows for other grants as may be approved by our board of directors.

The Director Option plan allows for cashless exercise of options granted, using the value of the options themselves or previously-owned shares of our common stock. Options granted to the outside directors expire after ten years, or upon termination of the individual's tenure as a director, whichever is earlier. Options granted to the outside directors become fully vested three months after they are granted.

The shares issuable upon exercise of options granted under the Director Option Plan will be adjusted for stock splits, stock dividends, and similar transactions. In the event of a proposed

dissolution or liquidation, to the extent that an option has not been previously exercised, it will terminate immediately prior to the consummation of the proposed action. In the event of the merger or sale of substantially all of our assets, all outstanding options will be assumed or substituted by the successor corporation, or if they are not assumed or substituted, will become fully vested, unless our board of directors determines otherwise.

With two exceptions, our board of directors may amend the Director Option Plan at any time or may terminate it without approval of the shareholders. The first exception is that the board of directors may not unilaterally alter or impair any option previously granted under the Director Option Plan without the consent of the holder of the option. The second exception is that the board of directors may not amend the term of the plan, which is ten years.

On June 6, 2002, our board of directors approved a stock grant plan under which up to 1,000,000 shares of our common stock could be issued to employees, consultants or other individuals providing services to us. This plan has not yet been formally adopted. Under the plan, each individual to whom shares are granted under the plan would not be able to acquire such shares until the expiration of a waiting period of a minimum of sixty days. In addition, the plan would require the Board to appoint an individual who has a financial background and is knowledgeable about the stock market as an authorizing agent. The authorizing agent would approve the distribution of shares from the plan after the waiting period only if he or she believes that the additional shares would not have a material negative affect on the market for our common stock. Without authorization from the authorizing agent, no shares may be distributed from the plan.

Under the stock grant plan, if the authorizing agent determines that a certain number of shares may be distributed from the Plan without a material negative effect on the market for our in a material way, the authorizing agent will send notice to each of the individuals to whom shares may be granted under the Plan. The shares from the Plan that are authorized to be distributed will be granted on a first come-first served basis to those individuals that notify the authorizing agent of their desire to acquire the shares at that time. If less than all of the shares that are authorized to be distributed at that time are actually distributed pursuant to the first come-first served opportunity, the remaining shares will be distributed on a pro rata basis among each individual eligible to receive shares of our common stock under the plan.

Under the stock grant plan, if the authorizing agent determines that shares may be distributed from the Plan, those shares may be distributed only to individuals who continue to be employees, officers or directors of the Company or who continue to maintain a consulting relationship with the Company at the time of distribution. The shares to be distributed under the Plan will have piggyback registration rights associated with them. Our board has approved the issuance of a total of 1,000,000 shares under the plan to various officers, directors and consultants of the company. See the information contained under the heading "Executive Officer Compensation" in Item 10 of this Form 10-KSB.

Compensation of Directors

We do not have a standard arrangement for compensation of our directors in connection with their service on our board of directors. We reimburse directors for expenses incurred in connection with our business, which may involve activities other than attendance at board meetings. In April 2002, we issued options to purchase 75,000 shares of our common stock to Mr. Cole, options to purchase 50,000 shares of our common stock to Mr. Landry, and options to purchase 50,000 shares of our common stock to Mr. Myers in connection with their service as directors. Mr. Cole received options for 25,000 more shares than did Mr. Landry or Mr. Myers as a result of additional services Mr. Cole provided to us. All of the above options had an exercise price of \$2.99 per share and a five-year term.

Employment and Change in Control Severance Agreements

David M. Lerten Separation Agreement. We entered into a one year employment agreement with Mr. Lerten on April 1, 2001. This agreement was terminated effective December 19, 2001 when Mr. Lerten resigned to pursue other interests. In connection with his resignation, Mr. Lerten entered into a separation agreement with us. Pursuant to the separation agreement, we issued to Mr. Lerten an option to purchase 235,000 shares of Common Stock, of which 85,000 shares are immediately exercisable, 75,000 shares may be purchased on or after April 1, 2002, and 75,000 shares may be purchased on or after April 1, 2003. This option may be exercised as follows: 85,000 shares at \$1.50 per share; 75,000 shares at \$2.50 per share; and 75,000 shares at \$3.50 per share. Additionally, Mr. Lerten relinquished his right to 105,000 of the 180,000 shares of common stock to which he was entitled pursuant to his employment agreement. Any other rights or benefits granted to Mr. Lerten pursuant to his employment agreement were terminated. Mr. Lerten issued a promissory note to us in connection with his purchase of 166,667 shares of Series A Preferred Stock. The note is secured by a pledge of the Series A Preferred Stock purchased by Mr. Lerten. In connection with Mr. Lerten's separation, to offset certain fees and expenses owed by us to Mr. Lerten, on January 2, 2002 we reduced the principal and accrued interest amount of the note from \$252,500 to \$127,500.

Edward P. Mooney Employment Agreement. We entered into an employment agreement with Mr. Mooney to serve as our Executive Vice President on April 1, 2001. Pursuant to the agreement, we paid Mr. Mooney an annual base salary of \$120,000 plus health insurance and other benefits, with bonuses as determined by our Board of Directors. In addition, we granted Mr. Mooney an option to purchase 100,000 shares of common stock at an exercise price of \$1.50 per share. The option is immediately exercisable and has a term of ten years. The term of the agreement was for one year and is renewable annually. In December 2001, Mr. Mooney was appointed to serve as our Interim President and Chief Executive Officer under the same terms and conditions of his original employment agreement with the exception that the board authorized an increase in salary to \$180,000 per year. Mr. Mooney served as our Interim President and Chief Executive Officer until September 2002.

Grant Miller Employment Agreement. On May 31, 2002, we entered into an annual renewable employment agreement with Grant Miller, our Chief Financial Officer. Under the agreement we will pay Mr. Miller an annual base salary of \$200,000 plus other benefits, with bonuses up to \$200,000 as determined by our board of directors. In addition, we agreed to grant Mr. Miller an option to purchase 500,000 shares of our common stock at an exercise price of \$1.33 per share, with the options vesting immediately with respect to 125,000 shares and equally over the next three anniversary dates of the agreement with respect to the remaining 375,000 shares.

ITEM 11. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

Equity Compensation Plan Information

| Plan Category | Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights | Weighted Average Exercise Price of Outstanding Options, Warrants and Rights | Number of Securities Remaining Available for Future Issuance |
|--|---|---|--|
| Equity compensation plans approved by security holders | 1,462,075(1) \$ | 1.85 | 1,000,500(2) |
| Equity compensation plans not approved by security holders | 340,000(3) \$ | 2.99 | 1,000,000(4) |
| Total: | 1,802,075 | | |

(1) Consists of shares issued under our Long-Term Incentive Plan.

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(2) Consists of 500 options issuable under our Long-Term Incentive Plan and 1,000,000 options issuable under our Director Option Plan.

(3) Consists of options granted outside of our Long-Term Incentive Plan and not pursuant to any formal plan.

(4) Consists of shares remaining available for issuance under a stock grant plan approved by our board of directors in June 2002.

Stock Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

The following table sets forth information as of September 30, 2002 regarding the beneficial ownership of (1) each person known by us to be the beneficial owner of more than five percent of any class of our voting securities and (2) our directors, each named executive officer and our directors and executive officers as a group. As of September 30, 2002 we had 6,187,940 shares of common stock outstanding, and 3,811,167 shares of Series A Preferred Stock outstanding. We have an obligation to issue 383,479 additional shares as a result of various offerings of securities for which some or all of the shares purchased have not been issued. This figure assumes that the price of our ongoing offering of common stock will remain at \$2.00. If the price is reduced, additional shares will be issued in an amount sufficient to ensure that all investors receive the same price in the offering. See the information under the heading "Recent Sales of Unregistered Securities" in Item 5 of this Form 10-KSB.

Each share of our Series A Preferred Stock is convertible into one share of our common stock, subject to adjustment as provided in the Certificate of Designations for the Series A Preferred Stock. Unless otherwise indicated, the address of each person listed in the table is 1111 Orange Avenue, Coronado, California 92118.

| | Shares of Common Stock Currently Owned | Series A Preferred Stock | % | Shares Issuable Upon Exercise of Options or Warrants(1) | Total Shares of Common Stock Beneficially Owned | % |
|--|---|--------------------------------|-------|---|---|-------|
| Paul A. Moore | 603,223 | 196,894 | 5.17 | 700,000 | 1,499,917(2) | 21.17 |
| Theodore H. Swindells(3) | 350,000 | 292,050 | 7.66 | 266,667 | 908,717 | 13.47 |
| Maroon Bells Capital, L.L.C. | 203,000 | 0 | * | 500,000 | 703,000(4) | 10.51 |
| Russell R. Myers | 152,208 | 366,667 | 9.62 | 50,000 | 568,875(5) | 8.61 |
| Edward P. Mooney(6) | 150,000 | 0 | 0 | 275,000 | 425,000 | 6.58 |
| Jon Eric Landry(7) | 145,000 | 35,388 | * | 200,000 | 380,388 | 5.92 |
| David M. Lerten(8) | 37,425 | 166,667 | 4.37 | 122,575 | 326,667 | 5.04 |
| Hightown(9) | 0 | 233,333 | 6.12 | 0 | 233,333 | 3.63 |
| MainStreet(10) | 0 | 233,333 | 6.12 | 0 | 233,333 | 3.63 |
| Douglas D. Cole | 0 | 0 | N/A | 225,000 | 225,000 | 3.51 |
| Grant Miller | 0 | 0 | N/A | 125,000 | 125,000 | 1.98 |
| Lewis Suders | 0 | 0 | N/A | 125,000 | 125,000 | 1.98 |
| Bhasu Panchal | 0 | 0 | N/A | 50,000 | 50,000 | * |
| Ronald E. Spears(11) | 0 | 0 | N/A | 0 | 0 | * |
| Total number of shares beneficially owned by all named executive officers and directors as a group (9 persons) were: | 447,208 | 402,055 | 10.55 | 1,050,000 | 1,899,263 | 24.86 |

* Represents holdings of less than one percent (1%).

(1) Includes only shares issuable upon exercise of options or warrants which may be currently exercised or will become exercisable within 60 days of September 30, 2002.

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(2) Consists of 400,023 shares of common stock, 196,894 shares of Series A Preferred Stock and warrants to purchase 200,000 shares of common stock owned by Mr. Moore, and 203,000 shares of common stock and warrants to purchase 500,000 shares of common stock owned by Maroon Bells Capital, L.L.C. Mr. Moore is a principal of Maroon Bells Capital, L.L.C. and, therefore, he may be deemed to beneficially own shares owned by, or issuable upon exercise of warrants held by, Maroon Bells Capital, L.L.C. Mr. Moore shares voting and dispositive power with Maroon Bells Capital, L.L.C. with respect to all shares. Mr. Moore disclaims beneficial ownership of shares owned by or issuable upon the exercise of warrants held by Maroon Bells Capital, L.L.C. Mr. Moore's mailing address is 269 Market Square, Lake Forest, Illinois 60045.

(3) Mr. Swindells' business address is c/o Fairway Western, 11400 Southeast 8th Street, Bellevue, WA 98004.

(4) Maroon Bells shares voting and dispositive power with Mr. Paul Moore with respect to all shares. Maroon Bells is a merchant banking firm whose principal address is 269 Market Square, Lake Forest, Illinois 60045.

- (5) Consists of 1,405 shares of common stock owned by Geneva Associates Advisors, LLC, 2,504 shares of common stock owned by Geneva Associates, LLC, 132,235 shares of common stock owned by Blue Ridge Investors II, LP, and 16,064 shares of common stock and 366,667 shares of Series A Preferred Stock owned by Geneva Associates Merchant Banking Partners I, LLC. Mr. Meyers may be deemed to beneficially own shares owned by Geneva Associates Advisors, LLC, Geneva Associates, LLC, Blue Ridge Investors II, LP, and Geneva Associates Merchant Banking Partners I, LLC as a result of his relationship to these entities. Mr. Myers also may be considered the beneficial owner of 1,150,000 shares of Series B Preferred Stock owned by Geneva Associates Merchant Banking Partners I, LLC, 134,074 shares of Series C Preferred Stock owned by Geneva Associates Advisors, LLC, 2,816,762 shares of Series C Preferred Stock owned by Blue Ridge Investors II, LP, 1,533,468 shares of Series C Preferred Stock owned by Geneva Associates Merchant Banking Partners I, LLC, and 238,992 shares of Series A Preferred Stock owned by Geneva Associates, LLC. Mr. Myers' mailing address is c/o Geneva Merchant Banking Partners, 300 North Greene Street, Greensboro, NC 27401.
- (6) Mr. Mooney's mailing address is 921 Transport Way, Suite 4, Petaluma, California 94954.
- (7) Mr. Landry's mailing address is Landry Montana Partners, Inc., 74 E. Westminister, Lake Forest, IL 60045.
- (8) Mr. Lerten's mailing address is 3006 Woodside Street, Unit 7019, Dallas, TX 75204. Mr. Lerten served as our President and Chief Executive Officer from April 2001 to December 2001, when he resigned to pursue other interests.
- (9) The mailing address of Hightown is Africa House, Woodburne Road, Douglas, Isle of Man, British Isles.
- (10) The mailing address of MainStreet is Africa House, Woodburne Road, Douglas, Isle of Man, British Isles.
- (11) Mr. Spears' mailing address is 390 Oenoke Ridge, New Canaan, CT 06840.

ITEM 12. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

In order to obtain general working capital and to provide interim working capital to be loaned to Cable Concepts, Inc. prior to closing the acquisition, we issued notes aggregating approximately \$1.5 million (the "Bridge Notes"). The Bridge Notes bear interest at a rate of 18% per annum and were due and payable on demand. All of the Bridge Notes were subsequently converted into shares of our Series A Preferred Stock. In connection with the offering of Bridge Notes, each investor also received a warrant to purchase shares of our Common Stock at a ratio equal to 66,667 shares for every \$100,000 in Bridge Notes. The warrants have a term of five years and may be exercised at \$0.01 per share. Mr. Paul A. Moore, one of our significant stockholders, participated in the Bridge Loan through one of his affiliates and loaned us \$225,035. Mr. Theodore H. Swindells, another one of our significant stockholders, also participated in the Bridge Loan and loaned us \$100,000. Mr. John Evans, our chairman of the board, also participated in the Bridge Loan and loaned us \$50,000. Mr. Jon Eric Landry, one of our directors, also participated in the Bridge Loan and loaned us \$50,000. The proceeds from the Bridge Notes were loaned to Cable Concepts, Inc., which used the proceeds to pay operating expenses.

On January 29, 2001, we entered into an advisory agreement with Maroon Bells Capital, L.L.C., a merchant banking firm, to provide certain advisory and business development services in exchange for a monthly advisory fee. The term of the agreement is twenty-four months with an automatic twelve-month renewal. Maroon Bells is one of our significant stockholders. Mr. Paul Moore, another one of significant stockholders, is a principal of Maroon Bells. See the information under the caption "Stock Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters" in Item 11 of this Form 10-KSB. In addition, Maroon

Bells earned a fee in connection with our acquisition of Cable Concepts, Inc. During fiscal year 2001, we paid Maroon Bells total fees and expenses equal to \$107,000 and accrued fees expenses equal to \$428,000. We are in discussions with Maroon Bells to convert a portion of the accrued fees and expenses to shares of our stock.

Effective April 1, 2001, we entered into a consulting agreement with Evans Capital Management, LLC, an entity of which Mr. John Evans, who was at the time one of our directors, is a principal. Pursuant to the agreement, Evans Capital Management provided us with advice relating to financing, mergers and acquisitions. We paid Evans Capital Management an advisory fee equal to \$10,000 per month. The agreement had a term of one year. Additionally, we issued to Mr. Evans an option to purchase 150,000 shares of our Common Stock at an exercise price of \$0.50. This option has a term of three years.

In April 2002 in connection with Mr. Evans' resignation as a member of our board of directors, we agreed with Mr. Evans that 100,000 shares of our stock held by Mr. Evans would be sold to a third party for total proceeds of \$125,000, with \$110,000 of the proceeds paid to us and \$15,000 paid to Mr. Evans. We did not enter into a formal agreement with Mr. Evans in connection with these sales.

Effective April 15, 2001, we entered into an agreement with Landry Montana Partners to provide executive recruiting services, an entity of which Mr. Jon Eric Landry, one of our directors, is a principal. Pursuant to the agreement, Landry Montana will work with us to recruit officers and directors. We were obligated to pay Landry Montana \$10,000 per month during the term of the agreement, which was May 1, 2001 to May 1, 2002. Additionally, we pay all direct expenses incurred by Landry Montana in connection with its engagement. We currently owe Landry Montana Partners approximately \$26,000 for services provided under this agreement. We also issued to Mr. Landry an option to purchase 150,000 shares of our common stock at \$1.50 per share which expires on July 18, 2011.

In consideration for services provided to us beyond his duties as a director, in June 2002 our board approved the issuance of 200,000 shares of our common stock to Mr. Landry under our stock grant plan. The specific services provided by Mr. Landry involved assisting our officers in connection with the

opening and closing of offices, recruitment and hiring of officers and directors, locating financing sources, and management transitions. The grant of shares to Mr. Landry is subject to approval by an authorizing agent for the plan, and Mr. Landry has not yet been granted any shares. See the information under the heading "Long-Term Incentive and Stock Grant Plans" in Item 10 of this Form 10-KSB.

We previously agreed to compensate Douglas D. Cole, who is one of our directors, for consulting services. Mr. Cole has and continues to provide these services, and as of June 30, 2002 we owed him a total of \$75,000 for services rendered and reimbursement of expenses. In consideration for similar services and Mr. Cole's deferring payment for past services rendered, in June 2002 our board approved the issuance of 100,000 shares of our common stock to Mr. Cole under our stock grant plan. The grant of these shares is subject to approval by an authorizing agent for the plan, and Mr. Cole has not yet been granted any shares. See the information under the heading "Long-Term Incentive and Stock Grant Plans" in Item 10 of this Form 10-KSB.

In consideration for his agreeing to join our board of directors, in June 2002 our board approved the issuance to Mr. Spears of 25,000 shares of our common stock under our stock grant plan. The grant of these shares is subject to approval by an authorizing agent for the plan, and Mr. Spears has not yet been granted any shares. See the information under the heading "Long-Term Incentive and Stock Grant Plans" in Item 10 of this Form 10-KSB.

In consideration for services provided beyond his duties as a director, including assistance with financings, in June 2002 our board approved the issuance of 50,000 shares of our common stock to Mr. Myers under our stock grant plan. The grant of these shares is subject to approval by an authorizing agent for the plan, and Mr. Myers has not yet been granted any shares. See the information under the heading "Long-Term Incentive and Stock Grant Plans" in Item 10 of this Form 10-KSB. We owe a total of approximately \$1,176,000 to Geneva Associates Merchant Banking Partners, consisting of amounts owed under a promissory note held by Geneva Associates Merchant Banking Partners, a reimbursement agreement with Geneva Associates Merchant Banking Partners arising out of its issuance of a letter of credit benefiting us, accrued interest and a fee relating to the issuance of the letter of credit. We are in default with regard to the promissory note and reimbursement agreement. See the information under the caption "Liquidity and Financial Resources" in Item 6 of this Form 10-KSB. Mr. Myers is a manager and part owner of Geneva Associates Merchant Banking Partners Group I, LLC, which is the manager of Geneva Associates Merchant Banking Partners. Mr. Myers is also a manager of Southern Capital Partners, which has an ownership interest in Geneva Associates Merchant Banking Partners.

On March 4, 2002, we issued two unsecured notes payable in the amount of \$150,000 each to Theodore Swindells and Paul Moore, both of whom beneficially own over 5% of our common stock. These notes bear interest at the rate of 10% per year and had a due date of October 31, 2002. We are in default under these notes and are seeking a waiver of default from Mr. Swindells and Mr. Moore. In July 2002 we agreed to issue warrants to Mr. Moore and Mr. Swindells, in connection with various loans and advances made by these individuals to us. Mr. Moore and Mr. Swindells each were issued warrants to purchase 200,000 shares of our common stock.

In consideration for advances of funds to us, and services provided to us, including assistance with financings, in June 2002 our board approved the issuance of 350,000 shares of our common stock to Mr. Moore under our stock grant plan. The grant of these shares is subject to approval by an authorizing agent for the plan, and Mr. Moore has not yet has been granted any shares. See the information under the heading "Long-Term Incentive and Stock Grant Plans" in Item 10 of this Form 10-KSB.

ITEM 13. EXHIBITS AND REPORTS ON FORM 8-K

(a) Exhibits

| Number | Description of Document |
|--------|--|
| 2.1 | Agreement and Plan of Reorganization By and Among Optika Investment Company, Inc., DD Acquisition, Inc., Cable Concepts, Inc. and the Shareholders of Cable Concepts, Inc., dated March 1, 2001 (Incorporated by reference from the Company's Current Report on Form 8-K dated July 27, 2001). |
| 2.2 | Agreement and Plan of Merger dated as of April 25, 2002 by and between USA Broadband, Inc. and Las Americas Broadband, Inc. (Incorporated by reference from the Company's Quarterly Report on Form 10-QSB dated May 21, 2002). |
| 2.3 | Asset Purchase Agreement dated March 1, 2002 among Verizon Media Ventures, Inc. and GTE Southwest Incorporated and USAB Video Corp II, Inc. and USA Broadband, Inc. (Incorporated by reference from the Company's Quarterly Report on Form 10-QSB dated May 21, 2002). |
| 2.4 | First Amendment, dated April 30, 2002, to Asset Purchase Agreement dated March 1, 2002 among Verizon Media Ventures, Inc. and GTE Southwest Incorporated and USAB Video Corp II, Inc. and USA Broadband, Inc. (Incorporated by reference from the Company's Quarterly Report on Form 10-QSB dated May 21, 2002). |
| 2.5 | Asset Purchase Agreement dated as of May 22, by and among Cable One, Inc. and Direct Digital Midwest, Inc. and USA Broadband, Inc. |
| 2.6 | Asset Purchase and Sale Agreement dated as of June 7, 2002 by and between Cable Concepts, Inc. and Priority/RTGI, LLC. |
| 2.7 | First Amendment to Asset Purchase and Sale Agreement, dated as of June 20, 2002, by and between Cable Concepts, Inc. and Priority/RTGI, LLC. |
| 2.8 | Asset Purchase Agreement dated as of June 28, 2002 by and between Time Warner Entertainment Company, L.P. and Cable Concepts, Inc. |
| 3.1 | Certificate of Incorporation of USA Broadband, Inc. (Incorporated by reference from the Company's Current Report on Form 8-K dated July 27, 2001). |
| 3.2 | Amended and Restated Bylaws of USA Broadband, Inc. (Incorporated by reference from the Company's Current Report on Form 8-K dated July 27, 2001). |
| 3.3 | Certificate of Designation, Preferences and Other Rights of the Company's Series A Preferred Stock, Series B |

- Preferred Stock and Series C Preferred Stock. (Incorporated by reference from the Company's Current Report on Form 8-K dated July 27, 2001).
- 4.1 Form of Warrant to purchase shares of Common Stock of the Company (Incorporated by reference from the Company's Annual Report on Form 10-K dated January 25, 2002).
- 4.2 Form of Option to purchase the Company's Common Stock (Incorporated by reference from the Company's Annual Report on Form 10-K dated January 25, 2002).
- 4.3 Registration Rights Agreement entered into with each of the Company's Series A Convertible Preferred shareholders (Incorporated by reference from the Company's Annual Report on Form 10-K dated January 25, 2002).
- 10.1 Advisory Agreement with Maroon Bells Capital, LLC dated January 29, 2001. (Incorporated by reference from the Company's Annual Report on Form 10-K dated January 25, 2002).

- 10.2 Letter Agreement with Landry Montana Partners dated April 15, 2001 (Incorporated by reference from the Company's Annual Report on Form 10-K dated January 25, 2002).
- 10.3 Employment Agreement with Edward P. Mooney dated as of April 1, 2001 (Incorporated by reference from the Company's Annual Report on Form 10-K dated January 25, 2002).
- 10.4 Stock Option Agreement with Edward P. Mooney dated as of April 1, 2001 (Incorporated by reference from the Company's Annual Report on Form 10-K dated January 25, 2002).
- 10.5 Separation Agreement with David M. Lerten dated as of December 19, 2001. (Incorporated by reference from the Company's Annual Report on Form 10-K dated January 25, 2002).
- 10.6 Stock Option Agreement with David M. Lerten dated as of December 19, 2001 (Incorporated by reference from the Company's Annual Report on Form 10-K dated January 25, 2002).
- 10.7 Stock Pledge and Security Agreement with David M. Lerten dated as of December 19, 2001. (Incorporated by reference from the Company's Annual Report on Form 10-K dated January 25, 2002).
- 10.8 Promissory Note of David M. Lerten dated as of December 19, 2001. (Incorporated by reference from the Company's Annual Report on Form 10-K dated January 25, 2002).
- 16.1 Letter on change in certifying accountant (Incorporated by reference from the Company's Current Report on Form 8-K dated December 6, 2001).
- 21 List of subsidiaries of USA Broadband, Inc.
- 99.1 Certification of Chief Executive Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 99.2 Certification of Chief Financial Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

(b) Reports on Form 8-K

None.

ITEM 14. CONTROLS AND PROCEDURES

Not applicable.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized.

USA BROADBAND, INC.

By: /s/ GRANT MILLER

Its: Chief Financial Officer

Dated: November 21, 2002

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

| <u>SIGNATURE</u> | <u>TITLE</u> | <u>DATE</u> |
|---------------------------|---|-------------------|
| /s/ GRANT MILLER | Principal Executive and Financial Officer | November 21, 2002 |
| /s/ BHASU PANCHAL | Principal Accounting Officer | November 21, 2002 |
| /s/ EDWARD P. MOONEY | Director | November 21, 2002 |
| /s/ DOUGLAS COLE | Director | November 21, 2002 |
| /s/ RONALD E. SPEARS | Director | November 21, 2002 |
| /s/ JON ERIC (RIC) LANDRY | Director | November 21, 2002 |
| /s/ RUSSELL MYERS | Director | November 21, 2002 |

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INDEPENDENT AUDITOR'S REPORT

Board of Directors
USA Broadband, Inc.
Petaluma, California

We have audited the accompanying consolidated balance sheets of USA Broadband, Inc. and Subsidiaries as of June 30, 2002 and September 30, 2001, and the related consolidated statements of operations, stockholders' equity, and cash flows for the nine months ended June 30, 2002 and year ended September 30, 2001. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of USA Broadband, Inc. and Subsidiaries as of June 30, 2002 and September 30, 2001, and the results of their operations and their cash flows for the nine months ended June 30, 2002 and year ended September 30, 2001, in conformity with accounting principles generally accepted in the United States of America.

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 2 to the financial statements, the Company has suffered recurring losses from operations and has a working capital deficiency. These factors raise substantial doubt about the Company's ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 2. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Hein + Associates LLP Denver, Colorado
October 18, 2002

USA BROADBAND, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS

(\$ in 000's, except per share data)

| | June 30, 2002 | September 30, 2001 |
|---|------------------|-----------------------|
| ASSETS | | |
| Current Assets: | | |
| Cash | \$ 88 | \$ 181 |
| Restricted cash | 500 | 500 |
| Accounts receivable, net | 171 | 318 |
| Prepaid expenses and other current assets | 15 | 16 |
| | 774 | 1,015 |
| Property and Equipment: | | |

| | | |
|----------------------------------|---------------|---------------|
| Cable properties | 9,831 | 12,520 |
| Cable equipment | 975 | 1,000 |
| Leasehold improvements | 2 | 19 |
| Furniture and equipment | 34 | 44 |
| Computer software and equipment | 113 | 110 |
| Vehicles | 7 | 22 |
| | <u>10,962</u> | <u>13,715</u> |
| Less accumulated depreciation | (1,472) | (476) |
| Net property and equipment | 9,490 | 13,239 |
| Note Receivable | 504 | – |
| Assets Held for Sale, net | 925 | – |
| Goodwill | – | 9,850 |
| Other Assets | 87 | 296 |
| | <u>11,780</u> | <u>24,400</u> |
| Total Assets | \$ 11,780 | \$ 24,400 |

See accompanying notes to these financial statements.

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USA BROADBAND, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS

(\$ in 000's, except per share data)

(Continued)

| | June 30, 2002 | September 30, 2001 |
|--|------------------|-----------------------|
| LIABILITIES AND STOCKHOLDERS' EQUITY | | |
| Current Liabilities: | | |
| Line-of-credit | \$ 100 | \$ 2,447 |
| Current portion of long-term debt and capital lease obligations | 5,096 | 1,309 |
| Accounts payable | 4,036 | 3,721 |
| Accrued liabilities | 735 | 193 |
| Deferred revenues | 11 | 101 |
| | <u>9,978</u> | <u>7,771</u> |
| Long-term Debt and Capital Lease Obligations, net of current portion | – | 1,598 |
| Deferred Revenues | 457 | 574 |
| Other Liabilities | 15 | 188 |
| Commitments and Contingencies, (Notes 7 and 10) | | |
| Stockholders' Equity: | | |
| Preferred stock, \$.001 par value; 50,000,000 shares authorized | | |
| Series A convertible preferred stock; 7,000,000 shares designated; 3,873,015 and 3,283,899 outstanding, liquidation preference of \$5,844,000 | 5,550 | 4,733 |
| Series B preferred stock; 2,625,000 shares designated; 2,625,000 outstanding, liquidation preference of \$2,809,000 | 2,391 | 2,391 |

| | | |
|---|------------------|------------------|
| Series C preferred stock; 7,875,000 shares designated; 7,875,000 outstanding, liquidation preference of \$7,875,000 | 7,875 | 7,875 |
| Common stock, \$.001 par value; 100,000,000 shares authorized; 6,299,316 and 4,963,000 outstanding | 6 | 5 |
| Additional paid in capital | 6,790 | 4,611 |
| Accumulated deficit | (21,282) | (5,346) |
| | <u>1,330</u> | <u>14,269</u> |
| Total Liabilities and Stockholders' Equity | \$ 11,780 | \$ 24,400 |

See accompanying notes to these financial statements.

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USA BROADBAND, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OPERATIONS

(\$ in 000's, except per share data)

| | For the Nine Months Ended June 30, 2002 | For the Year Ended September 30, 2001 |
|--|---|--|
| Revenues | \$ 2,995 | \$ 1,261 |
| Cost of Revenues | 712 | 544 |
| | <u>2,283</u> | <u>717</u> |
| Gross profit | | |
| Operating Expenses: | | |
| Selling, general and administrative | 6,656 | 5,057 |
| Depreciation | 1,314 | 475 |
| Impairment of long-lived assets | 9,850 | - |
| | <u>17,820</u> | <u>5,532</u> |
| Total operating expenses | | |
| Loss from operations | (15,537) | (4,815) |
| Other Income (Expense): | | |
| Interest expense, net | (403) | (149) |
| Other income (expense), net | 4 | 52 |
| | <u>(15,936)</u> | <u>(4,912)</u> |
| Net Loss | | |
| Accrued Cumulative Preferred Stock Dividends | 614 | 168 |
| | <u>(16,550)</u> | <u>(5,080)</u> |
| Net Loss Applicable to Common Shareholders | | |
| Net Loss Per Common Share, (primary and diluted) | \$ (3.09) | \$ (0.43) |
| | <u>5,360,000</u> | <u>11,859,000</u> |
| Weighted Average Common Shares Outstanding, (primary and diluted) | | |

See accompanying notes to these financial statements.

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USA BROADBAND, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY

FOR THE NINE MONTHS ENDED JUNE 30, 2002 AND THE YEAR ENDED SEPTEMBER 30, 2001

(\$ in 000's except per share data)

| | Series A Preferred Stock | | Series B Preferred Stock | | Series C Preferred Stock | | Common Stock | | Additional Paid In Capital | Accumulated Deficit | Tot Stockho Equ |
|--|-----------------------------|--------|-----------------------------|--------|-----------------------------|--------|--------------|--------|----------------------------------|------------------------|-----------------------|
| | Shares | Amount | Shares | Amount | Shares | Amount | Shares | Amount | | | |
| Balance, at October 1, 2000 | - | \$ - | - | \$ - | - | \$ - | 13,643,000 | \$ 14 | \$ 418 | \$(434) | \$ |
| Cancellation of common shares | - | - | - | - | - | - | (10,000,000) | (10) | 10 | - | - |
| Shares issued in acquisition of DDC | 33,334 | 50 | 2,625,000 | 2,391 | 7,875,000 | 7,875 | 1,110,000 | 1 | 1,664 | - | - |
| Option issued to employees | - | - | - | - | - | - | - | - | 169 | - | - |
| Options issued to non- employees | - | - | - | - | - | - | - | - | 476 | - | - |
| Series A Preferred issued for conversion of debt | 1,048,118 | 1,528 | - | - | - | - | - | - | - | - | - |
| Proceeds from sale of Series A Preferred | 2,149,666 | 3,224 | - | - | - | - | - | - | - | - | - |
| Series A Preferred issued in lieu of offering costs | 8,000 | - | - | - | - | - | - | - | - | - | - |
| Offering costs | - | (136) | - | - | - | - | - | - | - | - | - |
| Fair value of warrants issued for debt discount | - | - | - | - | - | - | - | - | 750 | - | - |
| Fair value of warrants issued for services | - | - | - | - | - | - | - | - | 536 | - | - |
| Shares issued as additional consideration for debt | - | - | - | - | - | - | 25,000 | - | 111 | - | - |
| Fair value of warrants issued as additional consideration for debt | - | - | - | - | - | - | - | - | 199 | - | - |
| Shares issued in payment of liabilities | 44,781 | 67 | - | - | - | - | 185,000 | - | 243 | - | - |
| Loss on extinguishment of debt | - | - | - | - | - | - | - | - | 35 | - | - |

| | | | | | | | | | | |
|--|--------------|-------|--------------|-------|--------------|-------|--------------|------|----------|-------------|
| Net loss | - | - | - | - | - | - | - | - | - | (4,912) |
| Balance, at September 30, 2001 | 3,283,899 | 4,733 | 2,625,000 | 2,391 | 7,875,000 | 7,875 | 4,963,000 | 5 | 4,611 | (5,346) |
| Option issued to employees | - | - | - | - | - | - | - | - | 455 | - |
| Options issued to non-employees | - | - | - | - | - | - | - | - | 84 | - |
| Proceeds from sale of Series A Preferred | 521,515 | 782 | - | - | - | - | - | - | - | - |
| Series A Preferred issued for services | 44,268 | - | - | - | - | - | - | - | - | - |
| Fair value of warrants issued for services | - | - | - | - | - | - | - | - | 72 | - |
| Shares issued in payment of liabilities | 23,333 | 35 | - | - | - | - | - | - | - | - |
| Shares issued in exercise of warrants | - | - | - | - | - | - | 528,022 | - | 5 | - |
| Proceeds from sale of Common Stock | - | - | - | - | - | - | 720,869 | 1 | 1,441 | - |
| Offering costs | - | - | - | - | - | - | - | - | (123) | - |
| Shares issued for conversion of notes payable | - | - | - | - | - | - | 50,000 | - | 100 | - |
| Fair value of warrants issued as consideration for debt retirement | - | - | - | - | - | - | - | - | 35 | - |
| Shares issued for option exercise | - | - | - | - | - | - | 37,425 | - | - | - |
| Proceeds from sale of former directors' shares | - | - | - | - | - | - | - | - | 110 | - |
| Net loss | - | - | - | - | - | - | - | - | - | (15,936) |
| Balance, at June 30, 2002 | 3,873,015 \$ | 5,550 | 2,625,000 \$ | 2,391 | 7,875,000 \$ | 7,875 | 6,299,316 \$ | 6 \$ | 6,790 \$ | (21,282) \$ |

See accompanying notes to these financial statements.

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USA BROADBAND, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS

\$000

| For the Nine Months Ended June 30, 2002 | For the Year Ended September 30, 2001 |
|--|--|
|--|--|

| | | | |
|--|--|-------------------|-------------------|
| OPERATING ACTIVITIES: | | | |
| Net loss | | \$ (15,936) | \$ (4,912) |
| Adjustments to reconcile net loss to net cash from operating activities: | | | |
| Impairment of long-lived assets | | 9,850 | – |
| Depreciation | | 1,314 | 475 |
| Loss on disposal of fixed assets | | 1,724 | – |
| Amortization of deferred financing costs | | 51 | 17 |
| Stock based compensation | | 611 | 1,181 |
| Amortization of note discount | | – | 750 |
| Allowance for bad debt | | 37 | 115 |
| Stock and warrants issued as additional consideration for debt | | – | 310 |
| Warrants issued for consideration of debt retirement | | 35 | – |
| Changes in operating assets and liabilities: | | | |
| Accounts receivable | | 109 | (219) |
| Prepaid expenses | | 1 | – |
| Accounts payable | | 314 | 589 |
| Accrued liabilities | | 424 | 49 |
| Deferred revenues | | (207) | (46) |
| Other assets | | 153 | – |
| Other liabilities | | (69) | (14) |
| | | <u> </u> | <u> </u> |
| Net cash used in operating activities | | (1,589) | (1,705) |
| | | <u> </u> | <u> </u> |
| INVESTING ACTIVITIES: | | | |
| Cash acquired in DDC acquisition | | – | 6 |
| Advances to DDC prior to acquisition | | – | (1,258) |
| Acquisition costs | | – | (343) |
| Increase in restricted cash | | – | (500) |
| Payment of the premium insurance | | – | (3) |
| Net proceeds from sale of assets | | 412 | – |
| Purchases of property and equipment | | (389) | (599) |
| Advances to Las Americas | | (500) | – |
| | | <u> </u> | <u> </u> |
| Net cash used in investing activities | | (477) | (2,697) |
| | | <u> </u> | <u> </u> |
| FINANCING ACTIVITIES: | | | |
| Net borrowings (reductions) on line-of-credit | | (46) | 42 |
| Borrowing of long-term capital | | 764 | 1,500 |
| Principal payments on long-term debt and capital lease obligations | | (961) | (125) |
| Proceeds from issuance of common stock | | 1,324 | – |
| Proceeds from preferred stock issuance, net of costs | | 782 | 3,166 |
| Proceeds from sale of former director's shares | | 110 | – |
| | | <u> </u> | <u> </u> |
| Net cash provided by financing activities | | 1,973 | 4,583 |
| | | <u> </u> | <u> </u> |
| NET INCREASE (DECREASE) IN CASH | | (93) | 181 |
| CASH, at beginning of year | | 181 | – |
| | | <u> </u> | <u> </u> |
| CASH, at end of period | | \$ 88 | \$ 181 |

SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION:

| | | | | |
|------------------------|----|-----|----|-----|
| Cash paid for interest | \$ | 230 | \$ | 153 |
|------------------------|----|-----|----|-----|

NON-CASH TRANSACTIONS:

| | | | | |
|---|----|---|----|-------|
| Series A Preferred stock issued for conversion of notes payable | \$ | – | \$ | 1,500 |
|---|----|---|----|-------|

| | | | | |
|-------------------------------------|----|---|----|--------|
| Stock issued for acquisition of DDC | \$ | – | \$ | 10,317 |
|-------------------------------------|----|---|----|--------|

| | | | | |
|--|----|-----|----|-----|
| Stock issued in payment of liabilities | \$ | 135 | \$ | 243 |
|--|----|-----|----|-----|

| | | | | |
|--|----|-----|----|---|
| Cable equipment exchanged for accounts payable | \$ | 592 | \$ | – |
|--|----|-----|----|---|

| | | | | |
|---|----|-----|----|---|
| Accounts payable converted to notes payable | \$ | 235 | \$ | – |
|---|----|-----|----|---|

See accompanying notes to these financial statements.

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USA BROADBAND, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NINE MONTHS ENDED JUNE 30, 2002 AND YEAR ENDED SEPTEMBER 30, 2001

1. Organization and Nature of Operations:

USA Broadband, Inc. ("USAB" or the "Company") was originally incorporated in 1985 for the purposes of acquiring business entities or other investment activities. In early 2001, the Company adopted a new business strategy to become a provider of digital television, data and broadband interactive services. In July 2001, the Company changed its name from Optika Investment Company, Inc. to USA Broadband, Inc.

On July 18, 2001, the Company acquired all of the outstanding common stock of Cable Concepts, Inc. (d/b/a Direct Digital Communications, Inc.) ("DDC"), as more fully described in Note 3. DDC is in the business of constructing and managing cable systems for both owned properties and for real estate developers and cable operators throughout the United States. DDC, under a DIRECTV Master System Operator Agreement, installs and manages DIRECTV systems, as well as acting as a commissioned sales representative for DIRECTV programming packages.

The Company is subject to risks inherent in any business enterprise. These risks include, but are not limited to, regulatory requirements, technology changes, increasing competition and changes in customer demand.

2. Summary of Significant Accounting Policies:

Principles of Consolidation—The accompanying financial statements include the accounts of the Company and the Company's wholly owned subsidiaries, Cable Concepts, Inc., USAB Videocorp II Inc., and Direct Digital Midwest. All material intercompany transactions and accounts have been eliminated in consolidation.

Revenue Recognition—Operations revenues are recognized as services are earned, generally on a monthly basis. The Company receives commissions on certain new subscribers, which is recognized into revenue over the estimated term of the relationship.

Cost of Revenues—Cost of revenues consists primarily of programming fees paid to local and premium cable signal providers, which may include costs of installing equipment for new subscribers.

Property and Equipment—Property and equipment is stated at historical cost. Significant additions and improvements are capitalized. Repairs and maintenance are expensed as incurred. Upon disposition of equipment, gains or losses are reflected in the statement of operations.

Depreciation is computed on property and equipment using the straight-line method over the following estimated useful lives:

| | |
|------------------|---|
| Cable properties | Life of Right of Entry Agreement (generally 10 to 12 years) |
| Cable equipment | 3 to 7 years |

| | |
|---------------------------------|--------------------------------------|
| Furniture and equipment | 3 to 7 years |
| Computer software and equipment | 3 to 5 years |
| Vehicles | 5 years |
| Leasehold improvements | Life of lease (generally 5-10 years) |

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The Company has begun a program to divest operating assets in non-core markets, with the intention of using the proceeds of these sales to repay debt and other obligations associated with the acquisition of DDC. As of June 30, 2002, the Company has entered into letters of intent for the sale of a portion of the non-strategic assets, and has retained various brokers and advisors to assist in system sales. The assets have been reclassified as assets held for sale on the balance sheet and are recorded at the lower of carrying amount or fair value less costs to sell.

Impairment of Long-Lived Assets—In the event that facts and circumstances indicate that the cost of assets may be impaired, an evaluation of recoverability would be performed. If an evaluation were required, the estimated future undiscounted cash flows associated with the asset would be compared to the asset's carrying amount to determine if a write-down to market or discounted cash flow value is required.

During the nine months ended June 30, 2002, as a result of the Company's changed business strategies and decision to sell a portion of its non-strategic assets, the Company recognized an impairment loss related to the recorded goodwill and cable properties. Fair value was determined based on established sales contracts for similar assets. The total impairment loss and loss from reducing assets held for sale to the fair value less cost to sell for the nine months ended June 30, 2002 was \$9,850,000.

Cash Equivalents—The Company considers all highly liquid debt instruments purchased with an original maturity of three months or less to be cash equivalents.

Income Taxes—The Company accounts for income taxes under the liability method whereby deferred tax assets and liabilities are determined based on differences between financial reporting and tax bases of assets and liabilities measured using enacted tax rates and laws that will be in effect when the differences are expected to reverse.

Use of Estimates—The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

The Company's financial statements are based on a number of significant estimates, including the useful lives of fixed assets, the collectibility of receivables, and the fair value of long-lived assets for purposes of measuring impairment. Due to the uncertainties inherent in the estimation process, it is at least reasonably possible that its estimates in connection with these items could be materially revised within the near term.

Earnings Per Share—Basic EPS is calculated by dividing the income or loss available to common shareholders by the weighted average number of common shares outstanding for the period. Diluted EPS reflects the potential dilution that could occur if securities or other contracts to issue common stock were exercised or converted into common stock. Diluted EPS does not include options, warrants, and Series A preferred stock representing 6,742,955 common shares because they would have been antidilutive.

Stock-Based Compensation—The Company has adopted the disclosure only provisions of Statement of Financial Accounting Standards (SFAS) No. 123, Accounting for Stock-Based Compensation for Grants to Employees. The Company applies Accounting Principles Board (APB) Opinion No. 25,

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Accounting for Stock Issued to Employees, and related interpretations in accounting for its employee stock benefit plans. Grants to non-employees are accounted for under the fair value method.

Impact of Recently Issued Accounting Pronouncements—In June 2001, the Financial Accounting Standards Board finalized FASB Statements No. 141, *Business Combinations* (SFAS 141), and No. 142, *Goodwill and Other Intangible Assets* (SFAS 142). SFAS 141 requires the use of the purchase method of accounting and prohibits the use of the pooling-of-interests method of accounting for business combinations initiated after June 30, 2001. SFAS 141 also requires that the Company recognize acquired intangible assets apart from goodwill if the acquired intangible assets meet certain criteria. SFAS 141 applies to all business combinations initiated after July 1, 2001 and for purchase business combinations completed on or after July 1, 2001. Accordingly, the Company applied SFAS 141 for the

acquisition of DDC (Note 3). It also requires, upon adoption of SFAS 142, that the Company reclassify the carrying amounts of intangible assets and goodwill based on the criteria in SFAS 141.

SFAS 142 requires, among other things, that companies no longer amortize goodwill, but instead test goodwill for impairment at least annually. In addition, SFAS 142 requires that the Company identify reporting units for the purposes of assessing potential future impairments of goodwill, reassess the useful lives of other existing recognized intangible assets, and cease amortization of intangible assets with an indefinite useful life. An intangible asset with an indefinite useful life should be tested for impairment in accordance with the guidance in SFAS 142. SFAS 142 is required to be applied in fiscal years beginning after December 15, 2001 to all goodwill and other intangible assets recognized at that date, regardless of when those assets were initially recognized. SFAS 142 requires the Company to complete a transitional goodwill impairment test six months from the date of adoption. The Company is also required to reassess the useful lives of other intangible assets within the first interim quarter after adoption of SFAS 142.

In August 2001, the FASB issued Statement of Financial Accounting Standards No. 143, *Accounting for Asset Retirement Obligations* (SFAS 143). This statement establishes standards of accounting for asset retirement obligations arising from the acquisition, construction, or development and/or the normal operation of a long-lived asset. SFAS 143 is effective for fiscal years beginning after June 15, 2002. Management does not believe that the adoption of SFAS 143 will have a material effect of the financial statements.

In October 2001, the FASB also approved SFAS 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*. SFAS 144 replaces SFAS 121, *Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of*. The new accounting model for long-lived assets to be disposed of by sale applies to all long-lived assets, including discontinued operations, and replaces the provisions of APB Opinion No. 30, *Reporting Results of Operations-Reporting the Effects of Disposal of a Segment of a Business*, for the disposal of segments of a business. Statement 144 requires that those long-lived assets be measured at the lower of carrying amount or fair value less cost to sell, whether reported in continuing operations or in discontinued operations. Therefore, discontinued operations will no longer be measured at net realizable value or include amounts for operating losses that have not yet occurred.

Statement 144 also broadens the reporting of discontinued operations to include all components of an entity with operations that can be distinguished from the rest of the entity and that will be eliminated from the ongoing operations of the entity in a disposal transaction. The provisions of Statement 144 are effective for financial statements issued for fiscal years beginning after December 15, 2001 and, generally, are to be applied prospectively.

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In April 2002, the FASB also approved SFAS 145, *Rescission of FASB No. 4, 44 and 64, Amendment of FASB 13, and Technical Corrections*. This statement clarifies, updates, and simplifies existing accounting pronouncements related to gain and losses on extinguishments of debt and lease modifications, among other items. The Company does not believe that the adoption of this statement will have a material effect on its financial position, results of operations or cash flow.

In July 2002, the FASB issued Statements of Financial Accounting Standards No. 146, *Accounting for Costs Associated with Exit or Disposal Activities* (SFAS 146). SFAS 146 requires companies to recognize costs associated with exit or disposal activities when they are incurred rather than at the date of a commitment to an exit or disposal plan. Examples of costs covered by SFAS 146 include lease termination costs and certain employee severance costs that are associated with a restructuring, discontinued operation, plant closing, or other exit or disposal activity. SFAS 146 is to be applied prospectively to exit or disposal activities initiated after December 31, 2002. The Company has not yet determined the impact of SFAS 146 on its operations.

Liquidity and Basis of Presentation—The Company's financial statements have been presented on the going concern basis, which contemplates the realization of assets and liquidation of liabilities in the normal course of business. At June 30, 2002, the Company had a working capital deficit of \$9,204,000. The Company's net loss for fiscal 2002 was \$15,936,000. At June 30, 2002, the Company was in default of the terms of its debt, capital lease obligations.

The Company's ability to continue as a going concern is dependent upon its ability to raise the capital necessary to successfully implement its business plan, and ultimately to achieve profitable operations. Management's plans in this regard are set forth below.

As a result of the Company's proposed merger with Las Americas (Note 4), the Company's efforts will be concentrated on concession-based cable services in Baja, Mexico. The Company has begun a program to divest DDC's MDU operation assets outside of the California market, with the intention of using the proceeds of these sales to repay debt, with excess proceeds to be invested in the Company's new business strategy. The Company has entered into letters of intent for the sale of a portion of the nonstrategic assets, and has retained various brokers and advisors to assist in system sales.

The Company is pursuing additional equity and debt financing, and has implemented cost-reduction measures subsequent to June 30, 2002. Management believes that these measures will be sufficient to allow the Company to continue as a going concern.

3. Acquisition Of Direct Digital Communications:

On July 18, 2001, the Company acquired all of the outstanding common stock of DDC for an aggregate of 1,082,500 shares of common stock and 7,875,000 shares of Series C preferred stock. The Company also issued 2,625,000 shares of Series B preferred stock, 33,334 shares of Series A preferred stock and 27,500 shares of common stock in exchange for \$2,200,000 of DDC notes payable and related accrued interest.

The transaction was accounted for as a purchase. The results of DDC's operations have been included in the consolidated financial statements since the date of the acquisition. The total purchase price, including transaction costs, was \$12,382,000. The common stock was valued at \$1,906,000, based on cash price of the Series A preferred stock offering which had been agreed to prior to the acquisition, as the Series A preferred is convertible into common stock. The Series C preferred was valued at \$7,875,000, which management believes is its fair value based on its liquidation preference of

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\$1.00. The Series B preferred stock was valued at the face amount of DDC debt for which it was exchanged, which is approximately equal to its liquidation preference and represents management's estimate of its fair value. The Series A preferred stock was valued \$1.50 per share, the cash price for the Series A preferred stock offering which had been agreed to prior to the acquisition, and is equal to its liquidation preference of \$1.50.

The following table summarizes the estimated fair values of the assets acquired and liabilities assumed at the date of acquisition.

At July 18, 2001

| | | |
|-------------------------------|----|--------------|
| Current assets | \$ | 236,000 |
| Property, plant and equipment | | 13,116,000 |
| Goodwill | | 9,850,000 |
| | | <hr/> |
| Total assets acquired | | 23,202,000 |
| | | <hr/> |
| Current liabilities | | (8,167,000) |
| Long-term debt | | (2,653,000) |
| | | <hr/> |
| Total liabilities assumed | | (10,820,000) |
| | | <hr/> |
| Net assets acquired | \$ | 12,382,000 |
| | | <hr/> |

The excess of the purchase price over the fair value of the net assets acquired was \$9,850,000. Of that amount \$0 is expected to be deductible for tax purposes. In accordance with Statement of Financial Accounting Standards No. 142, the goodwill is not being amortized, but is subject to annual impairment analysis. As a result of the Company's impairment analysis undertaken during the quarter ended June 30, 2002, an impairment of \$9,850,000 was recorded as of June 30, 2002.

The following unaudited pro forma summary financial information presents the consolidated results of operations of the Company as if the business combination had occurred as of the beginning of the fiscal years of DDC ended June 30, 2001. The pro forma information has been presented based on the June 30 fiscal year of DDC rather than the previous September 30 fiscal year of USAB because USAB had no significant operations prior to the acquisition of DDC, and conversion of DDC financial statements to a September 30 year-end would not provide meaningful information. In addition, the Company subsequently changed its fiscal year-end to June 30 to match that of DDC.

| | | <u>2001</u> |
|--------------------|----|-------------|
| Total revenues | \$ | 4,220,000 |
| Net loss | | (5,344,000) |
| Net loss per share | | (1.12) |

The agreement relating to the acquisition of DDC called for a potential downward adjustment to the purchase price based on the amount of DDCs' accounts payable as of the effective date of the acquisition. Accordingly, some of the shares the Company issued in

consideration for the merger were placed in escrow, and not to be released unless it was determined that a downward adjustment was not appropriate. The Company recently conducted an analysis of the accounts payable of DDC as of July 16, 2001 that indicated that a downward adjustment is appropriate, and that a portion of the shares of common stock and Series C preferred stock in escrow should revert back to USAB rather than being released to the former shareholders of DDC. There is no assurance that DDCs' former

shareholders will agree with the calculations or that all or any of these shares will ultimately revert back to the Company. Accordingly, no adjustment has been made to the recorded purchase price.

4. Proposed Merger With Las Americas Broadband, Inc.:

On April 23, 2002, The Company entered into a definitive merger agreement with Las Americas Broadband, Inc. ("Las Americas") under which Las Americas will merge with and into the Company, with Las Americas' shareholders receiving approximately .125 shares of USAB common stock for each share of Las Americas' common stock. Las Americas develops and operates cable television systems and broadband networks for video, data, and Internet.

Cable California S.A. de C.V., an entity organized under the laws of the United Mexican States ("Cable California") and managed by Las Americas, has a 30-year advanced telecommunications broadband concession from the Mexican government to construct and operate a 750-MHz fiber-optic network providing high-speed Internet, telephony, data and multi-channel cable television to residents and businesses. Cable California is constructing a 1,300-mile broadband network in the Northern Baja California region of Mexico for the delivery of cable television, data and Internet Service. Cable California has completed the first phase of this cable build, including its head-end, central operations center, and over 100 miles of cable plant now serving 2,000 customers.

Las Americas has a management contract managing Cable California and a condition to the merger is that Las Americas acquire majority control of Cable California through a Mexican subsidiary. Las Americas, through a wholly-owned operating subsidiary, also owns and operates a 750-MHz cable television system serving approximately 2,000 subscribers in Kern County, California and doing business under the name "Country Cable."

As a condition of the merger, the Company is obligated to provide Las Americas a loan of up to \$2,000,000 within 180 days of the merger. On May 3, 2002, Las Americas signed a promissory note to the Company in the amount of \$750,000 (as amended) with interest at a rate of 8% per annum which was due in full on September 21, 2002. Through June 30, 2002, the Company has advanced \$500,000 to Las Americas under the note. The note is collateralized by certain cable assets of Las Americas and no payment has been made on the note.

As of June 30, 2002, both the Company and Las Americas were not in compliance with all of the terms of the merger agreement.

5. Line Of Credit And Notes Payable:

As of June 30, 2002, the Company had a note payable to a financial institution in the amount of \$1,550,000 bearing interest at a rate of 10% per year. This note is due in December 2002. The note is collateralized by Right of Entry contracts entered into by the Company.

The Company also has a bank line of credit in the amount of \$100,000, which expires in October 2002. This line of credit bears interest at the prime rate, which as of June 30, 2002 was 4.75%, and is collateralized by a \$100,000 certificate of deposit held by a third party guarantor. The line of credit is past due.

On March 4, 2002, the Company entered into two unsecured notes payable to two stockholders in the aggregate amount of \$300,000. The notes bear interest at 10% per year and are payable on October 31, 2002 and the balance at June 30, 2002 includes accrued interest of \$10,000. The payments

due under these notes are past due and the Company is currently in default under the agreement and is seeking a waiver of the default from the stockholders.

6. Long-Term Debt:

Long-term debt consists of the following:

| | June 30, 2002 |
|--|----------------------|
| Note payable to a financial institution, with interest at prime plus 2%. Principal and interest payments due monthly through April 2002. Collateralized by all Company assets and a \$500,000 certificate of deposit. The payments due under these notes are | \$ 1,417,000 |

past due and the Company is currently in default under the Note agreement and is seeking a waiver of the financial covenants from the bank.

Subordinated note payable, related party, principal and interest at 11% due December 2001, unsecured. The note is subordinate to the line-of-credit and any subsequently issued senior debt. The payments due under these notes are past due and the Company is currently in default under the Note agreement and is seeking a waiver of the financial covenants from the stockholder.

1,146,000

Note payable to a vendor, principal and interest at 18% due in monthly installments with the final payment due March 2003. The payments due under these notes are past due and the Company is currently in default under the Note agreement.

235,000

Capital leases (Note 7)

438,000

3,236,000

Less current portion

(3,236,000)

Long-term portion

\$ -

Maturities of long-term debt outstanding at June 30, 2002 are as follows:

Years ended June 30, 2003

\$ 3,236,000

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7. Commitments:

The Company leases equipment under capital leases. The liabilities under capital leases are recorded at the present value of the minimum lease payments and consist of the following:

June 30, 2002

Capital lease obligations, collateralized by capital assets purchased, payable in monthly installments of \$11,719, including interest at 11%, the Company is currently in default under the agreement and the required payments are past due.

\$ 392,000

Capital lease obligations, collateralized by telephone equipment, payable in monthly installments of \$1,841, including interest at 14%, the Company is currently in default under the agreement and the required payments are past due.

36,000

Capital lease obligations, primarily for computer and equipment, payable in monthly installments of \$541, including interest at 22.91%, the Company is currently in default under the agreement and the required payments are past due.

6,000

Capital lease obligations, for a vehicle payable in monthly installments of \$270, including interest at 14.34%, the Company is currently in default under the agreement and the required payments are past due.

4,000

| | |
|----------------------|-----------|
| | 438,000 |
| Less current portion | (438,000) |
| Long-term portion | \$ — |

Operating Leases—The Company leases certain facilities and equipment under operating leases expiring at various dates through 2007.

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The future minimum payments required under operating leases are as follows:

| Years Ended June 30, | | |
|----------------------|----|---------|
| 2003 | \$ | 320,000 |
| 2004 | | 256,000 |
| 2005 | | 147,000 |
| 2006 | | 111,000 |
| 2007 | | 102,000 |
| | \$ | 936,000 |

Rent expense for the nine months ended June 30, 2002 and year ended September 30, 2001 was \$174,000 and \$57,000, respectively.

Commitments—The Company entered into an employment agreement with Edward Mooney to serve as its Executive Vice President on April 1, 2001. Pursuant to the agreement, the Company pays Mr. Mooney an annual base salary of \$120,000 plus health insurance and other benefits, with bonuses as determined by our Board of Directors. In addition, the Company granted Mr. Mooney an option to purchase 100,000 shares of common stock at an exercise price of \$1.50 per share. The option is immediately exercisable and has a term of ten years. The term of the agreement is for one year and is renewable annually. In December 2001, Mr. Mooney was appointed to serve as Interim President and Chief Executive Officer under the same terms and conditions of his original employment agreement. Though it was not required under this agreement, in April 2002, the Company increased Mr. Mooney's salary to \$180,000 per year through September 30, 2002.

On May 31, 2002, the Company entered into an annual renewable employment arrangement with Grant Miller to become its Chief Financial Officer. The Company will pay Mr. Miller an annual base salary of \$200,000 plus other benefits, with bonuses up to \$200,000 as determined by the Board of Directors. In addition, the company granted Mr. Miller an option to purchase 500,000 shares of common stock at an exercise price of \$2.50 per share, 125,000 vesting immediately and the remainder vesting equally over the next three anniversary dates.

In relation to a private placement of common stock during the nine months ended September 30, 2002, the Company agreed to grant piggyback registration rights to the investors in the offering and to register the shares sold in the offering within nine months of the offering. If the Company does not register the share, the Company will be obligated to pay each investor an amount equal to 5% of the dollar value of his or her investment in the form of common stock.

The Company had entered into an asset purchase program, which during the nine months ended September 30, 2002, the Company decided not to fulfill for certain properties under the agreement. The selling parties are currently seeking other buyers and if the purchase price is less than the amount that the Company agreed to pay, then the seller may seek payment from the Company for the difference. In relation to the original purchase, the Company signed a performance guarantee in the amount of \$250,000 in the form of a deposit note agreement which bears interest at the rate of 19% and will become payable if the Company fails to perform under the asset purchase agreement. As the Company did not perform all of the requirements under the original asset purchase agreement, \$250,000 has been accrued as a current liability. However, the seller has not acted upon the default.

On January 29, 2001, the Company entered into an advisory agreement with Maroon Bells Capital, L.L.C., a merchant banking firm, to provide certain advisory and business development services in exchange for a monthly advisory fee. The term of the agreement is twenty-four months with an automatic twelve-month renewal. Maroon Bells is one of the Company's significant stockholders.

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Effective April 15, 2001, the Company entered into an agreement with Landry Montana Partners to provide executive recruiting services, an entity of which Mr. Jon Eric Landry, one of the Company's directors, is a principal. Pursuant to the agreement, Landry Montana will work with the Company to recruit officers and directors. The Company is obligated to pay Landry Montana \$10,000 per month during the term of the agreement, which was May 1, 2001 to May 1, 2002 and has been extended to December 2002. Additionally, we pay all direct expenses incurred by Landry Montana in connection with its engagement. As of June 30, 2002, the Company owed Landry Montana Partners approximately \$26,000 for services provided under this agreement. We also issued to Mr. Landry an option to purchase 150,000 shares of our common stock at \$1.50 per share which expires on July 18, 2011.

8. Stockholders' Equity:

Preferred Stock—The Company has authorized 50,000,000 shares of preferred stock, par value \$.001 per share, with 7,000,000 shares designated as Series A Convertible Preferred Stock; 2,625,000 shares designated as Series B Preferred Stock; and 7,875,000 shares designated as Series C Preferred Stock.

Series A Convertible Preferred Stock—The Series A Convertible Preferred Stock holders shall be entitled to receive cumulative dividends of 8% per year, payable quarterly when and if declared by the Board of Directors. The dividends are payable in cash or shares of Series A Convertible Preferred Stock, at the election of the Board of Directors. The Series A Convertible Preferred Stock has a preference in liquidation of \$1.50 per share plus any unpaid dividends, over common stock and any other series of preferred stock. Each share of Series A Convertible Preferred Stock is convertible into one share of common stock, at the option of the holder, at any time. The Series A Convertible Preferred Stock shall automatically be converted into common stock upon the closing of a public offering of common stock with proceeds in excess of \$15,000,000 at not less than \$10.00 per share.

Series B Preferred Stock—The Series B Preferred Stock is redeemable at the option of the Company at rates ranging from 80% of the liquidation preference during 0-6 months after issuance to 110% of the liquidation preference after 19 months. If the Series B Preferred Stock is not redeemed within 24 months of issuance, the holders shall be entitled to receive cumulative dividends of \$0.14 per share per year, payable in cash when and if declared by the Board of Directors. The Series B Preferred Stock has a preference in liquidation of \$1.00 per share plus any unpaid dividends, over the Series C Preferred Stock and common stock, but after the Series A Preferred Stock.

Series C Preferred Stock—The Series C Preferred Stock is redeemable at the option of the Company at rates ranging from 80% of the liquidation preference during 0-6 months after issuance to 110% of the liquidation preference after 19 months. No shares of Series C Preferred may be redeemed until all of the Series B Preferred Stock has been redeemed. If the Series B Preferred Stock is not redeemed within 24 months of issuance, the holders shall be entitled to receive cumulative dividends of \$0.14 per share per year, payable in cash when and if declared by the Board of Directors. If the Series B Preferred Stock has not been redeemed, no dividends on the Series C Preferred Stock or common stock shall be declared or paid. The Series C Preferred Stock has a preference in liquidation of \$1.00 per share plus any unpaid dividends over common stock, but after the Series A Preferred Stock and the Series B Preferred Stock. Holders of the Series C Preferred Stock may exchange a portion of their shares for common stock.

The Company is required to utilize ten percent of the net proceeds received from future sales or grants of equity (excluding equity issued to employees, consultants, directors, officers, or in connection with any business combination) through July 2004 as follows:

First, toward payment of \$750,000 of the subordinated note payable

Then for redemption of the Series B Preferred Stock

Then for redemption of the Series C Preferred Stock.

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As of June 30, 2002, the Company was obligated to pay approximately \$180,000 of the note payable based upon equity sold to that date. The Company has not made the required payments.

Stock Option Plans—In 2001, the Company adopted the Long-Term Incentive Plan (the "Incentive Plan"). The Incentive Plan provides for the granting of options, restricted stock, stock appreciation rights, or other stock-based awards to employees. The Plan reserved 1,500,000 shares for future issuance of awards. In 2001, the Company adopted the 2001 Director Option Plan, which provides for the granting of non-qualified stock options to the Company's outside directors. The Director Option Plan reserved 1,000,000 shares for future issuance.

Following is a summary of stock option activity:

| | Non-Employee Options Outstanding | Employee Options Outstanding | Range of Exercise Prices | | Weighted Average Exercise Price |
|------------------------------|--|------------------------------------|-----------------------------|------|--|
| | | | Low | High | |
| Balances, October 1, 2000 | — | — | \$ — | \$ — | \$ — |
| Granted | 590,000 | 250,000 | .50 | 1.50 | 1.12 |
| Exercised | — | — | — | — | — |
| Terminated/Canceled | — | — | — | — | — |
| Balances, September 30, 2001 | 590,000 | 250,000 | ..50 | 1.50 | 1.12 |
| Granted | 350,000 | 544,500 | 1.50 | 3.50 | 2.53 |
| Exercised | — | — | — | — | — |
| Terminated/Canceled | — | — | — | — | — |
| Balances, June 30, 2002 | 940,000 | 794,500 | ..50 | 3.50 | 1.79 |
| Vested options | 840,000 | 794,500 | \$..50 | 3.50 | \$ 1.85 |

If not previously exercised, options expire as follows:

| Year Ending June 30, | Number of Shares | Weighted Average Exercise Price |
|----------------------|---------------------|------------------------------------|
| 2006 | 819,000 | \$ 1.78 |
| 2007 | 595,000 | 1.21 |
| 2011 | 303,000 | 1.00 |
| 2012 | 17,500 | 1.50 |
| | 1,734,500 | |

All employee options were fully vested at June 30, 2002.

If not cancelled or forfeited non-employee options outstanding at June 30, 2002 will vest as follows:

| Year | Options | Vested Average Exercise Price |
|-------------------------|---------|----------------------------------|
| Vested at June 30, 2002 | 840,000 | \$ 1.85 |
| 2003 | 62,500 | .90 |
| 2004 | 37,500 | 1.00 |
| | 940,000 | \$ 1.75 |

During the nine months ended June 30, 2002 and year September 30, 2001, the Company recognized compensation expense of approximately \$455,000 and \$169,000, respectively, related to employee options.

Pro Forma Stock-Based Compensation Disclosures—The Company applies APB Opinion 25 and related interpretations in accounting for stock options which are granted to employees. Accordingly, no compensation cost is recognized for grants of options to employees if the exercise prices were not less than the market value of the Company's common stock on the measurement dates. Had compensation cost been determined based on the fair value at the measurement dates consistent with the method of SFAS No. 123, the Company's net loss and loss per share would have been changed to the pro forma amounts indicated below.

| | Period Ended | |
|--|------------------|-----------------------|
| | June 30, 2002 | September 30, 2001 |
| Net loss applicable to common shareholders: | | |
| As reported | \$ (16,550,000) | \$ (5,080,000) |
| Pro forma | (17,651,000) | (5,264,000) |
| Net loss per common share applicable to common shareholders: | | |
| As reported | \$ (3.09) | \$ (.43) |
| Pro forma | (3.29) | (.44) |

For purposes of the above pro forma amounts, the weighted average fair value of 819,500 options granted to employees with an exercise price less than the market price for the nine months ended June 30, 2002 and year ended September 30, 2001 was \$3.21 and \$1.26, respectively. All remaining options were issued with an exercise price equal to the market price and had a weighted average fair value of \$0 and \$1.96 for the nine months ended June 30, 2002 and year ended September 30, 2001. The fair value of each employee option granted in 2002 and 2001 was estimated on the date of grant using the Black-Scholes option-pricing model with the following assumptions:

| | Period Ended | Year Ended |
|-------------------------|------------------|-----------------------|
| | June 30, 2002 | September 30, 2001 |
| Expected volatility | 99% | 88% |
| Risk-free interest rate | 4.65%-5.21% | 4.67%-4.98% |
| Expected dividends | 0.0% | 0.0% |
| Expected terms | 5-10 years | 5-10 years |

Stock Purchase Warrants—The Company has granted warrants, which are summarized as follows for the nine months ended June 30, 2002 and the year ended September 30, 2001:

| | Warrants Outstanding | Weighted Average Exercise Price |
|------------------------------|---------------------------|------------------------------------|
| | Balances, October 1, 2000 | — |
| Granted | 1,044,666 | .01 |
| Granted | 510,000 | 1.50 |
| Exercised | — | — |
| Terminated/Canceled | — | — |
| Balances, September 30, 2001 | 1,554,666 | .50 |
| Granted | 109,000 | 2.23 |
| Exercised | (528,226) | 0.01 |

Balances, September 30, 2002 1,135,440 \$..89

Warrants outstanding at June 30, 2002 have exercise prices ranging from \$.01 to \$3.50 as follows:

| Shares | Exercise Price | Expiration Date |
|-----------|----------------|-----------------|
| 516,440 | \$.01 | July 2006 |
| 579,000 | 1.50 | October 2006 |
| 25,000 | 3.50 | November 2006 |
| 15,000 | 3.50 | February 2007 |
| <hr/> | | |
| 1,135,440 | | |

The fair value of each warrant granted was estimated on the date of grant, using the Black-Scholes option-pricing model with the following assumptions:

| | Period Ended June 30, 2002 | Year Ended September 30, 2001 |
|---------------------------|----------------------------------|-------------------------------------|
| Expected volatility | 82%-88% | 88% |
| Risk-free interest rate | 4.12%-4.37% | 4.96% |
| Expected dividends | - | - |
| Expected terms (in years) | 5.0 | 5.0 |

Stock Grant Plan—On June 6, 2002, the Board of Directors approved a stock grant plan under which up to one million (1,000,000) shares of common stock could be issued to employees, consultants or other individuals providing services to the Company. As the Company has not formally adopted the plan at this time, no shares have been issued.

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9. Income Taxes:

As of June 30, 2002, the components of the deferred tax asset were as follows:

| | 2001 |
|---------------------------------|--------------|
| Net operating loss carryforward | \$ 6,080,000 |
| Allowance for bad debts | 260,000 |
| Deferred revenue | 170,000 |
| Valuation allowance | (6,510,000) |
| <hr/> | |
| Net deferred tax asset | \$ - |

Due to the recent operating losses incurred by the Company and the uncertainties regarding future taxable income, the Company has recorded a valuation allowance equal to net deferred tax assets. The increase in the valuation allowance of \$5,710,000 from September 30, 2001 through June 30, 2002 and \$3,800,000 from September 30, 2000 to September 30, 2001 was due primarily to the increase in the net operating loss carryforward. Net operating loss carryforwards total approximately \$16,000,000 at June 30, 2002, and expire from 2005 through 2022. Usage of the net operating loss carryforward will be restricted due to the change in ownership of DDC and the Company in 2001.

10. Litigation:

From time to time, the Company is involved in various legal matters arising in the normal course of business. In the opinion of management, the ultimate resolution of these matters is not expected to have a material adverse effect on these financial statements.

11. Fair Value Of Financial Instruments:

The estimated fair values for financial instruments are determined at discrete points in time based on relevant market information. These estimates involve uncertainties and cannot be determined with precision. The carrying amounts of the accounts receivable, accounts payable, line-of-credit, and accrued liabilities approximate fair value because of the short-term maturities of these instruments. The fair value of notes payable, line-of-credit, and notes receivable are not determinable.

12. Related Parties:

The Company had outstanding payables to various officers and significant shareholders in the amount of approximately \$510,000 as of June 30, 2002.

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13. Subsequent Events:

On July 29, 2002, the Company entered into an annual renewable employment arrangement with Lew Suders to become Chief Operating Officer. The Company will pay Mr. Suders an annual base salary of \$200,000 plus other benefits, with bonuses up to \$200,000 as determined by the Board of Directors. In addition, the company granted Mr. Suders an option to purchase 500,000 shares of common stock at an exercise price of \$2.50 per share, 125,000 vesting immediately and the remainder vesting equally over the next three anniversary dates.

Subsequent to June 30, 2002, the Company has loaned an additional \$350,000 to Las Americas under the merger agreement.

The Company has granted a total of 2,100,000 options for the purchase of common stock with exercise prices ranging from \$1.33 to \$3.00 which vest immediately through three years. The Company has also issued warrants to purchase 200,000 shares of common stock in connection with the two notes payable to shareholders (Note 5).

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INDEPENDENT AUDITOR'S REPORT

Board of Directors
Cable Concepts, Inc.
Seattle, Washington

We have audited the accompanying consolidated balance sheets of Cable Concepts, Inc. and Subsidiary (d/b/a Direct Digital Communications, Inc.) as of June 30, 2001 and 2000, and the related consolidated statements of operations, stockholders' equity (deficit), and cash flows for the years then ended. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Cable Concepts, Inc. and Subsidiary as of June 30, 2001 and 2000, and the results of their operations and their cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

Hein + Associates LLP
Denver, Colorado
August 10, 2001

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**CABLE CONCEPTS, INC. AND SUBSIDIARY
(d/b/a DIRECT DIGITAL COMMUNICATIONS, INC.)
CONSOLIDATED BALANCE SHEETS**

| | June 30, | |
|--|----------|----------|
| | 2001 | 2000 |
| ASSETS | | |
| Current Assets: | | |
| Cash | \$ 6,000 | \$ 2,000 |
| Accounts receivable, net of allowance for doubtful accounts of \$556,000 | 214,000 | 156,000 |

| | | |
|---|-----------------------------|-----------------------------|
| Prepaid expenses and other current assets | 16,000 | 65,000 |
| | <u> </u> | <u> </u> |
| Total current assets | 236,000 | 223,000 |
| Property and Equipment: | | |
| Cable properties | 13,346,000 | 5,921,000 |
| Cable equipment | 1,845,000 | 1,350,000 |
| Leasehold improvements | 43,000 | – |
| Furniture and equipment | 98,000 | 66,000 |
| Computer software and equipment | 233,000 | 149,000 |
| Vehicles | 49,000 | 49,000 |
| | <u> </u> | <u> </u> |
| | 15,614,000 | 7,535,000 |
| Less accumulated depreciation | (2,498,000) | (975,000) |
| | <u> </u> | <u> </u> |
| Net property and equipment | 13,116,000 | 6,560,000 |
| Other Assets | 310,000 | 222,000 |
| | <u> </u> | <u> </u> |
| Total Assets | <u>\$ 13,662,000</u> | <u>\$ 7,005,000</u> |

LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)

| | | |
|---|-----------------------------|-----------------------------|
| Current Liabilities: | | |
| Line-of-credit | 2,405,000 | \$ 500,000 |
| Current portion of long-term debt and capital lease obligations, net of discount of \$0 and \$190,000, respectively | 4,636,000 | 2,169,000 |
| Accounts payable | 3,631,000 | 1,259,000 |
| Accrued liabilities | 453,000 | 154,000 |
| | <u> </u> | <u> </u> |
| Total current liabilities | 11,125,000 | 4,082,000 |
| Long-term Debt and Capital Lease Obligations, net of current portion | 1,731,000 | 420,000 |
| Deferred Revenues | 721,000 | 410,000 |
| Other Liabilities | 202,000 | 101,000 |
| Commitments and Contingencies (Notes 6 and 12) | | |
| Stockholders' Equity (Deficit): | | |
| Preferred stock, \$.001 par value; 2,500,000 shares authorized; none issued and outstanding | – | – |
| Class A common stock, \$.001 par value; 9,033,958 shares authorized; 900,438 and 848,798 outstanding, respectively | 1,000 | 1,000 |
| Class B common stock, \$.001 par value; 1,250,000 shares authorized; 634,630 and 634,630 outstanding, respectively | 1,000 | 1,000 |

| | | |
|--|-----------------------------|-----------------------------|
| Class C common stock, \$.001 par value; 850,000 shares authorized; 573,755 and 463,785 outstanding, respectively | 1,000 | – |
| Class D common stock, \$.001 par value; 800,000 shares authorized; 332,873 and 0 outstanding, respectively | – | – |
| Additional paid in capital | 8,712,000 | 5,797,000 |
| Accumulated deficit | (8,832,000) | (3,807,000) |
| | <u> </u> | <u> </u> |
| Total stockholders' equity (deficit) | (117,000) | 1,992,000 |
| | <u> </u> | <u> </u> |
| Total Liabilities and Stockholders' Equity (Deficit) | \$ 13,662,000 | \$ 7,005,000 |
| | <u> </u> | <u> </u> |

See accompanying notes to these financial statements.

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CABLE CONCEPTS, INC. AND SUBSIDIARY
(d/b/a DIRECT DIGITAL COMMUNICATIONS, INC.)
CONSOLIDATED STATEMENTS OF OPERATIONS

| | For the Years Ended | |
|-------------------------------------|-----------------------------|-----------------------------|
| | June 30, | |
| | 2001 | 2000 |
| Revenues: | | |
| Operations | \$ 3,958,000 | \$ 1,382,000 |
| Construction | 262,000 | 186,000 |
| | <u> </u> | <u> </u> |
| Total revenues | 4,220,000 | 1,568,000 |
| Cost of Revenues: | | |
| Operations | 1,151,000 | 260,000 |
| Construction | 66,000 | 112,000 |
| | <u> </u> | <u> </u> |
| Total cost of revenues | 1,217,000 | 372,000 |
| | <u> </u> | <u> </u> |
| Gross profit | 3,003,000 | 1,196,000 |
| Operating Expenses: | | |
| Selling, general and administrative | 4,921,000 | 2,380,000 |
| Depreciation | 1,544,000 | 560,000 |
| | <u> </u> | <u> </u> |
| Total operating expenses | 6,465,000 | 2,940,000 |
| | <u> </u> | <u> </u> |
| Loss from operations | (3,462,000) | (1,744,000) |
| Other Income (Expense): | | |
| Interest expense, net | (1,669,000) | (392,000) |
| Other income (expense), net | 106,000 | 35,000 |
| | <u> </u> | <u> </u> |

Net Loss

\$ (5,025,000) \$ (2,101,000)

See accompanying notes to these financial statements.

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CABLE CONCEPTS, INC. AND SUBSIDIARY
(d/b/a **DIRECT DIGITAL COMMUNICATIONS, INC.**)
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (DEFICIT)
FOR THE YEARS ENDED JUNE 30, 2001 AND 2000

| | Class A | | Class B | | Class C | | Class D | | Additional Paid In Capital | Accumulated Deficit | Total Stockholders' Equity |
|---|--------------|----------|--------------|----------|--------------|--------|--------------|--------|----------------------------------|------------------------|----------------------------------|
| | Common Stock | | Common Stock | | Common Stock | | Common Stock | | | | |
| | Shares | Amount | Shares | Amount | Shares | Amount | Shares | Amount | | | |
| BALANCE, at July 1, 1999 | 861,827 | \$ 1,000 | 563,524 | \$ 1,000 | - | \$ - | - | \$ - | \$ 2,842,000 | \$ (1,706,000) | \$ 1,135,000 |
| Issuance of Class C common stock, net of costs | - | - | - | - | 463,785 | - | - | - | 2,183,000 | - | 2,183,000 |
| Class B common stock issued for conversion of debt | - | - | 71,106 | - | - | - | - | - | 480,000 | - | 480,000 |
| Repurchase of options | - | - | - | - | - | - | - | - | (40,000) | - | (40,000) |
| Repurchase and cancellation of shares | (13,029) | - | - | - | - | - | - | - | (55,000) | - | (55,000) |
| Warrants issued for financing costs | - | - | - | - | - | - | - | - | 387,000 | - | 387,000 |
| Net loss | - | - | - | - | - | - | - | - | - | (2,101,000) | (2,101,000) |
| BALANCE, at June 30, 2000 | 848,798 | 1,000 | 634,630 | 1,000 | 463,785 | - | - | - | 5,797,000 | (3,807,000) | 1,990,000 |
| Conversion of note payable to Class C common stock, net of costs | - | - | - | - | 95,602 | 1,000 | - | - | 474,000 | - | 475,000 |
| Issuance of Class C shares, net of costs | - | - | - | - | 14,368 | - | - | - | 71,000 | - | 71,000 |
| Issuance of Class D shares, net of costs | - | - | - | - | - | - | 332,873 | - | 1,538,000 | - | 1,538,000 |
| Exercise of options | 51,640 | - | - | - | - | - | - | - | - | - | - |
| Warrants issued for financing costs | - | - | - | - | - | - | - | - | 808,000 | - | 808,000 |
| Payment of expenses by stockholder | - | - | - | - | - | - | - | - | 24,000 | - | 24,000 |
| Net loss | - | - | - | - | - | - | - | - | - | (5,025,000) | (5,025,000) |

BALANCE, at
June 30, 2001

900,438 \$ 1,000 634,630 \$ 1,000 573,755 \$ 1,000 332,873 \$ – \$ 8,712,000 \$ (8,832,000) \$ (11

See accompanying notes to these financial statements.

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CABLE CONCEPTS, INC. AND SUBSIDIARY
(d/b/a DIRECT DIGITAL COMMUNICATIONS, INC.)
CONSOLIDATED STATEMENTS OF CASH FLOWS

| | For the Years Ended | |
|--|---------------------|----------------|
| | June 30, | |
| | 2001 | 2000 |
| Operating Activities: | | |
| Net loss | \$ (5,025,000) | \$ (2,101,000) |
| Adjustments to reconcile net loss to net cash from operating activities: | | |
| Depreciation | 1,544,000 | 560,000 |
| Gain on sale of assets | (85,000) | – |
| Amortization of note discount | 190,000 | 95,000 |
| Amortization of deferred financing costs | 690,000 | 66,000 |
| Allowance for bad debt | 556,000 | – |
| Write-off of inactive properties and associated assets | 377,000 | – |
| Expenses paid by shareholder | 24,000 | – |
| Changes in operating assets and liabilities: | | |
| Accounts receivable | (594,000) | (71,000) |
| Prepaid expenses and other current assets | 50,000 | (17,000) |
| Other assets | 42,000 | (97,000) |
| Accounts payable | 2,372,000 | 864,000 |
| Accrued liabilities | 300,000 | 19,000 |
| Deferred revenues | 311,000 | 200,000 |
| Other liabilities | 99,000 | 53,000 |
| Other | (9,000) | – |
| Net cash provided by (used in) operating activities | 842,000 | (429,000) |
| Investing Activities: | | |
| Purchases of property and equipment | (701,000) | (823,000) |
| Additions to cable properties | (8,523,000) | (4,594,000) |
| Proceeds from sale of assets | 832,000 | – |
| Payment of life insurance premiums | (11,000) | (11,000) |
| Net cash used in investing activities | (8,403,000) | (5,428,000) |
| Financing Activities: | | |
| Payments on line-of-credit | (1,550,000) | (4,500,000) |
| Net borrowings on line-of-credit | 3,455,000 | 4,750,000 |
| Proceeds from long-term debt borrowings and capital lease obligations | 4,825,000 | 4,349,000 |
| Principal payments on long-term debt and capital lease obligations | (774,000) | (1,148,000) |
| Proceeds from common stock issuance, net of costs | 1,609,000 | 2,183,000 |
| Repurchase of common stock | – | (55,000) |
| Repurchase of outstanding options | – | (40,000) |

| | | |
|---|--------------|------------|
| Net cash provided by financing activities | 7,565,000 | 5,539,000 |
| Net Increase (Decrease) in Cash | 4,000 | (318,000) |
| Cash, at beginning of year | 2,000 | 320,000 |
| Cash, at end of year | \$ 6,000 | \$ 2,000 |
| Supplemental Disclosures of Cash Flow Information: | | |
| Cash paid for interest | \$ 1,363,000 | \$ 393,000 |
| Non-Cash Transactions: | | |
| Warrants issued for financing costs | \$ 808,000 | \$ 387,000 |
| Common stock issued for conversion of notes payable | \$ 475,000 | \$ 480,000 |

See accompanying notes to these financial statements

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CABLE CONCEPTS, INC. AND SUBSIDIARY
(d/b/a DIRECT DIGITAL COMMUNICATIONS, INC.)
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
JUNE 30, 2001 and 2000

1. Organization and Nature of Operations:

operators throughout the United States. In 1997, the Company signed a System Operator Agreement with DIRECTV which allows them to install and manage DIRECTV systems, as well as act as a commissioned sales representative for DIRECTV programming packages.

The Company is subject to risks inherent in any business enterprise. These risks include, but are not limited to, regulatory requirements, technology changes, increasing competition and changes in customer demand.

2. Summary of Significant Accounting Policies:

Principles of Consolidation—The accompanying financial statements include the accounts of the Company and the Company's wholly-owned subsidiary, Direct Digital Midwest. All material intercompany transactions and accounts have been eliminated in consolidation.

Revenue Recognition—Operations revenues are recognized as services are earned, generally on a monthly basis. Construction revenues are recognized on the percentage-of-completion method. Construction costs related to costs of construction revenues consist only of amounts directly applicable or allocable to the construction project. Adjustments to construction cost estimates are made in the periods in which the facts requiring such revisions become known. When the revised estimate indicates a loss, such loss would be provided for currently. At June 30, 2001 no construction projects for external customers were in process.

Property and Equipment—Property and equipment is stated at historical cost. Included in the costs of internally constructed cable properties are all direct materials, direct labor, and internal overhead costs. The internal overhead costs are applied at a fixed rate per unit constructed, which represents management's estimate of capitalizable overhead costs. For the years ended June 30, 2001 and 2000, the Company capitalized overhead costs of \$918,000 and \$1,580,000, respectively. Significant additions and improvements are capitalized. Repairs and maintenance are expensed as incurred. Upon disposition of equipment, gains or losses are reflected in the statement of operations.

Depreciation is computed on property and equipment using the straight-line method over the following estimated useful lives:

| | |
|---------------------------------|--------------|
| Cable equipment | 3 to 7 years |
| Furniture and equipment | 3 to 7 years |
| Computer software and equipment | 3 to 5 years |
| Vehicles | 5 years |

Impairment of Long-Lived Assets—In the event that facts and circumstances indicate that the cost of assets may be impaired, an evaluation of recoverability would be performed. If an evaluation is required, the estimated future undiscounted cash flows associated with the asset would be compared to the asset's carrying amount to determine if a write-down to market or discounted cash flow value is required.

Concentration of Credit Risk—Financial instruments that potentially subject the Company to a concentration of credit risk principally consist of accounts receivable. The Company provides credit in the form of accounts receivable to real estate developers, construction companies and cable operators. The Company also performs ongoing credit evaluations of its customers' financial condition, and generally does not require collateral to support customer receivables. An allowance for doubtful accounts is maintained for potential credit losses.

Deferred Revenue—Deferred revenues arise from the Company's reimbursement received for certain fixed assets purchased. These amounts are amortized into income on the straight-line basis over three years, which represents the estimated useful life of the related assets.

Income Taxes—The Company accounts for income taxes under the liability method whereby deferred tax assets and liabilities are determined based on differences between financial reporting and tax bases of assets and liabilities measured using enacted tax rates and laws that will be in effect when the differences are expected to reverse.

Split Dollar Life Insurance—The Company maintains a split dollar life insurance policy on its president. The Company records a note receivable for premiums paid. Upon retirement or death of the executives, all premiums paid will be reimbursed by the insurance company.

Cost of Revenues—Cost of revenues includes direct materials and direct labor on cable systems built and sold and direct labor on maintaining cable systems built and held.

Use of Estimates—The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Stock-Based Compensation—The Company has adopted the disclosure only provisions of Statement of Financial Accounting Standards (SFAS) No. 123, *Accounting for Stock-Based Compensation*. The Company applies Accounting Principles Board (APB) Opinion No. 25, *Accounting for Stock Issued to Employees*, and related interpretations in accounting for its employee stock benefit plans.

Impact of Recently Issued Accounting Pronouncements—In June 2001, the Financial Accounting Standards Board finalized FASB Statements No. 141, Business Combinations (SFAS 141), and No. 142, Goodwill and Other Intangible Assets (SFAS 142). SFAS 141 requires the use of the purchase method of accounting and prohibits the use of the pooling-of-interests method of accounting for business combinations initiated after June 30, 2001. SFAS 141 also requires that the Company recognize acquired intangible assets apart from goodwill if the acquired intangible assets meet certain criteria. SFAS 141 applies to all business combinations initiated after July 1, 2001 and for purchase business combinations completed on or after July 1, 2001. It also requires, upon adoption of SFAS 142, that the Company reclassify the carrying amounts of intangible assets and goodwill based on the criteria in SFAS 141.

SFAS 142 requires, among other things, that companies no longer amortize goodwill, but instead test goodwill for impairment at least annually. In addition, SFAS 142 requires that the Company identify reporting units for the purposes of assessing potential future impairments of goodwill, reassess the useful lives of other existing recognized intangible assets, and cease amortization of intangible assets with an indefinite useful life. An intangible asset with an indefinite useful life should be tested for impairment in accordance with the guidance in SFAS 142. SFAS 142 is required to be applied in fiscal years beginning after December 15, 2001 to all goodwill and other intangible assets recognized at that date, regardless of when those assets were initially recognized. SFAS 142 requires the Company to complete a transitional goodwill impairment test six months from the date of adoption. The Company

is also required to reassess the useful lives of other intangible assets within the first interim quarter after adoption of SFAS 142.

In August 2001, the FASB issued Statement of Financial Accounting Standards No. 143, Accounting for Asset Retirement Obligations (SFAS 143). This statement establishes standards of accounting for asset retirement obligations arising from the acquisition, construction, or development and/or the normal operation of a long-lived asset. SFAS 143 is effective for fiscal years beginning after June 15, 2002. Management does not believe that the adoption of SFAS 143 will have a material effect of the financial statements.

Liquidity—The Company has generated significant losses from operations in each of the past two years, and has a working capital deficit of \$10,889,000 at June 30, 2001.

Subsequent to June 30, 2001, the Company was acquired by USA Broadband, Inc. (see Note 14). USA Broadband issued stock in repayment of \$2,200,000 of the Company's notes payable, and an additional \$1,079,000 in notes payable is due to USA Broadband and will be forgiven after the acquisition. USA Broadband has commenced a \$5,250,000 private placement, of which \$2,500,000 has been raised through August 10, 2001. Management believes that this funding, along with increased cash flow from cable properties put into operation during fiscal 2001, will enable the Company to continue as a going concern through at least June 30, 2002. In order to execute its business plan, the Company will need to raise additional equity to fund the acquisition of additional cable properties and, ultimately, achieve profitable operations.

3. Acquisitions:

In September 2000, the Company purchased the assets of certain cable properties located in North and South Dakota for an adjusted purchase price of approximately \$1,041,000.

Also in September 2000, the Company purchased the assets of certain cable properties located in California and Texas for an adjusted purchase price of approximately \$1,004,000.

4. Line of Credit:

At June 30, 2001 and 2000, the Company had a \$2,300,000 line-of-credit agreement (the "agreement") which expires on April 4, 2002. The line-of-credit is collateralized by all Company assets. Advances under the agreement accrue interest at the bank's prime rate plus 2.0% (9.0% at June 30, 2001). The agreement requires the Company to meet certain financial covenants regarding minimum tangible net worth and ratio of total liabilities to tangible net worth. The line-of-credit is personally guaranteed by stockholders of the Company and the Company's president. For the years ended June 30, 2001 and 2000, the Company paid \$50,000 and granted 25,820 Class A warrants, respectively, to the guarantors as consideration for the renewal of their guarantees. The fair value of the warrants issued in fiscal 2000 was recorded as a deferred financing cost and is being amortized to interest expense over the term of the line-of-credit.

As of June 30, 2001, the Company was not in compliance with the tangible net worth or net worth ratio covenants. The Company believes that it will be in compliance with these covenants after completion of the merger (see Note 14).

At June 30, 2001, the Company also had a \$105,000 line-of-credit agreement (the "Agreement") which expires on December 1, 2001. The line-of-credit is collateralized by Certificate of Deposit pledged by a related party. Advances under the agreement accrue interest at 6.75%. The line-of-credit is personally guaranteed by stockholders of the Company and the Company's president.

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5. Long-Term Debt:

Long-term debt consists of the following:

| | June 30, | |
|--|--------------|-----------|
| | 2001 | 2000 |
| Note payable, with interest at prime plus 2%. Principal and interest payments due monthly through April 2002. Collateralized by all Company assets and a \$500,000 certificate of deposit pledged by a related party (3) | \$ 1,817,000 | \$ — |
| Subordinated note payable, net of discount of \$190,000 at June 30, 2001, related party, principal and interest at 11% due December 2000, unsecured. The note is subordinate to the line-of-credit and any subsequently issued senior debt (1) | 1,750,000 | 1,560,000 |
| Note payable, related party, interest at 12.5% due monthly, | 1,200,000 | — |

principal due the earlier of February 28, 2001 or the closing of at least \$4,000,000 in additional debt or equity, unsecured (2)

| | | |
|--|-----------|---|
| Note payable, related party, principal and interest at 18% due April 1, 2002, collateralized by cable properties | 1,079,000 | - |
|--|-----------|---|

| | | |
|---|---|---------|
| Note payable, related party, principal and interest at 11%, due April 2000, extended to September 2000, unsecured. The note was converted to Class C common stock in September 2000 (1) | - | 500,000 |
|---|---|---------|

| | | |
|--|--------|---|
| Note payable, without interest, principal payments of \$40,000 due monthly, remaining balance due June 30, 2001, collateralized by certain service contracts and related receivables | 56,000 | - |
|--|--------|---|

| | | |
|---|-------|-------|
| Note payable with an annual percentage rate of 0.90%, collateralized by a vehicle. Monthly payments are \$288 through November 16, 2002 | 5,000 | 8,000 |
|---|-------|-------|

| | | |
|--|-------|-------|
| Note payable in monthly installments of \$454 including interest at 9.75%, due March 10, 2002, collateralized by a vehicle | 4,000 | 8,000 |
|--|-------|-------|

| | | |
|--|-----------|-----------|
| | 5,911,000 | 2,076,000 |
|--|-----------|-----------|

| | | |
|----------------------|-------------|-------------|
| Less current portion | (4,500,000) | (2,068,000) |
|----------------------|-------------|-------------|

| | | |
|-------------------|--------------|----------|
| Long-term portion | \$ 1,411,000 | \$ 8,000 |
|-------------------|--------------|----------|

Maturities of long-term debt outstanding at June 30, 2000 are as follows:

| Years Ended June 30, | | |
|----------------------|----|-----------|
| 2002 | \$ | 4,500,000 |
| 2003 | | 456,000 |
| 2004 | | 955,000 |
| | | 955,000 |
| | \$ | 5,911,000 |

(1) In conjunction with these notes, during the year ended June 30, 2000, the Company issued 100,000 Class A warrants and 25,378 Class B warrants respectively, to the note holders. The fair value of these warrants was recorded as a debt discount and amortized to interest expense over the original term of the notes.

(2) In conjunction with this note, the Company issued a total of 179,005 Class D warrants to the lender. The fair value of the warrants has been recorded as additional interest expense.

- (3) As consideration for this pledge, the Company issued 74,460 Class D warrants to the related party. The fair value of these warrants was recorded as a debt issuance costs and is amortized to interest expense over the term of the note.

In addition, the Company issued 16,634 Class B warrants in consideration for the extension of terms of the \$500,000 note payable. The fair value of the warrants of \$44,000 was recorded as deferred financing costs and is being amortized to interest expense over the term of the note.

Subsequent to June 30, 2001, \$2,200,000 of notes payable were repaid through the issuance of stock by USA Broadband, Inc. (see Note 14). In addition, the \$1,079,000 note payable is due to USA Broadband, Inc. and will be forgiven subsequent to the acquisition.

6. Commitments:

The Company leases certain office equipment under capital leases. The liabilities under capital leases are recorded at the present value of the minimum lease payments and consist of the following:

| | June 30, | |
|--|-------------------|-------------------|
| | 2001 | 2000 |
| Capital lease obligations, collateralized by capital assets purchased, payable in monthly installments of \$11,719, including interest at 11%, due through November 2004 | \$ 400,000 | \$ 494,000 |
| Capital lease obligations, collateralized by telephone equipment, payable in monthly installments of \$1,841, including interest at 14%, due through August 2003 | 44,000 | - |
| Capital lease obligations, primarily for computer and equipment, payable in monthly installments of \$541, including interest at 22.91%, due September 2003 | 10,000 | 14,000 |
| Capital lease obligations, primarily for computer and equipment, payable in monthly installments of \$270 including interest at 14.34%, due through November 2001 | 2,000 | 4,000 |
| | <u>456,000</u> | <u>512,000</u> |
| Less current portion | (136,000) | (101,000) |
| Long-term portion | <u>\$ 320,000</u> | <u>\$ 411,000</u> |

Future minimum payments due as of June 30, 2001 are as follows:

| Years Ended June 30, | |
|--|-------------------|
| 2002 | \$ 170,000 |
| 2003 | 169,000 |
| 2004 | 146,000 |
| 2005 | 59,000 |
| | <u>544,000</u> |
| Less amount representing interest | (88,000) |
| Present value of future minimum lease payments | <u>\$ 456,000</u> |

Operating Leases—The Company leases certain facilities and equipment under operating leases expiring at various dates through 2006. The future minimum payments required under operating leases are as follows:

| Years Ended June 30, | |
|-----------------------------|------------|
| 2002 | \$ 223,000 |
| 2003 | 215,000 |
| 2004 | 221,000 |
| 2005 | 151,000 |
| 2006 | 2,000 |
| | <hr/> |
| | \$ 812,000 |
| | <hr/> |

Rent expense for the years ended June 30, 2001 and 2000 was approximately \$276,000 and \$175,000, respectively.

7. 401K Plan:

Employees are eligible to participate in the Company's 401(k) plan after the first six months of employment. The Company's match is discretionary determined by the profitability for the annual fiscal year. During 2001 and 2000, the Company made no contributions to the 401(k) plan.

8. Equity Transactions:

The shareholders have authorized 2,500,000 preferred shares with a par value of \$.001 per share. The Board of Directors has the authority to issue such preferred shares in series and determine the rights and preferences of each series. No preferred shares have been issued.

In December 1999, the shareholders amended its bylaws increasing the number of authorized common shares to 10,283,958, consisting of 9,033,958 shares of Class A common stock and 1,250,000 shares of Class B common stock. The bylaws also decreased the par value of all common stock shares from \$1.00 to \$.001. The number of Class A common shares was revised proportionate to each shareholder's interest. All share and per share information in the accompanying financial statements has been retroactively restated to reflect the changes.

Class A Common Shares—Class A common stock have no liquidation preferences.

Class B Common Shares—In the event of any liquidation, dissolution or winding up of the Company, the holders of Class B common stock would be entitled to receive an amount per share equal to \$2.5 million divided by the number of outstanding shares, prior and in preference to any distribution to the holders of Class A common stock.

Class C Common Shares—In April 2000, the shareholders authorized 850,000 shares of Class C common stock. The Class C common shares are entitled to a liquidation preference of \$5.2287 per share, after payment of the liquidation preference of the Class B common shares, and before any distribution to the Class A common shares.

Class D Common Shares—In September 2000, the shareholders authorized 800,000 shares of Class D common stock. The Class D common stock has a liquidation preference of \$5.40 per share, after payment of the Series B common shares, and before any distribution to the Class A shares.

Stock Option Plan—Effective March 1, 1999, the Company adopted the 1999 Stock Option Plan (the "Plan"). The Plan provides for the granting of nonqualified stock options to consultants and directors and incentive stock options to employees. The Plan reserved 184,718 shares of Class A common stock.

Option activity under the Plan was as follows:

| | Options Available for Grant | Non-Employee Options Outstanding | Employee Options Outstanding | Weighted Average Exercise Price |
|------------------------|--|---|---|--|
| Balances, July 1, 1999 | 26,507 | 51,640 | 106,571 | \$ 1.48 |
| Authorized | — | — | — | — |
| Granted | — | — | — | — |

| | | | | |
|-------------------------|--------|----------|----------|---------|
| Exercised | - | - | - | - |
| Terminated/Canceled | 63,538 | - | (63,538) | 2.44 |
| <hr/> | | | | |
| Balances, June 30, 2000 | 90,045 | 51,640 | 43,033 | .83 |
| <hr/> | | | | |
| Authorized | - | - | - | - |
| Granted | - | - | - | - |
| Exercised | - | (51,640) | - | .01 |
| Terminated/Canceled | - | - | - | - |
| <hr/> | | | | |
| Balances, June 30, 2001 | 90,045 | - | 43,033 | \$ 1.85 |
| <hr/> | | | | |
| Vested options | | - | 43,033 | \$ 1.85 |
| <hr/> | | | | |

If not previously exercised or forfeited, vested options outstanding at June 30, 2001 will expire in the year ending June 30, 2009 at a weighted average exercise price of \$.01 per share. At June 30, 2001, the weighted average remaining contractual life of options outstanding was approximately 93 months.

Had compensation cost for the Plan been determined based upon the fair value at the grant date for options granted consistent with the provisions of SFAS 123, the Company's net loss would have been reduced to the pro forma amounts indicated below:

| | | |
|----------------------|----------------|----------------|
| | <u>2001</u> | <u>2000</u> |
| Net loss—as reported | \$ (5,158,000) | \$ (2,101,000) |
| Net loss—pro forma | (5,158,000) | (2,177,000) |

Stock Purchase Warrants—The Company has granted warrants, which are summarized as follows for the years ended June 30, 2001 and 2000:

| | <u>Warrants Outstanding</u> | <u>Weighted Average Exercise Price</u> | <u>Weighted Average Grant Date Fair Value</u> |
|-------------------------|---------------------------------|--|---|
| <hr/> | | | |
| Balances, July 1, 1999 | | | |
| Granted—Class A | 125,820 | \$ 5.30 | \$ 5.30 |
| Granted—Class B | 42,010 | 4.93 | 4.93 |
| Exercised | - | - | |
| Terminated/Canceled | - | - | |
| <hr/> | | | |
| Balances, June 30, 2000 | 167,830 | 5.20 | |
| Granted—Class D | 265,876 | 4.68 | \$ 4.70 |
| Exercised | - | - | |
| Terminated/Canceled | - | - | |
| <hr/> | | | |
| Balances, June 30, 2001 | 433,706 | \$ 4.89 | |
| <hr/> | | | |

Warrants outstanding at June 30, 2001 have exercise prices ranging from \$.01 to \$5.40 as follows:

| Shares | Exercise Price | Expiration Date |
|---------|-------------------|-----------------|
| 25,378 | \$ 4.93 | December 2009 |
| 25,820 | 4.93 | January 2010 |
| 16,632 | 4.93 | February 2010 |
| 100,000 | 5.39 | June 2010 |
| 231,654 | 5.40 | September 2010 |
| 4,137 | .01 | September 2010 |
| 30,085 | .01 | December 2010 |
| 433,706 | | |

The fair value of each warrant granted was estimated on the date of grant, using the Black-Scholes option-pricing model with the following assumptions:

| | 2001 | 2000 |
|---------------------------|-------------|-------------|
| Expected volatility | 50% | 50% |
| Risk-free interest rate | 5.16%-5.80% | 6.22%-6.72% |
| Expected dividends | - | - |
| Expected terms (in years) | 5.0 | 5.0 |

All warrants were granted in conjunction with notes payable agreements. The fair value of warrants issued during fiscal 2001 of \$808,000 (calculated using the Black-Scholes method) were recorded as deferred financing costs. The fair value of warrants issued during fiscal 2000 of \$285,000 and \$102,000 (calculated using the Black-Scholes method) were recorded as a debt discount and deferred financing costs, respectively.

9. Income Taxes:

As of June 30, 2001 and 2000, the components of the deferred tax asset were as follows:

| | 2001 | 2000 |
|---------------------------------|--------------|--------------|
| Net operating loss carryforward | \$ 2,656,000 | \$ 1,220,000 |
| Allowance for bad debts | (206,000) | - |
| Property and equipment | (67,000) | (40,000) |
| Other | 14,000 | - |
| Valuation allowance | (2,397,000) | (1,180,000) |
| | \$ - | \$ - |
| Net deferred tax asset | \$ - | \$ - |

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Due to the recent operating losses incurred by the Company and the uncertainties regarding future taxable income, the Company has recorded a valuation allowance equal to net deferred tax assets. The increase in the valuation allowance of \$1,217,000 from June 30, 2000 through June 30, 2001 and \$660,000 from June 30, 1999 to June 30, 2000 was due primarily to the increase in the net operating loss carryforward. Net operating loss carryforwards total approximately \$7,100,000 at June 30, 2001, and expire from 2018 through 2021. Usage of the net operating loss carryforward will be restricted due to the change in ownership of the Company in July 2001.

10. Life Insurance Policy:

The Company pays the premiums on a variable life insurance policy for the Company's president. The policy apportions premiums, cash values and death benefits between the Company and the president. Total premiums paid through June 30, 2001 and 2000 were approximately \$56,000 and \$45,000, respectively, and are included in other assets in the accompanying balance sheet.

11. Related Party Transaction:

The Company had related party accruals included in accounts payable of \$61,000 and \$21,000 at June 30, 2001 and 2000, respectively. These consisted of transactions between the Company and officers, directors, and a Company with which the directors are affiliated.

12. Legal Matters:

From time to time, the Company is involved in various legal matters arising in the normal course of business. In the opinion of management, the ultimate resolution of these matters is not expected to have a material adverse effect on these financial statements.

13. Fair Value of Financial Instruments:

The estimated fair values for financial instruments are determined at discrete points in time based on relevant market information. These estimates involve uncertainties and cannot be determined with precision. The carrying amounts of the accounts receivable, accounts payable, line-of-credit, and accrued liabilities approximate fair value because of the short-term maturities of these instruments. The fair value of notes payable approximates their carrying value as generally their interest rates reflect the Company's current effective annual borrowing rate, and due to their short-term maturities.

14. Subsequent Event:

On July 18, 2001, USA Broadband, Inc. (USA Broadband) acquired all of the Company's outstanding shares for the following consideration:

1,000,000 shares of USA Broadband common stock issued for all of the outstanding Class A common shares of the Company.

7,875,000 shares of USA Broadband Series C preferred stock and 82,500 shares of USA Broadband common stock issued for all of the outstanding Class B, C and D common shares of the Company.

In addition, USA Broadband issued the following consideration to convert certain outstanding debt of the Company.

1,475,000 shares of USA Broadband Series B preferred stock and 15,452 shares of USA Broadband common stock in exchange for \$1,000,000 of notes payable and related accrued interest.

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1,150,000 shares of USA Broadband Series B preferred stock, 12,048 shares of USA Broadband common stock, and \$50,000 of USA Broadband Series A preferred stock (estimated at \$1.50 per share) in exchange for \$1,200,000 of notes payable and related accrued interest.

This transaction will be accounted for as a purchase of the Company by USA Broadband.

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**CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO RULE 13a-14
UNDER THE SECURITIES EXCHANGE ACT OF 1934**

I, Grant Miller, certify that:

1. I have reviewed this annual report on Form 10-KSB of USA Broadband, Inc.;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report; and
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report.

Date: November 21, 2002

/s/ GRANT MILLER

Grant Miller
Principal Executive Officer

**CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO RULE 13a-14
UNDER THE SECURITIES EXCHANGE ACT OF 1934**

I, Grant Miller, certify that:

1. I have reviewed this annual report on Form 10-KSB of USA Broadband, Inc.;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report; and
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report.

/s/ GRANT MILLER

Date: November 21, 2002

Grant Miller
Chief Financial Officer

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement ("Agreement") is entered into as of May 22, 2002 (the "Effective Date"), by and among Cable One, Inc., a Delaware corporation with its principal place of business located at 1314 North Third Street, Phoenix, AZ 85004 ("Buyer"), and Direct Digital Midwest, Inc., a Delaware corporation with its principal place of business located at 10012 Norwalk Blvd., Suite 150, Santa Fe Springs, CA 90670 ("Seller") and USA Broadband, Inc., a Delaware corporation ("USA Broadband"). Buyer and Seller are each referred to herein individually as a "Party" and collectively as the "Parties."

WHEREAS, Seller owns and operates satellite master antenna television systems (the "SMATV Systems") that serve the residential complexes known as Gardiner Office Building, Glenwood Apartments, Park Place Apartments, Royal Court Apartments, Sunwest Apartments and SouthPointe Apartments, each located in the Fargo, North Dakota area and as described more fully in *Schedule 4.13* (each, a "Complex," and together, the "Complexes");

WHEREAS, Seller is willing to convey to Buyer, and Buyer is willing to purchase from Seller, substantially all of the tangible and intangible assets comprising the SMATV Systems, upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises set forth below, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

**ARTICLE I.
DEFINITIONS**

Certain capitalized terms are defined in the body of this Agreement. The capitalized terms referred to below have the following meanings:

"Adjustment Time" has the meaning given in *Section 2.2*.

"Ancillary Agreements" means the other documents and agreements called for in this Agreement.

"Applicable Law" means all laws, statutes, treaties, rules, codes, ordinances, regulations, permits, certificates, orders and licenses of any Governmental Authority, interpretations of any of the foregoing by a Governmental Authority having jurisdiction or any arbitrator or other judicial or quasi-judicial tribunal.

"Assumed Obligations and Liabilities" has the meaning given in *Section 2.4*.

"Basic Subscriber" means any private residential customer account that is billed by individual unit and pays the standard monthly rate (without discount) for each tier of the SMATV System's basic television programming service to which such account subscribes.

"Best Knowledge" means, with respect to Seller, the actual knowledge after reasonable investigation of Gary Langendoen, or his successor. "Best Knowledge" means, with the respect to Buyer, the actual knowledge after reasonable investigation of T. Mitchell Bland, or his successor.

"Closing" has the meaning given in *Section 2.9(a)*.

"Closing Date" means the date on which Closing occurs.

"Contracts" has the meaning given in *Section 2.1(b)*.

"Current Items Amount" has the meaning given in *Section 2.6*.

"Equipment" has the meaning given in *Section 2.1(a)*.

"Excluded Assets" has the meaning given in *Section 2.2*.

"Equivalent Basic Subscribers" means, with respect to a SMATV System, the sum of (a) the number of Basic Subscribers of the SMATV System, and (b) the number obtained by dividing (i) the aggregate monthly billings for all tiers of basic programming service provided by the SMATV System to any private residential customer account which pays less than the standard monthly residential rate for such service and any multiple dwelling unit that pays a bulk rate (excluding any charges for premium service, pay-per-view programming, internet access, franchise fees, taxes, second connects, additional outlets, installation fees, deposits and other non-recurring items and any charges for rental converters, remote control devices and other like charges for equipment), by (ii) \$28.95. For purposes of this Agreement, Equivalent Basic Subscribers will not include any Basic Subscriber or commercial or bulk account which

(A) has not received and paid in full for at least one full month of service at the SMATV System's applicable rates, (B) is more than sixty (60) days delinquent in payment for any service (exclusive of balances less than \$10.00) provided by the SMATV System, (C) is pending disconnection for any reason, or (D) was solicited during the 60-day period preceding the Closing Date by non-customary, promotions or offers of discounts that are inconsistent with Seller's normal and ordinary past practices with respect to the SMATV Systems. The number of days a customer account is past due will be determined from the first day of the period for which the applicable billing relates.

"Governmental Authority" means any national, federal, state, departmental, county, municipal, regional or other governmental authority, agency, board, body, instrumentality or court in whatever country having jurisdiction in whole or in part over Seller or the SMATV Systems or Purchased Assets.

"Hazardous Substance" means any substance, material or waste which is as of the Closing Date regulated or, on or before the Closing Date, is proposed to be regulated, by any Governmental Authority, including, but not limited to, any material or substance which is designated as a hazardous or polluting substance or subject to regulation as a hazardous or toxic substance pursuant to any Applicable Law.

"Liability" means any liability, whether known or unknown, asserted or unasserted, absolute or contingent, whether accrued or unaccrued, liquidated or unliquidated, and whether due or to become due, including but not limited to any liability for Taxes.

"Loss" has the meaning given in *Section 9.1*.

"Material Adverse Effect" means a material adverse effect on the operation of the SMATV Systems, or on the assets, prospects or conditions (financial or otherwise) of the business of the SMATV Systems or the Purchased Assets, taken as a whole, but without taking into account any effect resulting from any regulatory or other change affecting the United States cable industry as a whole, including changes in FCC regulations.

"Non-Competition Agreement" means the noncompetition agreement delivered by Seller to Buyer in the form attached hereto as *Exhibit B*.

"Operating Permits" means all of the permits, licenses, certifications, approvals, authorities or other franchises granted by any Governmental Authority or other third party required or appropriate for the continued operation of the SMATV Systems in the manner heretofore operated.

"Purchase Price" has the meaning given in *Section 2.3*.

"Purchased Assets" has the meaning given in *Section 2.1*.

"Records" means the books and records described in *Section 2.1(c)*.

"Taxes" means all state, local or foreign taxes, social security contributions, fees, levies or other assessments, including, without limitation, all net income, gross receipts, sales, use, ad valorem, value added, transfer, recording, franchise, profits, inventory, capital stock, license, withholding, payroll, stamp, occupation and property taxes, customs duties or other similar fees, assessments and charges,

however denominated, together with all interest, penalties, surcharges, additions to tax or additional amounts imposed by any Governmental Authority, and any transfer Liability in respect of any of the foregoing taxes.

ARTICLE II.

ACQUISITION OF ASSETS

2.1 **Purchased Assets.** On and subject to the terms and conditions set forth in this Agreement, Buyer will purchase from Seller, and Seller will sell, transfer, assign, convey and deliver to the Buyer on the Closing Date, free and clear of all liens, encumbrances, security interests, purchase rights, pledges, charges, mortgages, claims or any other limitations or restrictions whatsoever, all of Seller's right, title and interest in and to the following (collectively, the "Purchased Assets"):

(a) the tangible properties and assets of Seller of every kind used in the operation of the SMATV Systems, including but not limited to microwave equipment, cables, wires, conduits, splitter fixtures, outlets, connections, amplifiers, lock boxes, converter boxes, junction boxes, passive and active electronics, vaults and pedestals (including all related spare parts, accessories, inventory and supplies) and other similar equipment, the material items of which are listed on *Schedule 2.1(a)* to this Agreement (the "Equipment");

(b) the Right of Entry agreements and contracts set forth on *Schedule 2.1(b)* to this Agreement ("Contracts");

(c) all books and records of every kind pertaining to Equipment, Contracts, Operating Permits, customers and sales prospects used in connection with the SMATV Systems, including without limitation and to the extent possessed by Seller, all billing records, engineering records, files, data, drawings, blueprints, schematics, reports, lists, digital and other maps, plans and processes and all files of correspondence, lists, records and reports concerning Equivalent Basic Subscribers and prospective Equivalent Basic Subscribers, signal and program carriage and dealings with Governmental Authorities, including all reports filed on or behalf of Seller with the Federal Communications Commission and statements of account filed by or on behalf of Seller with the U.S. Copyright Office (the "Records");

(d) the Operating Permits; and

(e) All intangible assets, including subscriber lists, accounts receivable resulting from services rendered on or after the Closing Date, claims (excluding claims relating to Excluded Assets), patents, copyrights and goodwill, if any, owned, used or held by Seller for use in the business or operation of the SMATV Systems.

2.2 Excluded Assets. Notwithstanding the provisions of *Section 2.1*, the Purchased Assets shall not include the following, which shall be retained by Seller (the "Excluded Assets"): (a) programming contracts and retransmission consent agreements; (b) insurance policies and rights and claims thereunder; (c) bonds, letters of credit, surety instruments, and other similar items; (d) cash and cash equivalents; (e) Seller's trademarks, trade names, service marks, service names, logos, and similar proprietary rights; (f) all contracts and agreements not listed on *Schedule 2.1(b)*; (g) any rights, assets, and properties described on *Schedule 2.2*; and (h) all subscriber accounts receivable owed to Seller as payment for services rendered by Seller prior to 11:59 P.M., central time, on the day immediately prior to the Closing Date (the "Adjustment Time") in connection with the operation of the SMATV Systems, as reflected on the billing records of Seller.

2.3 Purchase Price and Terms of Payment. Buyer shall assume the specified liabilities set forth in *Section 2.4* and pay to Seller, as the purchase price for the Purchased Assets under *Section 2.1*, subject to the adjustments set forth in *Section 2.6*, an amount equal to the product of: (A) \$1,000, and (B) the number of Equivalent Basic Subscribers served by the SMATV Systems at Closing pursuant to the

Contracts properly assigned to Buyer at Closing (the "Purchase Price"). Subject to *Section 2.8*, the Purchase Price shall be payable by Buyer to Seller at the Closing by wire transfer in immediately available funds, to the account or accounts designated by Seller to Buyer in writing not less than two (2) days prior to the Closing.

2.4 Assumed Liabilities. Buyer shall assume, pay, discharge, and perform the following (the "Assumed Obligations and Liabilities"): (a) those obligations and Liabilities attributable to periods after the Adjustment Time under the Contracts assigned and transferred to Buyer at Closing; (b) other obligations and Liabilities of Seller set forth on *Schedule 2.4* hereto only to the extent that there shall be an adjustment in favor of Buyer with respect thereto pursuant to *Section 2.6*; and (c) all obligations and Liabilities arising out of Buyer's ownership of the Purchased Assets and operations at the Complexes after the Adjustment Time.

2.5 Excluded Liabilities. Seller hereby represents, covenants and agrees that Buyer shall not assume, and shall not in any way become liable for, any contracts, obligations or Liabilities of Seller of any nature whatsoever not included in the Assumed Obligations and Liabilities, including, without limitation, the following Liabilities, which shall be paid, performed or otherwise discharged by Seller:

(a) any obligation or Liability of Seller accrued or incurred by Seller after the Closing Date;

(b) any obligation or Liability in connection with any customer contract or any other contract or agreement retained by Seller or in connection with any other Excluded Asset;

(c) any Liability of Seller with respect to its outstanding shares of capital stock or any warrants, options or rights to purchase its shares which may be outstanding;

(d) any Liability for deferred Taxes or for Taxes, penalties or interest occurring as a result of an examination of Seller's federal or state Tax returns filed by Seller;

(e) any Liability of Seller related to or arising out of any profits sharing plan, defined benefit or contribution plan, money purchase plan or any other employee benefit plan sponsored by Seller relating to its employees;

(f) any Liabilities to employees or former employees of Seller, including but not limited to any liability for wages, salary, vacation pay, sick leave pay or any other pay for time not worked, back pay, damages payable under make whole remedies pursuant to Applicable Law governing employment practices;

(g) any obligation of Seller to perform this Agreement, and any Liabilities and obligations incurred by Seller in connection with this Agreement or the consummation of the transactions provided herein or contemplated hereby, including, without limitation, fees and expenses of Seller's counsel, accountants and other experts and all other expenses incurred by Seller incident to the negotiation, preparation and execution of this Agreement or any transaction incident hereto or contemplated hereby, including expenses incurred in proving or perfecting title to property, Taxes, commissions and all other expenses of Seller pertaining to the performance by it of its obligations under this Agreement;

(h) any debt, obligation or Liability of Seller which may arise out of any litigation, whether or not described in *Schedule 4.5* attached hereto;

(i) any of Seller's debts, Liabilities and obligations arising out of or relating to any transactions entered into at or prior to the Closing Date, any action or omission at or prior to the Closing Date or any state of facts existing at or prior to the Closing Date; and

(j) any obligations or Liability in connection with any customer deposit retained by Seller, including but not limited to any Liability related to the return of such customer deposits to customers.

2.6 Current Items Amount. Buyer or Seller, as appropriate, shall pay to the other (by increasing or decreasing the funds paid as the Purchase Price) the net amount of the adjustments and prorations effected pursuant to this Section 2.6 (the "Current Items Amount").

2.6.1 Advance Payments and Deposits. Buyer shall be entitled to an amount equal to the aggregate of (i) all deposits of subscribers of the SMATV Systems for converters, decoders, and similar items, and (ii) all payments made to Seller for (A) services to be rendered by Buyer to subscribers of the SMATV Systems after the Adjustment Time or (B) other services to be rendered by Buyer to other third parties after the Adjustment Time for services or rentals with respect to the SMATV Systems.

2.6.2 Expenses. As of the Adjustment Time, the following expenses shall be prorated, in accordance with generally accepted accounting principles, so that all expenses attributable to periods prior to the Adjustment Time shall be for the account of Seller, and all expenses attributable to periods after the Adjustment Time shall be for the account of Buyer:

2.6.2.1 all payments and charges under the Contracts;

2.6.2.2 general property Taxes, special assessments, and ad valorem taxes levied or assessed against any of the Purchased Assets;

2.6.2.3 sales and use Taxes, if any, payable with respect to cable television service and related sales to the SMATV Systems' subscribers;

2.6.2.4 charges for utilities and other goods or services furnished to the SMATV Systems;

2.6.2.5 copyright expense; and

2.6.2.6 all other items of expense relating to the SMATV Systems;

provided, however, that Seller and Buyer shall not prorate any items of expense payable under any Excluded Assets, all of which shall remain and be solely for the account of Seller.

2.7 Current Items Amounts Calculated. The Current Items Amount shall be estimated in good faith by Seller, and set forth, together with a detailed statement of the calculation thereof, in a certificate (the "Initial Adjustment Certificate") executed by an officer of Seller and delivered to Buyer not later than five days prior to Closing. If accepted by Buyer, the Initial Adjustment Certificate shall constitute the basis on which the Current Items Amount is calculated for purposes of Closing. Seller and Buyer shall endeavor in good faith to agree upon an estimate of the Current Items Amount, on the basis of the Initial Adjustment Certificate and such other information as they deem relevant, prior to Closing. At Closing, the party against whose favor the estimated Current Items Amount is so determined shall pay to the other the estimated Current Items Amount by way of adjustment to the Purchase Price paid to Seller at Closing. Buyer and Seller shall use good faith efforts to determine the actual Current Items Amount within 90 days after Closing. If Buyer and Seller are unable to agree on the actual Current Items Amount within 90 days after Closing, the disputed portion of the Current Items Amount shall be determined by a partner in a major accounting firm with substantial cable television audit experience but which is not an auditor of either Buyer or Seller (the "Qualified Auditor") and the determination of the Qualified Auditor shall be final and binding upon the parties. If Buyer and Seller cannot agree with respect to selection of the Qualified Auditor, Buyer and Seller shall each select an auditor and those two auditors shall select the Qualified Auditor whose determination shall be final and binding upon the parties. Buyer and Seller shall bear equally the expenses arising in connection with the determination of the Qualified Auditor. Not later

than 15 days after Seller and Buyer shall have finally agreed upon the actual Current Items Amount, or the actual Current Items Amount is determined by the Qualified Auditor, Seller or Buyer, as appropriate, shall pay to the other an amount equal to the amount by which the Current Items Amount as finally

determined differs from the estimated Current Items Amount paid at Closing together with interest at the annual rate publicly announced from time to time by Bank of New York in New York, New York, as its "reference rate," from and including the Closing Date but excluding the date of payment.

2.8 **Escrow Agreement.** Seven and One-half percent (7.5%) of the Purchase Price payable at Closing (the "Escrow Amount") shall be held in escrow by an independent escrow agent reasonably acceptable to both Buyer and Seller. The Escrow Amount, together with all interest thereon, will be distributed to Buyer or Seller pursuant to the terms of the escrow agreement attached hereto in the form of Exhibit 2.8 (the "Escrow Agreement").

2.9 **Closing.**

(a) The closing of the transactions contemplated by this Agreement ("Closing") will be held effective as of the first calendar day of the next calendar month following the calendar month in which all conditions to Closing contained in this Agreement (other than those based on acts to be performed at Closing) have been satisfied or waived (provided that each party will have at least ten days prior notice of the scheduled Closing Date) with respect to not less than four (4) of the Complexes (the "First Closing"). The Parties shall use commercially reasonable efforts to cause Closing to occur as soon as possible and no later than the date that is six months after the Effective Date. If, by a date that is six months after the Effective Date, the Closing condition in *Section 5.1(g)* with respect to the SouthPointe Complex is not satisfied and/or the Closing condition in *Section 5.1(e)* with respect to any other Complex is not fully satisfied, then the Parties shall hold a Closing as set forth above for those remaining Complexes that the Parties have obtained either the consent to transfer the applicable Contracts (pursuant to the terms set forth in *Section 5.1(e)*) or a replacement SouthPointe Complex right-of-entry agreement (pursuant to the terms set forth in *Section 5.1(g)*) which were not the subject of the First Closing. Subject to *Section 7.1.4*, the Parties shall continue to use commercially reasonable efforts to cause the Closing of the remaining Complexes to occur as soon as possible. Closing will be held via facsimile and overnight courier, or at such place and at such time as Buyer and Seller may agree. If Closing Date is not a Business Day, then Buyer will pay the Purchase Price on the immediately following Business Day.

(b) Subject to the conditions set forth in this Agreement, on the Closing Date:

- (i) Seller will convey to Buyer good and marketable title to and constructive or actual possession (as applicable) of all of the Purchased Assets, free and clear of all liens, encumbrances, security interests purchase rights, pledges, charges, mortgages, claims or any other limitations or restrictions;
- (ii) The Parties will deliver to each other the Ancillary Agreements,
- (iii) Buyer will deliver to Seller the Purchase Price, as adjusted by *Sections 2.6 and 2.8*; and
- (iv) Buyer will deliver to the Escrow Agent the Escrow Amount.

ARTICLE III.
REPRESENTATIONS AND WARRANTIES OF BUYER

To induce Seller to enter into this Agreement, Buyer represents and warrants to Seller that the following are true and correct on the date hereof and will be true and correct as of the Closing Date:

3.1 **Organization.** Buyer is a Delaware corporation lawfully existing and in good standing under the laws of its state of its formation with full power and authority to own or lease its properties and to conduct its business in the manner and in the places where such properties are owned or leased or such business is conducted by it.

3.2 **Binding Nature of Agreement.** This Agreement has been duly and validly executed and delivered by Buyer and is, and each Ancillary Agreement contemplated hereby when executed and delivered will be, the legal, valid and binding obligation of Buyer, enforceable in accordance with its respective terms, except as such may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally, and by general equitable principles.

3.3 **Regulatory Approvals.** All consents, approvals and authorization and all other requirements prescribed by any Applicable Law which must be obtained or satisfied by Buyer and which are necessary for the execution and delivery by Buyer of this Agreement and the documents to be executed and delivered by Buyer in connection herewith and in order to permit the consummation of the transactions contemplated by this Agreement have been obtained and satisfied or shall be obtained and satisfied by Closing.

3.4 **No Violation.** The execution, delivery and performance of this Agreement by Buyer and the consummation by Buyer of the transactions contemplated hereby do not and will not contravene or constitute a default under or give rise to a right of termination, cancellation or acceleration of any right or obligation of Buyer or to a loss of any benefit to which Buyer is entitled under (i) any provision of Applicable Law to which Buyer may be subject; (ii) the [Title of Charter documents to be inserted here] of Buyer; or (iii) any judgment, injunction, order or decree binding upon Buyer.

3.5 **No Brokerage Fees.** No broker or finder has acted for Buyer in connection with this Agreement or the transactions contemplated hereby, and no broker or finder is entitled to any brokerage or finder's fees or other commission in respect of such transactions based in any way on agreements, arrangements or understandings made by or on behalf of Buyer.

3.6 **Litigation.** To Buyer's Best Knowledge, there is no litigation pending or threatened, which seeks to enjoin or obtain damages in respect of the consummation of the transactions contemplated hereby.

ARTICLE IV.

REPRESENTATIONS AND WARRANTIES OF SELLER AND USA BROADBAND

To induce Buyer to enter into this Agreement, Seller and USA Broadband represent and warrant to Buyer that the following are true and correct on the date hereof and will be true and correct as of the Closing Date:

4.1 **Authority of Seller.** Seller has full right, authority and power to enter into this Agreement, the Non-Competition Agreement and each Ancillary Agreement and to carry out the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement, the Non-Competition Agreement and the Ancillary Agreements by Seller and the consummation of the transactions contemplated by this Agreement, the Non-Competition Agreement and the Ancillary Agreements have been duly authorized by all necessary corporate action on the part of Seller. Except as set forth on *Schedule 4.1*, the execution, delivery and performance of this Agreement, the Non-Competition Agreement and the Ancillary Agreements by Seller and the consummation of the

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transactions contemplated by this Agreement, the Non-Competition Agreement and the Ancillary Agreements do not and will not conflict with, result in a default of, constitute a breach or default under, or create in any party the right to accelerate, terminate, modify, or cancel, or require any notice or consent to, or filing with, any person that has not been obtained or made under or in connection with:

- (a) any provision of the Articles of Incorporation or Bylaws of Seller;
- (b) any Applicable Law to which Seller or the Purchased Assets may be subject; or
- (c) any of the Purchased Assets.

The execution, delivery and performance of this Agreement, the Non-Competition Agreement and of each of the Ancillary Agreements by Seller does not and will not result in the creation or imposition of any mortgage, pledge, lien, security interest or other charge or encumbrance on any of the Purchased Assets.

4.2 **Organization and Qualification.** Seller is a corporation lawfully existing and in good standing under the laws of its state of incorporation will full power and authority to own or lease its properties and to conduct its business in the manner and in the places where such properties are owned or leased or such business is conducted by it. USA Broadband, Inc. owns all of the issued and outstanding capital stock of Seller.

4.3 **Binding Nature of Agreement.** This Agreement has been duly and validly executed and delivered by Seller and is, and the Non-Competition Agreement and each Ancillary Agreement contemplated hereby when executed and delivered will be, the legal, valid and binding obligation of Seller, enforceable in accordance with its respective terms, except as such may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally, and by general equitable principles.

4.4 **Tangible Personal Property.** Except as indicated in *Schedule 4.4*, with respect to all tangible personal property (including but not limited to Equipment) of Seller included in the Purchased Assets:

- (a) Seller has good and marketable title to each item of owned tangible personal property, free and clear of all liens, encumbrances, security interests, purchase rights, pledges, charges, mortgages, claims or any other limitations or restrictions;

(b) Each item of tangible personal property included in the Purchased Assets is, and as of the Closing Date will be, in good operating condition and repair subject to ordinary wear and tear;

(c) Seller owns or otherwise has the right to use all of the tangible personal property now used by it in the operation of the SMATV Systems; and

(d) Except for the Excluded Assets, the Purchased Assets constitute all the assets necessary to permit a purchaser of the SMATV Systems to conduct the business of the SMATV Systems and operate the SMATV Systems as they are being conducted and operated on the Effective Date and in compliance in all material respects with all applicable legal requirements, governmental licenses and Contracts.

4.5 **Litigation.** Except as set forth in *Schedule 4.5*, there are no legal actions, suits, arbitrations or other legal, administrative or governmental proceedings or investigations pending, or, to the Best Knowledge of Seller, threatened against Seller which in any way relate to the SMATV Systems or the Purchased Assets.

4.6 **Compliance with Laws.** Except as set forth on *Schedule 4.6*, (a) Seller is in compliance with all material respects with all Applicable Laws, (b) Seller has not received notice of a violation or alleged violation of any such Applicable Law, in each case which relates to the SMATV Systems or the

Purchased Assets, and (c) Seller has filed all required reports or filings and made all payments necessary with any Governmental Authority.

4.7 **Records.** The Records of Seller to be purchased by Buyer are, and will be as of the Closing Date, materially true and complete, and have been and will have been kept in accordance with Applicable Law and good business practices.

4.8 **Consents and Approvals.** Except for those listed in *Schedule 4.8*, no consent, authorization, order or approval of or filing with or notice to any Governmental Authority or other entity or person, including, without limitation, consents from parties to the Contracts, is required for the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement.

4.9 **Environmental Laws.** Seller is in compliance in all material respects with all Applicable Laws with respect to the environment and Hazardous Substances in connection with the operation of the SMATV Systems. There are no pending or, to the Seller's Best Knowledge, threatened environmental investigations or proceedings with respect to the operation of the SMATV Systems. To the Best Knowledge of Seller, there is and has been no current or past usage or practice of Seller with respect to any Hazardous Substances which may support a claim or cause of action against Seller with respect to the SMATV Systems under Applicable Law.

4.10 **No Brokerage Fees.** No broker or finder has acted for Seller in connection with this Agreement or the transactions contemplated hereby, and no broker or finder is entitled to any brokerage or finder's fees or other commission in respect of such transactions based in any way on agreements, arrangements or understandings made by or on behalf of Seller.

4.11 **Taxes.** Except as described on *Schedule 4.11*, (a) Seller has duly and timely paid all Taxes with respect to the Purchased Assets and the SMATV Systems which have become due and payable; (b) Seller has received no notice of, nor has Seller received any notice of deficiency or assessment or proposed deficiency or assessment from any Governmental Authority with respect to, the Purchased Assets or the SMATV Systems; (c) there are no audits pending with respect to the Purchased Assets or the SMATV Systems and there are no outstanding agreements or waivers by Seller that extend the statutory period of limitations applicable to any Federal, State, local or foreign Tax returns or Taxes with respect to the SMATV Systems or the Purchased Assets; and (d) Seller has duly and timely filed in true and correct form all Tax returns and Tax reports required to be filed by Seller.

4.12 **Contracts.** The Contracts listed on *Schedule 2.1(b)* constitute all of the Right of Entry Agreements of Seller that are currently in effect with respect to the Complexes. Seller has delivered to Buyer true and complete copies of each of the Contracts, including any amendments thereto. Except as set forth on *Schedule 4.12*, all of the Contracts are in full force and effect, and neither Seller nor, to the Best Knowledge of Seller, the other party thereto is in default under any Contract (nor, to the Best Knowledge of Seller, has any event occurred which with notice, lapse of time or both would constitute a default thereunder). Seller has not received any notice (a) of any alleged default under any Contract prior to the date of this Agreement or (b) that any Contract will be cancelled. Seller has made all payments that have become due and payable under all Contracts. Except as set forth on *Schedule 4.12*, each Contract is assignable to Buyer and neither such assignment nor the consummation of any of the transactions contemplated by this Agreement will result in a default under, or termination of or payment penalty under, any Contract. Seller possesses all valid easements and rights-

of-way necessary for the installation, maintenance, repair or replacement of all Equipment now in place or being used by Seller in connection with the SMATV Systems.

4.13 **SMATV Systems Information.** *Schedule 4.13* sets forth a true and accurate description of the following information as of the date of this Agreement:

4.13.1 the number of individual dwelling units in each of the Complexes;

4.13.2 a description of the services available from each of the SMATV Systems, a list of all subscribers thereto (including the tier of service subscribed and the rate of such tier of service), together with the number of subscribers receiving each of the services, and any other charges by Seller for services to subscribers of the SMATV Systems; and

4.13.3 the channel and bandwidth capacity of the SMATV Systems, the stations and signals carried by the SMATV Systems, and the channel position of each such signal and station.

4.14 **No Other Operators.** Other than direct-to-home satellite services, the SMATV Systems are the only multiple channel video operator presently serving the Complexes. To the actual knowledge of Seller, without independent investigation, there are no plans of any third party for the establishment of any additional cable television system or community or satellite master antenna television system within the area served by the SMATV Systems.

4.15 **Material Omissions.** No representation or warranty by Seller in this Agreement, any of the Ancillary Agreements, or any written statement, certificate or schedule furnished to or to be furnished by Seller to Buyer pursuant to this Agreement or in connection with the transactions contemplated herein, contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances.

4.16 **Operating Permits.** All Operating Permits are described on *Schedule 4.16*. Seller has delivered to Buyer copies of all Operating Permits and all amendments, assignments and consents thereto. Seller is the authorized legal holder of the Operating Permits. Except as set forth on *Schedule 4.16*, the Operating Permits comprise all the material licenses, permits and other authorizations required from governmental and regulatory authorities for the lawful conduct of the business of the SMATV Systems in the manner and to the full extent they are now conducted, and none of the Operating Permits is subject to any material restriction or condition that would limit the operations of the SMATV Systems as they are now conducted. The Operating Permits are in full force and effect, and the operations of the SMATV Systems are in compliance therewith (including any payments necessary or required thereunder). Seller has full legal power and authority to assign its rights under the Operating Permits to Buyer in accordance with this Agreement, and the assignment of the Operating Permits to Buyer will not affect the validity, enforceability or continuation of any of the Operating Permits.

4.17 **Intangibles.** To Seller's actual knowledge without independent investigation, Seller is not infringing upon or otherwise acting adversely to any trademarks, trade names, copyrights, patents, patent applications, know-how, methods or processes owned by any other person or persons, and there is no claim or action pending, or to the Best Knowledge of Seller threatened, with respect thereto.

4.18 **Absence of Certain Changes.** With respect to the SMATV Systems, since February 1, 2002, (a) Seller has not incurred any non-ordinary course obligation or liability, the performance of which would be reasonably likely, individually or in the aggregate, to have a Material Adverse Effect, (b) Seller has not made any sale, assignment, lease or other transfer of any of the Purchased Assets other than Purchased Assets that have been replaced or pursuant to this Agreement, (c) to Seller's Best Knowledge, there has not been any event or circumstance which, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect, and (d) the business of the SMATV Systems have been conducted only in the ordinary course of business.

4.19 **Transactions with Affiliates.** With respect to the SMATV Systems, Seller is not a party to any contract or any other arrangement of any kind whatsoever with any affiliate of Seller.

ARTICLE V. CONDITIONS TO CLOSING

5.1 **Conditions to Buyer's Obligation.** The obligation of Buyer to consummate the transactions contemplated by this Agreement is subject to the satisfaction of the following conditions on or before the Closing Date:

- (a) The representations and warranties set forth in *Article 4* hereof or in any document delivered to Buyer pursuant to this Agreement will be true and correct in all material respects at and as of Closing as though then made and as though the Closing Date was substituted for the date of this Agreement;
- (b) Seller will have performed and complied with, in all material respects, all of the covenants and agreements required to be performed and complied with by it under this Agreement prior to Closing;
- (c) Seller shall have provided Buyer, its employees, agents and professional advisors access to all relevant operational, financial, subscriber, asset-related and other information reasonably requested by Buyer to conduct a pre-acquisition review of the Purchased Assets and the SMATV Systems, and Buyer shall have completed and been satisfied with the results of such pre-acquisition review;
- (d) There will have been no Material Adverse Effect, other than the decision of Seller to sell the Purchased Assets, and there will have been no material casualty or other loss or damage to the Purchased Assets, whether or not covered by insurance, and there will have been no other event which would have a Material Adverse Effect;
- (e) All consents by third parties that are required, including those required by the Contracts (other than the SouthPointe Complex which is governed by *Section 5.1(g)*), for the consummation of the transactions contemplated hereby will have been duly made and obtained, without any change in the terms and conditions of the Contracts that could be less advantageous to the Buyer than those pertaining under the Contracts as in effect on the Effective Date (other than changes permitted by Buyer) substantially in the form attached hereto as *Exhibit 5.1(e)*;
- (f) No action or proceeding before any court or government body will be pending or threatened wherein an unfavorable judgment, decree or order could have a Material Adverse Effect or would prevent the carrying out of this Agreement or any of the transactions contemplated hereby, declare unlawful the transactions contemplated hereby or cause such transactions to be rescinded;
- (g) Seller shall have received and delivered to Buyer documentation from the owner of SouthPointe Complex that notwithstanding anything in the applicable Contract, following the Closing Buyer shall have a right-of-entry with the exclusive right to provide cable television service to the residents of this Complex for a term of not less than fifteen years following the expiration of such Contract pursuant to a right-of-entry agreement with Buyer (containing terms and conditions reasonably acceptable to Buyer).
- (h) Seller shall have delivered and Initial Adjustment Certificate reasonably acceptable to Buyer;
- (i) If so requested by Buyer on or before May 30, 2002, Seller shall have discontinued carriage of Station WGN no later than June 30, 2002.

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- (j) On the Closing Date, Seller will have delivered to Buyer all of the following:
- (i) copies of all necessary third party and governmental consents, releases, approvals and filings required in order to effect the transactions contemplated by this Agreement;
 - (ii) the Ancillary Agreements, including a Bill of Sale and Assignment in substantially the form attached hereto as *Exhibit A*, duly executed by Seller, as are required in order to transfer to Buyer good and marketable title to the Purchased Assets, free and clear of all liens, encumbrances, security interests, purchase rights, pledges, charges, mortgages, claims or any other limitations or restrictions;
 - (iii) an executed Non-Competition Agreement substantially in the form attached hereto as *Exhibit B* from Seller and certain named affiliates; and
 - (iv) evidence reasonably satisfactory to Buyer to the effect that Seller has taken all action necessary to authorize the execution of this Agreement and the consummation of the transactions contemplated hereby;
 - (v) a certificate executed by an executive officer of Seller, dated as of Closing, reasonably satisfactory in form and substance to Buyer, certifying that the conditions specified in *Sections 5.1(a), (b) and (d)* have been satisfied;
 - (vi) to the extent not previously delivered, the Records;
 - (vii) an executed counterpart of the Escrow Agreement in the form of *Exhibit 2.8*; and
 - (viii) all other documents, instruments or writings required to be delivered to Buyer at or prior to Closing pursuant to this Agreement, and such other certificates of authority and documents as Buyer may reasonably request.

Any condition specified in this *Section 5.1* may be waived by Buyer; provided that no such waiver will be effective unless it is set forth in a writing executed by Buyer.

5.2 *Conditions to Seller's Obligations.* The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction of the following conditions on or before the Closing Date:

(a) The representations and warranties set forth in *Article 3* hereof or in any document delivered to Seller pursuant to this Agreement will be true and correct in all material respects as of Closing as though then made and as though the Closing Date was substituted for the date of this Agreement; and

(b) On the Closing Date, Buyer will have delivered to Seller all of the following:

- (i) the Purchase Price, subject to the adjustments set forth in *Sections 2.6 and 2.8*;
- (ii) any Ancillary Agreements, duly executed by Buyer;
- (iii) the Escrow Amount to the Escrow Agent; and
- (iv) an executed counterpart of the Escrow Agreement in the form of *Exhibit 2.8*.

ARTICLE VI.

ADDITIONAL COVENANTS

6.1 *Certain Affirmative Covenants of Seller.* Except as Buyer may otherwise consent in writing, between the date of this Agreement and Closing Seller shall (a) operate the SMATV Systems only in the usual, regular, and ordinary course and in accordance with past practices (including, but not limited to, maintaining appropriate personnel and fulfilling installation requests, making disconnections and

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continuing normal marketing, advertising and promotional expenditures), (b) maintain the Purchased Assets in good condition and repair, ordinary wear excepted, (c) duly comply with all applicable legal requirements, (d) perform all of its obligations under all the Contracts without default, (e) give to Buyer, and its counsel, accountants, and other representatives, full access during normal business hours to the SMATV Systems, all of the Purchased Assets, Seller's books and records relating to the SMATV Systems and the Purchased Assets, and the System's personnel, (f) furnish to Buyer and such representatives all such additional documents, financial information, and other information with respect to the SMATV Systems or the Purchased Assets as Buyer may from time to time reasonably request, and (g) use its best efforts to obtain in writing as promptly as possible all approvals, authorizations, agreements and consents required in order to consummate the transactions contemplated hereby and deliver to Buyer copies, satisfactory in form and substance to Buyer, of such approvals, authorizations, and consents; provided, however, that Seller shall not accept or agree or accede to any modifications or amendments to, or any conditions to the transfer of, the Contracts that are not acceptable to Buyer.

6.2 *Certain Negative Covenants of Seller.* Except as Buyer may otherwise consent in writing, or as contemplated by this Agreement, between the date of this Agreement and Closing, Seller shall not (a) modify, terminate, renew, suspend, or abrogate any Contract, (b) enter into any transaction or permit the taking of any action that would result in any of the representations and warranties contained in this Agreement not being true and correct when made or at Closing, (c) engage in any marketing, subscriber installation, disconnection or collection practices that are inconsistent with usual, regular and ordinary past practices of Seller, or (d) implement any increase or decrease in the rates for cable television service or charges for equipment or installation or make any changes in channel lineups or implement any retiering or repackaging of cable television programming offered by the SMATV Systems.

6.3 *Mutual Assistance.* Subsequent to Closing, Seller and Buyer shall at their own expense assist each other in preparation of their respective Tax returns and the filing and execution of Tax elections, if required, as well as any audits or litigation that ensues as a result of the filing thereof, to the extent that such assistance is reasonably requested. In addition, Seller shall also provide any information with respect to the operation of the SMATV Systems prior to Closing reasonably required by Buyer to complete the copyright filing after Closing.

6.4 *Press Release and Announcements.* No press releases related to this Agreement and the transactions contemplated herein, or other announcements to Seller's employees, customers and suppliers will be issued without the joint approval of Buyer and Seller. Buyer and Seller may cooperate to prepare a joint press release to be issued on or following the Closing Date.

6.5 *Further Transfers.* Subsequent to Closing, Seller will execute and deliver such further instruments of conveyance and transfer and take such additional action as Buyer may reasonably request to effect, consummate, confirm or evidence the transfer to Buyer of the Purchased Assets. Seller will execute such documents as may be necessary to assist Buyer in preserving or perfecting its rights in the Purchased Assets.

6.6 **Confidentiality.** If the transactions contemplated by this Agreement are not consummated, Buyer will maintain the confidentiality of all information and materials reasonably designated by Seller as confidential, and Buyer will return, or destroy and certify the destruction of, all materials (and all copies of such materials) received in connection with this Agreement and the transactions contemplated hereby. If the transactions contemplated by this Agreement are consummated, Seller will maintain the confidentiality of all information and materials relating to the SMATV Systems (including all customer lists), except as necessary to file tax returns and other reports to governmental agencies. Whether or not the transactions contemplated hereby are consummated, Seller will maintain the confidentiality of all information and materials regarding Buyer and its affiliates designated as confidential by Buyer.

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6.7 **Bulk Transfer Laws.** Seller agrees to indemnify and hold harmless Buyer against any claims or demands asserted against Buyer by any creditor of Seller in connection with any liabilities and obligations of Seller other than those assumed by Buyer under this Agreement, and any costs and expenses reasonably incurred by Buyer in defending against such claims or demands. Seller shall be given prompt notice of any such claims or demands, upon Buyer's learning of the same.

6.8 **Transfer Taxes.** Seller and Buyer shall each be liable for and pay one-half of all sales, use, transfer, and similar Taxes, fees, and assessments arising from or payable in connection with the transfer of the Purchased Assets.

6.9 **Distant Signal.** Seller currently carries Station WGN on the SMATV Systems and Station WGN is considered a distant signal. If so requested by Buyer on or before May 30, 2002, Seller will take such necessary steps (including sending all required notices) to discontinue carriage of Station WGN on the SMATV Systems no later than June 30, 2002.

ARTICLE VII.

TERMINATION AND DEFAULT

7.1 **Termination Events.** This Agreement may be terminated and the transactions contemplated hereby may be abandoned:

7.1.1 at any time, by the mutual written agreement of Buyer and Seller;

7.1.2 by either Buyer or Seller, upon written notice to the other, at any time, if the other is in breach or default of its respective covenants, agreements, or other obligations herein, or if any of its representations herein are not true and accurate when made or when otherwise required by this Agreement to be true and accurate, and such breach, default or failure is not cured within 30 days of receipt of notice that such breach, default or failure exists or has occurred;

7.1.3 by Buyer upon written notice to Seller, if Buyer is not satisfied with the results of its pre-acquisition review as set forth in *Section 5.1(c)*;

7.1.4 by either Buyer or Seller if the Closing for each Complex has not occurred by the six month anniversary of the last interim Closing for any reason other than a breach or default by such party of its respective covenants, agreements, or other obligations hereunder, or any of its representations herein not being true and accurate in all material respects when made or when otherwise required by this Agreement to be true and accurate in all material respects; or

7.1.5 as otherwise provided herein.

7.2 **Effect of Termination.**

7.2.1 **Buyer's Remedies.** If both (i) this Agreement is terminated by Buyer pursuant to *Section 7.1.2*, and (ii) Seller is in breach in any material respect of any of its representations and warranties made herein or its covenants or agreements made herein (and Buyer is not in breach in any material respect of any of its representations and warranties or covenants made herein), then Buyer shall have the right to seek specific performance and/or money damages from Seller for any losses or damages incurred by Buyer.

7.2.2 **Seller's Remedies.** If both (i) this Agreement is terminated by Seller pursuant to *Section 7.1.2*, and (ii) Buyer is in breach in any material respect of any of its representations and warranties made herein or its covenants or agreements made herein (and Seller is not in breach in any material respect of any of its representations and warranties or covenants made herein), then Seller shall have the right to seek money damages from Buyer for any losses or damages incurred by Seller.

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ARTICLE VIII.

NATURE AND SURVIVAL OF REPRESENTATIONS AND WARRANTIES

8.1 **Nature of Statements.** All statements contained in this Agreement or any Schedule or Exhibit hereto shall be deemed representations and warranties of the Party executing or delivering the same.

8.2 **Survival of Representations and Warranties.** All representations and warranties made hereunder or pursuant hereto or any Schedule or Exhibit hereto or in connection with the transactions contemplated hereby and thereby shall not terminate but shall survive Closing and continue in effect thereafter until twelve (12) months following the Closing Date, except for those representations and warranties contained in *Sections 4.1, 4.2, 4.3 and 4.4*, which shall survive indefinitely, and those representations and warranties contained in *Sections 4.6, 4.9 and 4.11*, which shall survive for a period ending 30 days after the expiration of the statutory period of limitations applicable to third party claims with respect to the matters that are the subject of the representations set forth in such Sections. Notwithstanding the foregoing, those representations and warranties for which a specific claim has been asserted prior to expiration of the survival period shall, with respect to any such specific claim, continue until such claim is finally resolved. The covenants of Buyer and Seller shall survive indefinitely.

ARTICLE IX. INDEMNIFICATION

9.1 **Indemnification by Seller.** Seller and USA Broadband agree to indemnify and hold harmless Buyer and its successors and assigns, together with any of their officers, directors, partners, agents and employees, from and against any and all losses, damages, liabilities, obligations, costs or expenses (any one such item being herein called a "Loss" and all such items being herein collectively called "Losses") which are caused by or arise out of (a) any breach or default in the performance by the Seller of any covenant or agreement of the Seller contained in this Agreement, (b) any breach of warranty or inaccurate or erroneous representation made by the Seller or USA Broadband herein, in any Schedule delivered to the Buyer pursuant hereto or in any certificate or other instrument delivered by or on behalf of the Seller pursuant hereto (subject to all terms and provisions of *Section 8.2* herein), (c) any claim made against the Buyer in respect of any of the Excluded Liabilities, and (d) any and all actions, suits, proceedings, claims, demands, judgments, costs and expenses (including reasonable legal fees) arising out of the foregoing.

9.2 **Indemnification by Buyer.** Buyer agrees to indemnify and hold harmless Seller and its successors and assigns, together with any of their officers, directors, and shareholders, from and against any Losses which are caused by or arise out of (a) any breach or default in the performance by the Buyer of any covenant or agreement of the Buyer contained in this Agreement, (b) any breach of warranty or inaccurate or erroneous representation made by the Buyer herein or in any certificate or other instrument delivered by or on behalf of the Buyer pursuant hereto (subject to all terms and provisions of *Section 8.2* herein), (c) any claim made against the Seller in respect of the Assumed Obligations and Liabilities, and (d) any and all actions, suits, proceedings, claims, demands, judgments, costs and expenses (including reasonable legal fees) arising out of the foregoing.

9.3 **Third Party Claims.** If any third person asserts a claim against an indemnified party hereunder that, if successful, might result in a claim for indemnification against any indemnifying party hereunder, the indemnifying party shall be given prompt written notice thereof and shall have the right (a) to participate in the defense thereof and be represented, at this or its own expense, by advisory counsel selected by it, and (b) to approve any settlement if the indemnifying party is, or will be, required to pay any amounts in connection therewith. Notwithstanding the foregoing, if within 10 business days after delivery of the indemnified party's notice described above, the indemnifying party indicates in writing to the indemnified party that, as between such parties, such claims shall be fully indemnified for by the indemnifying party as provided herein, then the indemnifying party shall have

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the right to control the defense of such claim, provided that the indemnified party shall have the right (x) to participate in the defense thereof and be represented, at his or its own expenses, by advisory counsel selected by it, and (y) to approve any settlement if the indemnified party's interests are, or would be, affected thereby, which approval shall not be unreasonably withheld, conditioned or delayed.

9.4 **Exclusive Remedy.** Except with respect to claims based on fraud or intentional misrepresentation or knowing breach of this Agreement or claims for equitable relief, the enforcement of the indemnification agreement contained in this Article IX shall be, after the Closing Date, the exclusive remedy of the parties.

ARTICLE X. MISCELLANEOUS

10.1 **Expenses.** Each Party will pay all of its expenses, including attorney's fees incurred in connection with the negotiation of this Agreement, the performance of its obligations hereunder and the consummation of the transactions contemplated by this Agreement.

10.2 **Notices.** All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given when personally delivered, transmitted by facsimile (with telephonic confirmation of receipt) or mailed by first class mail, return receipt requested. Notices, demands and communications to Seller and Buyer will, unless another address is specified in writing, be sent to the addresses indicated below:

SELLER OR USA BROADBAND:

Direct Digital Midwest, Inc.
10012 Norwalk Blvd., Suite 150
Santa Fe Springs, CA 90670
Attention: President

Facsimile: _____

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

Shefsky & Froelich Ltd.
444 N. Michigan Avenue
Suite 2500
Chicago, Illinois 60611
Attention: Michael J. Choate
Facsimile: 312-527-5921

BUYER:

Cable One, Inc.
1314 North Third Street
Phoenix, AZ 85004
Attention: Vice President–Norwest Division

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

Cable One, Inc.
1314 North Third Street
Phoenix, AZ 85004
Attention: Vice President and General Counsel

10.3 **Entire Agreement; Amendment.** This Agreement, the Ancillary Agreements and the Non-Competition Agreement constitute the entire agreement between the Parties and supersede all prior discussions, negotiations and understanding relating to the subject matter hereof, whether written

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or oral. This Agreement shall not be amended, altered, enlarged, supplemented, abridged, modified, or any provisions waived, except by a writing duly signed by all of the Parties hereto.

10.4 **Benefit; Assignability.** This Agreement shall be enforceable by, and shall inure to the benefit of, the Parties to this Agreement and their respective successors and assigns, provided, however, that no Party may assign its rights or obligations under this Agreement without the consent of the other Party; *provided, however*, that Buyer may assign its rights under this Agreement to a subsidiary or affiliate of Buyer without the consent of Seller, so long as such assignment does not relieve Buyer of its obligations under this Agreement.

10.5 **Severability.** Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement.

10.6 **Captions.** The captions used in this Agreement are for convenience of reference only and do not constitute a part of this Agreement and will not be deemed to limit, characterize or in any way affect any provision of this Agreement, and all provisions of this Agreement will be enforced and construed as if no caption had been used in this Agreement.

10.7 **Counterparts.** This Agreement and any Ancillary Agreements may be executed by facsimile and in one or more counterparts all of which taken together will constitute one and the same instrument.

10.8 **Governing Law.** The laws of the State of North Dakota govern all questions concerning the construction, validity and interpretation of this Agreement and the performance of the obligations imposed by this Agreement.

10.9 **Tax Treatment.** It is expressly understood and agreed that Buyer and Seller, or their respective officers, agents, accountants and attorneys have not made any warranty or agreement, express or implied, as to the Tax consequences of this transaction or the Tax consequences of any transaction pursuant to or arising out of this Agreement.

10.10 **Non-Exclusivity.** Except as provided in *Section 9.4*, the rights, remedies, powers and privileges provided in this Agreement are cumulative and not exclusive and shall be in addition to any and all rights, remedies, powers and privileges granted by law, rule, regulation or instrument.

10.11 **Risk of Loss.** The risk of any loss, damage, impairment, confiscation or condemnation of any of the Purchased Assets from any cause whatsoever shall be borne by Seller at all times prior to the Closing.

[Remainder of this page intentionally left blank; signature follows on next page.]

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

SELLER:

DIRECT DIGITAL MIDWEST, INC.

By: _____

Its: _____

USA BROADBAND:

USA BROADBAND, INC.

By: _____

Its: _____

BUYER:

CABLE ONE

By: _____

Its: _____

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EXHIBITS

| | |
|----------------|-----------------------------|
| Exhibit A | Bill of Sale and Assignment |
| Exhibit B | Non-competition Agreement |
| Exhibit 2.8 | Escrow Agreement |
| Exhibit 5.1(e) | Form of Consent |

SCHEDULES

| | |
|-----------------|---------------------------|
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| Schedule 2.1(b) | Contracts |
| Schedule 2.2 | Excluded Assets |
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| Schedule 4.1 | Authority of Seller |
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| Schedule 4.6 | Compliance with Laws |
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ASSET PURCHASE AND SALE AGREEMENT

THIS ASSET PURCHASE AND SALE AGREEMENT ("Agreement") is made as of June 7, 2002, by and between Cable Concepts, Inc., a Washington corporation, doing business as Direct Digital Communications ("Seller") and Priority/RTG1, LLC a Washington limited liability company ("Buyer").

Seller, through its ownership and operation of the Assets (defined below) provides video and audio programming services to subscribers at certain multiple dwelling unit properties in and around Seattle, Washington. Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Assets, subject to the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, representations, and warranties contained in this Agreement, Seller and Buyer agree as follows:

ARTICLE 1 Definitions of Terms: As used in this Agreement, the following terms shall have the following meanings:

1.1 *Assets.* All assets, privileges, rights, interests, and claims, real and personal, tangible and intangible, that are owned, leased, held for use, or used exclusively in connection with the cable system or systems(s) operated by Seller at the Properties listed on Schedule 1.1a and in which Seller has any right, title, or interest or acquires any right, title or interest on or before the Close, including Real Property, Tangible Personal Property, Governmental Permits, System Contracts, System Licenses, Books and Records and Other Intangibles, and all equipment used to provide video and audio services to the Property including but not limited to satellite and cable receiving equipment, electronics, off air processors and antennas, head-end equipment, junction boxes, equipment and racks, conduit, distribution plant, wiring, coax cabling, fiber cable, and drop wire as specifically described in the ROE, located at the Property and any other equipment that would constitute the assets of the operating system, and further including the right to use Seller's SMATV license with DirecTV without markup by or profit to Seller, but excluding any Excluded Assets as described on **Schedule 1.1a**.

1.2 *Books of Record.* All engineering records, files, data, drawings, blueprints, schematics, reports, lists, plans and processes and all other non-privileged files and correspondence, lists, records and reports concerning the Assets, signal and program carriage and dealings with governmental authorities, including if any all reports filed by or on behalf of Seller with the FCC which relate to the Assets and statements of account filed by or on behalf of Seller with the U.S. Copyright Office which relate to the Assets.

1.3 *Closing Date.* The Closing Date shall be June 14, 2002, unless extended pursuant to Section 2.2(a) hereto, but not later than June 30, 2002, unless the Parties may mutually agree to extend beyond such date in writing.

1.4 *FAA.* The Federal Aviation Administration or any successor agency.

1.5 *FCC.* The Federal Communications Commission or any successor agency.

1.6 *GAAP.* Generally accepted accounting principles as in effect from time to time in the United States of America.

1.7 *Government Entity.* Any federal, state, local or municipal court, government or governmental or administrative department, commission, instrumentality, board, agency or authority including, without limitation, the United States Internal Revenue Service and other taxing authorities.

1.8 *Governmental Permits.* All System Licenses, franchises, approvals, authorizations, permits, licenses, easements, registrations, qualifications, leases, variances and similar rights obtained from any Governmental Authority with respect to the Assets, including those set forth, if any, on **Schedule 1.8**.

1.9 *Legal Rules.* Any applicable permits, writs, judgments, injunctions, decrees or awards, statute, ordinance, code or other rule, regulation, tariff or order enacted and followed by any governmental authority with jurisdiction over the Assets, including without limitation the rules and regulations of the FCC.

1.10 *Lien.* Any security interest, security agreement, financing statement filed with any governmental authority, conditional sale or other title retention agreement, any consignment or bailment given for purposes of security, any mortgage, lien, judgment, assessment, indenture, pledge, option, charge or encumbrance, constructive trust or other trust which constitutes an interest in or claim against property relating to an unpaid financial obligation.

1.11 *Litigation.* Any action, suit, proceeding, arbitration, mediation, or hearing.

1.12 *Losses.* Any claims, losses, liabilities, damages, penalties, costs and expenses, including interest that may be imposed in connection therewith, expenses of investigation, reasonable fees and disbursements of counsel and other experts and the cost to any Person making a claim or seeking indemnification under this Agreement with respect to funds expended by such Person by reason of the occurrence of any event or the existence or assertion of any Liens (other than Permitted Liens) with respect to which indemnification is sought, except Losses incurred by a party or on behalf of such party in asserting any claim for indemnification against the other party where it is ultimately determined (including by agreement of the Parties) that such Party is not entitled to indemnification.

1.13 *Other Intangibles.* All intangible assets other than Governmental Permits, System Contracts and System Licenses, including subscriber lists, accounts receivable, claims (excluding any claims relating to Excluded Assets), and going concern value, if any, that are owned, held for use or used exclusively in connection with the Assets.

1.14 *Permitted Lien.* The following Liens: (a) liens for taxes, assessments and governmental charges not yet due and payable; (b) zoning laws and ordinances and similar Legal Requirements; and (c) any and all regulatory rights reserved to any governmental authority, and (d) the liens set forth on Schedule 1.14.

1.15 *Person.* Any natural person, governmental entity, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association or unincorporated entity of any kind.

1.16 *Property.* The properties (each a "Property") served by the Assets, consists of:

| | |
|----------------------------|-------------------------------|
| Brighton Ridge | (264 Units Nonexclusive Roe) |
| Cascade View | (64 Units Exclusive Roe) |
| Center Court | (18 Units Nonexclusive Roe) |
| Crystal Cove | (311 Units Exclusive Roe) |
| Fifth & Roy | (36 Units Exclusive Roe) |
| Pasa Fino | (180 Units Joint Venture Roe) |
| Pinnacle @ Lake Washington | (180 Units Exclusive Roe) |
| Rivers Edge | (36 Units Joint Venture Roe) |
| Sunrise Point | (329 Units Nonexclusive Roe) |
| Village Square | (94 Units Joint Venture Roe) |
| Waterford Square | (21 Units Nonexclusive Roe) |

1.17 *Real Property.* The easements, leaseholds, and similar real property rights and interests granted in the ROE Agreements.

1.18 *Required Consents.* All material authorizations, approvals, consents, and waivers required under Governmental Permits, System Contracts, and System Licenses for Seller to transfer the Assets

to Buyer free and clear of all Liens except Permitted Liens in accordance with this Agreement, a list of which is set forth on **Schedule 1.18.**

1.19 *ROE Agreements.* The System Contracts that are the right of entry agreements related to the Properties which are attached as **Schedule 1.19.**

1.20 *Schedules.* The disclosure schedules attached to this Agreement.

1.21 *Seller's Knowledge.* The current actual knowledge of Gary Langendoen, Mark Dorothy, the Seller's CEO and the Seller's COO.

1.22 *Services.* The video and audio programming services provided at the Property.

1.23 *Subscriber.* For purposes of this agreement a subscriber is an Equivalent Subscriber, the number of which is calculated by taking the total cash flow from all monthly re occurring subscriber revenue sources, subtracting the total programming and revenue share costs, discounting for length of the ROE agreements that are less than ten years, discounting for any joint venture agreements and dividing this result of the above formula by twenty two dollars (\$22) margin.

1.24 *System Contracts.* All written contracts and agreements, amendments and copies of related recordings including the ROE Agreements related to the Properties, held for use or used exclusively in connection with operation of the Assets, which are all listed on **Schedule 1.24a.** System Contracts shall include if any retransmission consent agreements and programming agreements excluding any Excluded System Contracts listed in **Schedule 1.24b.**

1.25 *System Licenses.* The intangible cable television channel distribution rights, cable television relay service (CARS), business radio earth station and other licenses, copyright notices and other licenses, authorizations, consents or permits issued by the

FCC or any other governmental authority or Person in connection with the ownership and use of the Assets (other than System Contracts), which are listed on **Schedule 1.25**.

1.26 *Tangible Personal Property.* All privileges, rights, interest, claims, tangible and intangible personal property, right of entry agreements ("ROE"), all required licenses and permits to operate the systems at the Properties, and including towers, tower equipment, satellite dishes, DBS satellite and cable receiving equipment, all coax cable, all fiber cable, all drop cable as described in the ROE agreements, all subscribers and set-tops, all subscriber deposits, aboveground and underground cable, distribution systems, as-built maps, switching equipment, head-end amplifiers, line amplifiers, microwave equipment, converters, testing equipment, and all other equipment, contracts, or other assets employed or required to be employed to actively operate and profit from the Systems. Tangible Personal Property shall also include the tangible personal property assets listed on **Schedule 1.26**.

1.27 *Third Party.* With respect to Seller, any Person other than Seller and its Affiliates; with respect to Buyer, any Person other than Buyer, and its Affiliates.

1.28 *Unit.* The total number of individual dwelling units at the Properties that can receive cable television service through the operation of the Assets, which numbers are set forth in **Schedule 1.28**.

ARTICLE 2 *Purchase and Sale*

2.1 *Purchase and Sale of Assets.* Subject to the terms and conditions of this Agreement, on the Closing Date, Buyer hereby agrees to purchase from Seller, and Seller hereby agrees to sell and transfer to Buyer, all of Seller's right, title, and interest in and to all of the Assets.

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2.2 *Purchase Price and Payment.*

(a) The consideration to be paid for the Assets (the "Purchase Price") shall be Two Hundred Thirty Thousand Dollars (\$230,000). The purchase price, subject to adjustments as hereinafter provided, shall be payable as follows:

(i) Buyer shall pay to Seller Two Hundred Thousand Dollars (\$200,000) at closing in immediately available funds to the account or accounts designated in writing by Seller to Buyer not less than three days prior to the Closing Date. The Purchase Price is determined by the valuation formula as described on **Schedule 2.2a**. The Purchase Price valuation formula is based on system and subscriber information represented by Seller as true and accurate. In the event that the system and subscriber information supplied by Seller has changed on or prior to the Closing Date, the then current system and subscriber information on the Closing Date will be used to increase or decrease the Purchase Price. In the event that Seller is unable to satisfy the delivery condition set forth in Section 7.1(c) with respect to any Property, Buyer shall reduce the amount of the Purchase Price due at closing based on the number of Subscribers at such Property multiplied by \$600 (the "Closing Holdback"), and place such amount in escrow in accordance with Section 2.2(a)(ii). At such time as Seller is able to satisfy the delivery condition set forth in Section 7.1(c) with respect to such Property, Buyer or Seller will authorize the Escrow Agent to promptly disburse from escrow the amount of the Closing Holdback with respect to such Property to Seller.

(ii) In addition to any Closing Holdback, Buyer shall place in escrow acceptable to both parties Thirty Thousand Dollars (\$30,000) (the "Escrow Amount") at closing. The Escrow Amount, together with all interest thereon, will be distributed to Buyer or Seller ninety (90) days following the Closing Date (the "Adjustment Date") pursuant to the terms of the escrow agreement attached hereto in the form of *Exhibit 2.2* (the "Escrow Agreement").

(b) Adjustments on a per diem basis, calculated as of the Closing Date, will be made for all prepaid expenses, accrued expenses (including real and personal property taxes), copyright fees and franchise or license fees or charges, prepaid income, Subscriber prepayments and accounts receivable, all as determined in accordance with GAAP consistently applied (collectively the "Current Items" and the net amount in favor of either Buyer or Seller of such Current Items, once determined in accordance with the procedures herein, is referred to as the "Current Items Adjustment"), and all expenses and income for the period through and including the Closing Date are for the account of Seller and all expenses and income attributable to the operation of the Assets for the period after the Closing Date are for the account of Buyer. Revenues received by Buyer after the Closing Date properly attributable to periods before the Closing Date will be credited to the account of Seller. All liabilities arising out of advance payments to, or funds of third parties on deposit with Seller relating to the Properties, including advance payments and deposits and any accrued interest on such deposits for converters, encoders, decoders, cable television service and related sales, will be credited to the account of Buyer. Buyer and Seller shall use good faith efforts to determine the actual Current Items Adjustment within 30 days after the Closing Date. If Buyer and Seller are unable to agree

on the actual Current Items Adjustment within 30 days after Closing, the disputed portion of the Current Items Adjustment shall be determined by a partner in a major accounting firm with substantial cable television audit experience but which is not an auditor of either Buyer or Seller (the "Qualified Auditor") and the determination of the Qualified Auditor shall be final and binding upon the parties. If Buyer and Seller cannot agree with respect to selection of the Qualified Auditor, Buyer and Seller shall each select an auditor and those two auditors shall select the Qualified Auditor whose determination shall be final and binding upon the parties. Buyer and Seller shall bear equally the expenses arising in connection with the determination of the Qualified Auditor. Not earlier than two days prior to the Adjustment Date (or if the Current Items Adjustment has not been determined at that time,

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not later than five days following the determination of the Current Items Adjustment) Seller and Buyer, shall send to Escrow Agent a certificate detailing the Current Items Adjustment (the "Certificate"). The Certificate shall also include a determination of the amount that Buyer is liable to DirecTV for chargebacks on the rebates granted to Seller for each DirecTV subscriber account transferred to Buyer hereunder (the "Chargeback Amount"). Seller shall be liable to Buyer for the Chargeback Amount and it shall be paid for as set forth herein. On the Adjustment Date, if the sum of the Current Items Adjustment and the Chargeback Amount, as set forth in the Certificate, details a net amount in favor of Buyer, Escrow Agent shall disburse to Buyer the amount set forth in the Certificate as the sum of the Chargeback Amount and the Current Items Adjustment and shall disburse the remainder of the Escrow Amount to Seller, in accordance with the Escrow Agreement. If the net sum of the Current Items Adjustment and the Chargeback Amount, as set forth in the Certificate, details a net amount in favor of Seller, then, on the Adjustment Date, the Escrow Agent shall disburse the Escrow Amount to Seller and Buyer shall pay to Seller, in cash or by wire transfer, an amount equal to the sum of Current Items Adjustment as reduced by the Chargeback Amount.

(c) All deposits relating to the business and operations of Seller that are held by third parties as of the Closing Date for the account of Seller or as security for the performance of any of Seller obligations, including deposits on leases and deposits for utilities, will be credited to the account of Buyer in their full amounts and all rights thereto will be transferred to the Buyer.

(d) Buyer will be entitled to all amounts received on all accounts receivable that exist as of the Closing Date for services to be rendered after the Closing Date and such amounts shall be applied first toward the newest obligation owed by the Subscriber.

2.3 *Conversion.* Beginning on the Closing Date, the parties will begin transferring the provision of the Services from the Seller to the Buyer. The parties shall make reasonable efforts to ensure an orderly transition of the Services and complete the transition in four (4) business days.

2.4 *Allocation of Purchase Price.* The Purchase Price shall be allocated as shown in **Schedule 2.4** attached herein.

ARTICLE 3. ASSUMED LIABILITIES AND EXCLUDED ASSETS

3.1 *Assumed Obligations and Liabilities.* Prior to or at Closing, Seller will assign and contribute to Buyer and Buyer will assume the following, to the extent related to the Assets (a) accrued obligations and liabilities relating to periods after the Closing Date; and (b) those obligations and liabilities of Seller to its customers at the Properties for (i) subscriber deposits held by Seller as of the Closing Date and delivered to Buyer, and (ii) advertising and other advance payments as of the Closing Date which are credited to Buyer at Closing except to the extent that such obligations or liabilities relate to any Excluded Asset (the "Assumed Obligations and Liabilities").

3.2 *Excluded Assets.* "Excluded Assets" means those assets that will not be transferred by Seller to Buyer and include all: (a) insurance policies and rights and claims thereunder; (b) bonds, letters of credit, surety instruments and other similar items and any stocks, bonds, certificates of deposit and similar investments of Seller; (c) cash and cash equivalents, notes receivable and subscriber accounts receivable owed Seller prior to the Closing Date; (d) trademarks, trade names, service marks, service names, logos and similar proprietary rights; (e) any claims, rights or chooses in action of Seller related to the period prior to the Closing Date (other than subscriber and advertising accounts receivable related to the operation of the Assets), including any Litigation and the proceeds thereof and any claims, rights and interest in and to any refunds of taxes or payments of any nature for the periods prior to the Closing Date, including copyright fees; (f) any Books and Records that Seller is required by any Legal Rule to retain and any books of account, tax reports and returns and the like related to the operation of the Assets, provided that copies of such Books and Records will be retained by Seller and made available to Buyer for review and copying for a period of three years; (g) the Seller's minute

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books; (h) any employment, union, collective bargaining, compensation, bonus, deferred compensation, non-competition, confidentiality, consulting, agency or management agreements; (i) any agreement, right, asset or property owned, leased or held by Seller that is not specifically used or held exclusively for use in connection with the operation of the Assets; (j) all employees of Seller or any Affiliate of Seller, and any agreements or understandings related thereto including any employee plans; (k) any equipment leased by Seller unless Buyer notifies Seller, at least six (6) Business Days prior to the Closing Date, of Buyer's desire to assume all obligations under the lease and Buyer obtains the lessor's consent, if required, prior to the Closing Date; and (l) such other rights, assets and properties, if any, described on **Schedule 3.2**.—*Excluded Assets*.

ARTICLE 4 Representations and Warranties of Seller. Seller represents and warrants to Buyer the following:

4.1 *Organization, Qualification, Authority, Enforceability, Approvals.* Seller is a corporation duly organized, validly existing and in good standing under the laws of Washington, and has all requisite power and authority to own, lease and use the Assets and to provide the Services to the Properties. Seller has the requisite organizational right, power and authority to execute, deliver and perform its obligations under this Agreement. The execution, delivery and performance of this Agreement by Seller and the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate or organizational action on the part of Seller. This Agreement has been duly executed and delivered by Seller and constitutes the valid and legally binding obligation of Seller enforceable against Seller in accordance with the terms of the Agreement except to the extent that enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights generally and by principles of equity regarding the availability of remedies. Except for and subject to the receipt of the Required Consents related to the ROE Agreements listed in **Schedule 1.19**, and the public right of way easement related to any under public street wiring, the execution, delivery and performance of this Agreement and the consummation of the transaction contemplated hereby or thereby, does not require any additional consent, notice, authorization or approval of, filing with, or exemption from, any third party or any other Person which has not been made, given or otherwise accomplished.

4.2 *Compliance with Laws and System Contracts.*

(a) Complete and correct copies of all of the Governmental Permits, all of which are listed on **Schedule 1.8**, have been or will be delivered by Seller to Buyer. The System Licenses and other Governmental Permits are currently in full force and effect, are not in default and are valid and enforceable under all applicable Legal Requirements according to their terms. There is no legal action, governmental proceeding, or investigation pending or threatened to terminate, suspend or modify any Governmental Permit.

(b) **Schedule 1.19** contains a complete and accurate copy of all the ROE Agreements related to this Asset Purchase Agreement. **Schedule 1.24a** contains a complete and accurate list and description of all the System Contracts (other than the System Contracts that are Excluded System Contracts and are listed on **Schedule 1.24b**). Complete and correct copies of all System Contracts have been or will be provided to the Buyer, and (i) such documents constitute the entire agreement with the other party with respect to the subject matter thereof; (ii) each such System Contract is in full force and effect and constitutes the valid, legal, binding and enforceable obligation of the Seller and Seller is not in breach or default and would not by the lapse of time or giving of notice be in default of any material terms or conditions thereunder;

(c) No party has notified Seller of any claim, dispute, or controversy or withheld payments from Seller with respect to any System Contract, which claim, dispute, controversy or withholding of payment could, if such party were to prevail, have a material adverse effect on the System Contract; there are no contingent contractual obligations or liabilities under the ROE Agreements other than as may be described in the ROE Agreements provided to Buyer or reflected in the

adjustments made to the Purchase Price; and to Seller's Knowledge, Buyer will be entitled to the same rights that Seller held under the ROE Agreements transferred to Buyer as of the date of this Agreement.

(d) Except as may be disclosed in **Schedule 4.2d**, the ownership, leasing and use of the Assets as they are currently owned, leased and used and the provision of Services by Seller do not violate and will not violate immediately after their sale to Buyer any Legal Requirements, which violation individually or in the aggregate would have a material adverse effect on the operation of the Assets at any Property. Seller has not received written notice of any violation of any Legal Rules applicable to Seller or to the operation of the Assets. Seller is not in default in any material respect under any executive, legislative, judicial, administrative or private ruling, order, writ, injunction or decree which may affect any of the Assets; and Seller is in material

compliance with all Legal Rules imposed by any Government Entity having jurisdiction over the Assets, including the FCC and including payments of all applicable copyright fees relating to the Assets.

4.3 *Compliance with Other Instruments.* Except for and subject to receipt of the Required Consents, and other than with respect to the need to provide certain notices under the ROE Agreements identified in **Schedule 4.3** (the "Assignment Notices"), the execution and delivery by Seller of this Agreement and the consummation of the transactions contemplated by this Agreement do not and will not: (a) conflict with or violate any provision of its Certificate of Incorporation or bylaws or, other similar governance document for corporations (b) require any consent, approval or authorization of or filing of any certificate, notice, application, report or other document with any governmental authority or other Person or (c) conflict with, violate, result in a breach of, or constitute a default under (without regard to requirements of notice, lapse of time or elections of other Persons or any combination thereof), any System License or any System Contract or other instrument evidencing any of the Assets to which it is a party or by which Seller or any of the Assets is bound or affected, except for matters that would not individually or in the aggregate, have a material adverse effect on the operation of any of the Assets at a Property or on the ability of Seller to perform its obligations under this Agreement.

4.4 *Title and Encumbrances.* The Seller has good and marketable title to and possession of all of the Assets. The Assets are free and clear of all Liens except Permitted Liens..

4.5 *Operating Statements.* Seller has delivered to Buyer copies of certain operating statements (collectively, the "Operating Statements"). To Seller's Knowledge, the Operating Statements fairly present Seller's results of operation of the Assets for the periods indicated. Attached hereto as **Schedule 4.5** are Seller's (i) list of subscribers at the Property and (ii) Property-specific revenue summaries for the periods listed thereon ("Financial Information"). The Financial Information is in accordance with the books and records of Seller and to Seller's Knowledge are true, correct and complete.

4.6 *Tangible Personal Property.* The tangible Personal Property is in good working order and operating condition (ordinary wear and tear excepted), the systems are currently operating and, after the transfer of the Assets, the Buyer will receive the same rights to use the transferred Assets as Seller held. The Assets contain all the items of equipment necessary to provide the Services to the Property. All items of equipment located at the Property have been installed in material compliance with all applicable Legal Rules.

4.7 *Litigation, Taxes, Disclosure.* Except as disclosed on **Schedule 4.7**, there is no claim, action, litigation, proceeding or investigation pending, or to Seller's knowledge, threatened before any court or Government Entity, nor is there any outstanding judgment, order, decree, award, stipulation or injunction issued by any court or Governmental Entity which may affect any of the Assets or impair the Seller from performing its obligations under this Agreement. All taxes related to the Assets, related to taxable periods or portions thereof ending on or prior to the Closing Date, have been reported and

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duly paid, collected or withheld and remitted to the appropriate federal, state, and local governmental agency, except for current taxes not due and payable on or prior to the applicable Closing Date.

4.8 *Broker Fees.* Seller has employed Paradigm Marketing Group, Inc. as a broker in connection with this Agreement. All brokerage fees or sales expenses incurred by Seller in connection with the transactions contemplated herein are the responsibility of Seller and will be paid by Seller at Closing. Seller shall supply Buyer a written letter from an authorized principle at Paradigm Marketing Group, Inc. stating that the Broker Fees payment arrangements are satisfactory to the Broker (the "Broker Letter"). The Broker Letter will be submitted to the escrow agent and released to Buyer when the escrow instructions are satisfied.

4.9 *Disclosure.* No representation or warranty by Seller in this Agreement contains or will contain any untrue statement of material fact, or omits or will omit to state a material fact required to be stated therein or necessary to make the statements contained therein not misleading in light of the circumstances in which made.

ARTICLE 5 Representations and Warranties of Buyer. Buyer represents and warrants to Seller the following:

5.1 *Organization, Qualification, Authority, Enforceability, Approvals.* Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of Washington. Buyer has the requisite organizational right, power and authority to execute, deliver and perform its obligations under this Agreement. The execution, delivery and performance of this Agreement by Buyer and the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate or organizational action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer and constitutes the valid and legally binding obligation of Buyer enforceable against Buyer in accordance with the terms of the Agreement. Except for the Required Consents, the execution, delivery and performance of this Agreement, and the consummation of the transaction contemplated hereby or thereby, does not require any additional consent, notice, authorization or approval of, filing with, or exemption from, any third party or any other Person which has not been made, given or otherwise accomplished.

5.2 *Compliance with Other Instruments.* The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and thereby shall not (a) result in a breach or violation of any term or provision of, or constitute a breach or default under Buyer's certificate of formation, bylaws; or other similar governance document for limited liability companies or partnerships; under any agreement applicable to Buyer, or (b) violate or result in the violation of any Legal Rule or any order, judgment or decree applicable to or binding upon Buyer.

5.3 *Broker Fees.* No broker, finder or similar agent has been employed by or on behalf of Buyer in connection with this Agreement and Buyer has not entered into an agreement or understanding of any kind with any Person for the payment of any brokerage commission, finder's fee or similar Agreements.

5.4 *Litigation.* To Buyer's knowledge, there is no litigation pending or threatened, which seeks to enjoin or obtain damages in respect of the consummation of the transactions contemplated hereby.

ARTICLE 6 *Additional Covenants*

6.1 *Access to Assets.* Prior to the Closing Date, Seller covenants and agrees that it shall give Buyer, and its respective employees and authorized representatives, during normal business hours and with reasonable prior notice, access to all books and records related to the Assets and will furnish to Buyer such financial data, operating data, and other information as Buyer shall reasonably request.

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6.2 *Continuity and Maintenance of Operations.* Seller covenants and agrees that it shall, from the date hereof to the Closing Date and through the conversion period with respect to the Assets:

(a) operate the Assets in the ordinary course consistent with current practices and, to the extent consistent with such conduct and operation, will use its commercially reasonable efforts to preserve its current business intact in all material respects, including preserving existing relationships with suppliers, customers and others having business dealings with the Seller; and

(b) maintain the Tangible Personal Property constituting a part of the Assets in the ordinary course consistent with current practices; (ii) maintain its books, records and accounts with respect to the ownership and operation of its Assets in the usual, regular and ordinary manner on a basis consistent with current practices; and (iii) continue to implement its procedures for disconnection and discontinuance of service to Subscribers whose accounts are delinquent in accordance with those in effect on the date of this Agreement.

6.3 *Adverse Changes.* Prior to the Closing, Seller covenants and agrees that it shall immediately notify Buyer in writing of each adverse change or condition affecting any of the Assets which becomes known to Seller.

6.4 *Maintain Insurance.* Seller covenants and agrees that it shall maintain in full force and effect all insurance policies with respect to the Assets until the Closing Date with limits and coverages consistent with past practices (and in commercially reasonable amounts) and shall not do, permit or allow to be done any act by which any of such insurance policies may lapse or be suspended, impaired or canceled until the date of closing. Seller shall give immediate written notice to Buyer of any material damage to any of the Assets or any of the Properties by fire or other casualty.

6.5 *Confidentiality.* Each party shall keep the terms of this Agreement and the transactions contemplated hereby, and all information provided by the other party in connection herewith, confidential and shall not disclose the same to any other Person except for legal counsel, accountants, lenders, advisers, prospective investors, creditors, and employees on a need-to-know basis in order to carry out the terms of this Agreement. Notwithstanding anything contained in this **Section 6.5**, any party may disclose information if required by applicable law or court order or in connection with either party's disclosure or reporting obligations under any rule or regulation of the SEC, NASDAQ, FCC or other Government Entity. If this Agreement is terminated, no party shall use any confidential information for any business purpose, and each party will keep confidential any information so obtained.

6.6 *Satisfaction of Conditions.* Seller shall use commercially reasonable efforts to obtain in writing all of the Required Consents and will deliver to Purchaser copies of such Required Consents promptly after they are obtained by Seller. Purchaser will cooperate with Seller in its efforts to obtain the Required Consents. Seller shall use commercially reasonable efforts to cause (i) the representations and warranties set forth in **Article 4** and the **Schedules** and **Exhibits** herein to be true and correct as of the Closing Date and (ii) the conditions precedent set forth in **Article 7** to have been satisfied as of the Closing Date. The Buyer shall use commercially reasonable efforts to cause (i) the representations and warranties set forth in Article 4 and the **Schedules** and **Exhibits** herein to be true and correct as of the Closing Date and (ii) the conditions precedent set forth in **Article 8** to have been satisfied as of the Closing Date.

6.7 *Further Assurances.* Subsequent to the Closing, Seller will promptly execute and deliver or cause to be executed and delivered such further documents and instruments to effect, consummate, confirm or evidence the transfer to Buyer of the Assets. Seller will execute such documents as may be necessary to assist Buyer in preserving or perfecting its rights in the Assets.

ARTICLE 7 Conditions Precedent to Obligations of Buyer

7.1 *Conditions Precedent of Buyer to Closing.* The obligations of Buyer to consummate the transactions contemplated on the Closing Date are subject to the satisfaction or Buyer's waiver, on or before the Closing Date, of all the following conditions:

- (a) Seller shall have performed and complied with all covenants, conditions and obligations required by this Agreement to be performed or complied with by Seller on or before the Closing Date.
- (b) All representations and warranties of Seller contained in this Agreement shall be true, correct and complete in all material respects on and as of the Closing Date.
- (c) Seller shall have received and shall have delivered to Buyer the Required Consents.
- (d) Seller shall have tendered to Buyer all documents which Seller is required by Section 9.2(a) to deliver to Buyer, in each case executed.
- (e) There shall be no pending litigation or government proceeding which seeks to restrain or prohibit the consummation of the transactions contemplated by this Agreement or which affects the Assets.
- (f) There shall have been no material adverse change in the manner of operation of Assets prior to the Closing Date.
- (g) Seller and Escrow Agent shall have executed and delivered the Escrow Agreement.

7.2 *Risk of Loss.* The risk of loss, damage, or destruction to any of the Assets to be conveyed to Buyer under this Agreement shall be borne by Seller up to the time of Closing.

ARTICLE 8 Conditions Precedent to Obligations of Seller

8.1 *Conditions Precedent of Seller to Closing.* The obligation of Seller to consummate the transactions contemplated on the Closing Date is subject to the satisfaction or Seller's waiver, on or before the applicable Closing Date, of all the following conditions:

- (a) Buyer shall have performed and complied with all covenants, conditions and obligations required by this Agreement to be performed or complied with by Buyer on or before the Closing Date.
- (b) All representations and warranties made by Buyer contained in this Agreement shall be true, correct and complete in all material respects on and as though made on the applicable Closing Date.
- (c) Buyer shall have tendered the Purchase Price and all documents which Buyer is required by Section 9.2(b) to deliver to Seller, in each case executed.
- (d) There shall be no pending litigation or government proceeding which seeks to restrain or prohibit the consummation of the transaction contemplated by this Agreement.
- (e) Buyer and Escrow Agent shall have executed and delivered the Escrow Agreement.

ARTICLE 9 Closing

9.1 *Closing.* The closing of the transaction contemplated by this Agreement ("Closing") will be held effective as of the second Business Day following the day in which Seller notifies Buyer all conditions to closing contained in this Agreement, other than those based on acts to be performed at Closing, have been satisfied or waived. The Parties shall use commercially reasonable efforts to cause Closing to occur as soon as possible and no later than June 30, 2002. Closing will be held via facsimile and overnight courier, or at such place and at such time as the Buyer and Seller agree.

9.2 *Closing Documents.*

- (a) At the Closing, Seller shall deliver to Buyer all of the following:
 - (i) An Officer's Certificate, dated as of the Closing Date, certifying as true and correct the representations and warranties of Seller hereunder as of the Closing Date.
 - (ii) Seller's Certificate of Good Standing issued by the state of organization not more than 14 days prior to closing.
 - (iii) All Books and Records relating to the Assets in a form satisfactory to Buyer.
Such other documents and instruments as may be reasonably necessary to affect the intent of this Agreement and consummate the transactions contemplated hereby, including but not limited to a

documented resolution to the public right of way easement issue regarding cable under the street at the Property.

(iv) The Escrow Agreement.

(v) The Required Consents.

(vi) The Acknowledgement in the form attached hereto as *Exhibit 9.2* duly executed by Pace Electronics, Inc.

(b) At the Closing, Buyer shall deliver or shall have delivered to Seller the following:

(i) An Officer's Certificate, dated as of the Closing Date, certifying as true and correct the representations and warranties of Buyer hereunder as of the Closing Date.

(ii) The Purchase Price less the Escrow Amount.

(iii) Such other documents and instruments as may be reasonably necessary to effect the intent of this Agreement and consummate the transactions contemplated hereby.

(iv) A Bill of Sale in the form of Exhibit B, and an Assignment and Assumption Agreement in the form of Exhibit C, by which the Assets to be transferred have been transferred to Buyer.

(v) The Escrow Agreement.

(vi) The Escrow Amount to the Escrow Agent.

ARTICLE 10 Conditions Subsequent—Left Blank Intentionally

ARTICLE 11 Indemnification

11.1 Indemnification.

(a) Seller agrees to indemnify, defend, and hold Buyer harmless against, any and all Losses which Buyer may suffer or incur by reason of or in connection with (i) any breach or default in the performance by the Seller of any covenant or agreement of the Seller contained in this Agreement, (ii) any breach of warranty or inaccurate or erroneous representation made by Seller herein, and (iii) any and all actions, suits, proceedings, claims, demands, judgments, costs and expenses arising out of the foregoing.

(b) From and after the Closing, Buyer will indemnify, defend and hold Seller harmless from and against any and all Losses arising out of or resulting from (i) any act or omission of Buyer with respect to or any event or circumstance related to the ownership or operation of the Assets, which act, omission, event or circumstance occurred or existed after the Closing Date; (ii) any liability or obligation of Buyer; and (iii) any misrepresentation or breach of a warranty of Buyer contained in this Agreement.

11.2 Survival of Representations and Warranties. The representations and warranties of the parties contained herein shall survive for a period of three hundred sixty-five (365) days after the Closing Date (the "Survival Period"). Any claim of breach based upon such representations and warranties must be asserted by a party in a written notice to the other party within the Expiration Period.

11.3 Third Party Claims. Promptly after the receipt by either party of a notice of any claim, action, suit or proceeding by any Third Party (collectively, an "Action"), which Action is subject to indemnification under this Agreement, such party (the "Indemnified Party") will give reasonable written notice to the party from whom indemnification is claimed (the "Indemnifying Party"). The Indemnified Party will be entitled, at the sole expense and liability of the Indemnifying Party, to exercise full control of the defense, compromise or settlement of any such Action unless the Indemnifying Party, within thirty (30) days after the giving of such notice by the Indemnified Party, (a) admits in writing to the Indemnified Party the Indemnifying Party's liability to the Indemnified Party for such Action under the terms of this **Article 11**, (b) notifies the Indemnified Party in writing of the Indemnifying Party's intention to assume such defense, and (c) retains legal counsel reasonably satisfactory to the Indemnified Party to conduct the defense of such Action. The other party will cooperate with the party assuming the defense, compromise or settlement of any such Action in accordance with this Agreement in any manner that such party reasonably may request. If the Indemnifying Party so assumes the defense of any such Action, the Indemnified Party will have the right to employ separate counsel and to participate in (but not control) the defense, compromise or settlement of the Action, but the fees and expenses of such counsel will be at the expense of the Indemnified Party unless (x) the Indemnifying Party has agreed to pay such fees and expenses, (y) any relief other than the payment of money damages is sought against the Indemnified Party or (z) the Indemnified Party will have been advised by its counsel that there may be one or more defenses available to it which are different from or additional to those available to the Indemnifying Party, and in any such case that portion of the fees and expenses of such separate counsel that are reasonably related to matters covered by the indemnity provided in this

Article 11 will be paid by the Indemnifying Party. No Indemnified Party will settle or compromise any such Action for which it is entitled to indemnification under this Agreement without the prior written consent of the Indemnifying Party, unless the Indemnifying Party has failed, after reasonable notice, to undertake control of such Action in the manner provided in this **Article 11**. No Indemnifying Party will settle or compromise any such Action (A) in which any relief other than the payment of money damages is sought against any Indemnified Party or (B) in the case of any Action relating to the Indemnified Party's liability for any tax, if the effect of such settlement would be an increase in the liability of the Indemnified Party for the payment of any tax for any period beginning after the Closing Date, unless the Indemnified Party consents in writing to such compromise or settlement.

ARTICLE 12 Termination

12.1 *Prior to Closing.* This Agreement may be terminated at any time prior to the Closing:

- (a) by mutual agreement of Buyer and Seller;
- (b) by either Buyer or Seller at any time (if such party itself is not then in material breach of any of its covenants, agreements or other obligations contained in this Agreement), if the other is in material breach or default of any of its covenants, agreements or other obligations herein or if any of its representations herein is not true in all material respects when made, if the non-breaching party provides the breaching party with prompt written notice that provides a reasonably detailed explanation of the facts and circumstances surrounding such breach or default, provided that such party will have no right to terminate if the breaching Party cures such breach or default within 10 days after its receipt of such written notice; or
- (c) by either party if the Closing has not occurred by June 30, 2002.

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12.2 *Effect of Termination.* If this Agreement is terminated pursuant to Article 12, all obligations of the parties under this Agreement will terminate. Notwithstanding the preceding sentence, termination of this Agreement pursuant to Article 12 will not limit or impair any remedies that Buyer or Seller may have with respect to a breach or default by the other of its covenants, agreements or obligations under this Agreement prior to Closing.

ARTICLE 13 General

13.1 *Miscellaneous.* All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and permitted assigns of the parties hereto. Without the prior written consent of the other Party, neither Party will assign any of its rights under this Agreement or delegate any of its duties under this Agreement. Date is of the essence in each and every provision in this Agreement. Any provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining provisions of this Agreement or affecting the validity or enforceability of any provision of this Agreement in any other jurisdiction. Except as otherwise provided herein, Buyer and Seller may amend, modify or supplement this Agreement at any time, but only in writing duly executed by the parties. The terms set forth in this Agreement including its **Schedules** and **Exhibits** are intended by the parties as a final, complete and exclusive expression of the terms of their agreement and may not be contradicted or supplemented by evidence of any prior agreement, or any prior or contemporaneous oral agreement among the parties with respect to the subject matter hereof. The **Schedules** and **Exhibits** attached to this Agreement are incorporated herein by this reference and made a part of this Agreement. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall be governed by and construed and enforced in accordance with the laws (but not the laws of choice of law) of the State of Washington.

13.2 *Notices.* Any notice or demand desired or required to be given hereunder shall be in writing and deemed given when personally delivered, sent by telecopier, facsimile, overnight courier or deposited in the mail, postage prepaid, sent certified or registered, return receipt requested, and addressed as set forth below or to such other address as either party shall have previously designated by such a notice. Any notice so delivered personally shall be deemed to be received on the date of delivery; any notice so delivered by telecopy shall be deemed to be received upon confirmation of transmission by telecopy; any notice so sent by overnight courier shall be deemed to be received one

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Business Day after the date sent; and any notice so mailed shall be deemed to be received on the date stamped on the receipt.
If to Seller:

Cable Concepts, Inc.
Attn: Gary Langendoen
10012 Norwalk Blvd, Suite 150
Santa Fe Springs, CA 90670
Tel: 562-941-5957
Fax: 562-941-3416

With a copy to:

Shefsky & Froelich Ltd.
Attn: Michael J. Choate
444 North Michigan Avenue
Suite 2500
Chicago, IL 60611
Tel: 312-527-4000
Fax: 312-527-5921

If to Buyer:

Priority/RTG1, LLC
Priority Systems, LLC/Resident Technology Group, LLC
John Craig/Dan Devlin
1200 112th Ave. NE Suite C-115
Bellevue WA, 98004
Tel: (425) 818 8889
Fax: (425) 957 0119

13.3 *Expenses.*

(a) Each party shall each bear its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement (including, but not limited to, any attorneys', accountants', brokers', finders' and investment bankers' fees), whether or not the Closing occurs.

(b) Any sales, transfer or use tax assessed or imposed in connection with the transfer of the Assets hereunder shall be borne by Seller.

13.4 *Attorneys' Fees.* If any action or proceeding is commenced between the parties with respect to this Agreement, the prevailing party shall be entitled to all fees and expenses incurred by it in connection with such action or proceeding, including reasonable attorneys' fees.

13.5 *Judicial Proceeding.* Each party consents to the exclusive jurisdiction over it of the courts of the United States District Courts sitting in King County, Washington, for the purpose of any action, claim or cause of action arising out of or based upon this Agreement or relating to the subject matter hereof and agrees that personal service of process may be made by registered or certified mail pursuant to the provisions of Section 12.1. Each party to this Agreement hereby (i) waives, to the extent not prohibited by applicable law, and agrees not to assert, any claim that it is not subject personally to the jurisdiction of the above-named courts, that any action brought in any such court is improper or that this Agreement or the subject matter may not be enforced in or by any such court, and (ii) agrees not to commence or maintain any action, claim or cause of action arising out of or based upon this Agreement or relating to the subject matter other than before the above-named courts nor make any

motion or take any other action seeking to cause the transfer or removal of any such action, claim or cause of action to any court other than one of the above-named courts.

13.6 *Cumulative Remedies.* Except for the limitations on indemnification under this Agreement as expressly set forth in Article 11, none of the rights, powers or remedies conferred upon any party hereto shall be mutually exclusive, and each such right, power or remedy shall be cumulative and in addition to every right, power, or remedy, whether conferred hereby or now or hereafter available at law, in equity, by statute or otherwise.

13.7 *Construction.* This Agreement has been negotiated by the parties, and legal or equitable principles that might require the construction of this Agreement or any provision of this Agreement against the party drafting this Agreement will not apply in any construction or interpretation of this Agreement.

13.8 *Tax Consequences.* No party to this Agreement makes any representation or warranty, express or implied, with respect to the tax implications of any aspect of this Agreement on any other party to this Agreement, and all parties expressly disclaim any such representation or warranty with respect to any tax consequences arising under this Agreement. Each party has relied solely on its own tax advisors with respect to the tax implications of this Agreement.

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

Seller: Cable Concepts, Inc. dba Direct Digital Communications,
A Washington corporation

By:

Print Name:

Print Title:

Buyer: Priority/RTG1, LLC, LLC
A Washington limited liability company

By:

Print Name:

Print Title:

QuickLinks

[Exhibit 2.6](#)

[ASSET PURCHASE AND SALE AGREEMENT](#)

**FIRST AMENDMENT TO
ASSET PURCHASE AND SALE AGREEMENT**

THIS FIRST AMENDMENT TO ASSET PURCHASE AND SALE AGREEMENT (this "Amendment") is made as of June 20, 2002, by and between Cable Concepts, Inc., a Washington corporation, doing business as Direct Digital Communications ("Seller") and Priority/RTG1, LLC a Washington limited liability company ("Buyer").

Seller and Buyer entered into that certain Asset Purchase and Sale Agreement, dated June 7, 2002 (the "Purchase Agreement"), pursuant to which Seller agreed to sell, and Buyer agreed to purchase, the Assets on the terms and conditions set forth therein. Any capitalized terms used but not defined herein shall have the meaning ascribed to such term in the Purchase Agreement.

Seller and Buyer desire to amend the Purchase Agreement as set forth herein and any and all modifications thereof, as amended hereby, shall have the same validity and effect as they had immediately prior to the execution and delivery of this Amendment.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, representations, and warranties contained in this Agreement, Seller and Buyer agree as follows:

1. *Amendment.* Section 2.2(a) of the Purchase Agreement is hereby deleted in its entirety and amended to read as follows:

2.2 Purchase Price and Payment.

(a) The consideration to be paid for the Assets (the "Purchase Price") shall be Two Hundred Fifteen Thousand Dollars (\$215,000). The Purchase Price, subject to adjustments as hereinafter provided, shall be payable as follows:

(i) Buyer shall pay to Seller Two Hundred Thousand Dollars (\$200,000) at closing in immediately available funds to the account or accounts designated in writing by Seller to Buyer not less than three days prior to the Closing Date. The Purchase Price is determined by the valuation formula as described on **Schedule 2.2a**. The Purchase Price valuation formula is based on system and subscriber information represented by Seller as true and accurate. In the event that the system and subscriber information supplied by Seller has changed on or prior to the Closing Date, the then current system and subscriber information on the Closing Date will be used to increase or decrease the Purchase Price. In the event that Seller is unable to satisfy the delivery condition set forth in Section 7.1(c) with respect to any Property, Buyer shall reduce the amount of the Purchase Price due at closing based on the Property valuation described in **Schedule 2.2a** (the "Closing Holdback"), and place such amount in escrow in accordance with Section 2.2(a)(ii); *provided, however*, the Closing Holdback shall not be more than \$100,000. At such time as Seller is able to satisfy the delivery condition set forth in Section 7.1(c) with respect to such Property, Buyer or Seller will authorize the Escrow Agent to promptly disburse from escrow the amount of the Closing Holdback with respect to such Property to Seller; *provided, however*, the Closing Holdback, and any portion thereof, shall be released only to the extent that the aggregate value of all of the Properties transferred to Buyer (as determined in accordance with **Schedule 2.2a**) pursuant to this Agreement exceeds \$100,000.

(ii) In addition to any Closing Holdback, Buyer shall place in escrow acceptable to both parties Fifteen Thousand Dollars (\$15,000) (the "Escrow Amount") at closing. The Escrow Amount, together with all interest thereon, will be distributed to Buyer or Seller ninety

(90) days following the Closing Date (the "Adjustment Date") pursuant to the terms of the escrow agreement attached hereto in the form of *Exhibit 2.2* (the "Escrow Agreement").

2. *Reaffirmation of Representations and Warranties.* Buyer and Seller hereby acknowledge and reaffirms that all the representations and warranties of Buyer and Seller, as the case may be, as stated in the Purchase Agreement are true and correct as of the date hereof.

3. *Governing Law and Counterparts.* This Amendment shall be governed by and be construed in accordance with the internal laws of the State of Washington. This Amendment may be executed in counterparts, each of which shall constitute an original, but all together shall constitute one and the same instrument.

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

Seller: Cable Concepts, Inc. dba Direct Digital Communications,
A Washington corporation

By:

Print Name:

Print Title:

Buyer: Priority/RTG1, LLC, LLC,
A Washington limited liability company

By: Priority Systems, LLC
Title: Authorized Manager

By:

Print Name:

Print Title:

QuickLinks

[Exhibit 2.7](#)

[FIRST AMENDMENT TO ASSET PURCHASE AND SALE AGREEMENT](#)

[QuickLinks](#) -- Click here to rapidly navigate through this document

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement ("Agreement") is entered into as of June 28, 2002 (the "Effective Date"), by and between Time Warner Entertainment Company, L.P., a Delaware limited partnership, with its principal place of business located at 290 Harbor Drive, Stamford, CT 06902 ("Buyer"), and Cable Concepts, Inc. d/b/a Direct Digital Communications, a Washington corporation with its principal place of business located at 14220 Interurban Avenue South, Suite 134, Seattle, WA, 98168 ("Seller"). Buyer and Seller are each referred to herein individually as a "Party" and collectively as the "Parties."

WHEREAS, Seller owns and operates satellite master antenna television systems (the "SMATV Systems") that serve the apartment complexes known as Preserve at Southwind, The Echelon at the Ballpark, Wesley Forest and Belmont Village, each located in the Memphis, Tennessee area (together, the "Complexes");

WHEREAS, Seller is willing to convey to Buyer, and Buyer is willing to purchase from Seller, certain of the tangible and intangible assets comprising the SMATV Systems, upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises set forth below, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I. DEFINITIONS

Certain capitalized terms are defined in the body of this Agreement. The capitalized terms referred to below have the following meanings:

"Adjustment Time" has the meaning given in Section 2.1(c).

"Ancillary Agreements" means the other documents and agreements called for in this Agreement.

"Applicable Law" means all laws, statutes, treaties, rules, codes, ordinances, regulations, permits, certificates, orders and licenses of any Governmental Authority, interpretations of any of the foregoing by a Governmental Authority having jurisdiction or any arbitrator or other judicial or quasi-judicial tribunal.

"Assumed Obligations and Liabilities" has the meaning given in Section 2.4.

"Basic Subscriber" means any private residential customer account that is billed by individual unit and pays the standard monthly rate (without discount) for each tier of the System's basic television programming service to which such account subscribes.

"Best Knowledge" means, with respect to Seller, the actual knowledge after reasonable investigation of Richard Baxter and Gary Langendoen. "Best Knowledge" means, with the respect to Buyer, the actual knowledge after reasonable investigation of Bonnie Blecha and Dean Deyo.

"Closing" has the meaning given in Section 2.8(a).

"Closing Date" means the date on which Closing occurs.

"Closing Date Payment" has the meaning given in Section 2.3(a)

"Contracts" has the meaning given in Section 2.1(b).

"Current Items Amount" has the meaning given in Section 2.6.

"Equipment" has the meaning given in Section 2.1(a).

"Excluded Assets" has the meaning given in Section 2.2.

"Equivalent Basic Subscribers" means, with respect to a SMATV System, the sum of (a) the number of Basic Subscribers of the SMATV System, and (b) the number obtained by dividing (i) the aggregate monthly billings for all tiers of basic programming service provided by the SMATV System to

any private residential customer account which pays less than the standard monthly residential rate for such service and any multiple dwelling unit that pays a bulk rate (excluding any charges for premium service, pay-per-view programming, internet access, franchise fees, taxes, second connects, additional outlets, installation fees, deposits and other non-recurring items and any charges for rental converters, remote control devices and other like charges for equipment), by (ii) \$40.00. For purposes of this Agreement, Equivalent Basic Subscribers will not include any Basic Subscriber or residential, commercial or bulk account which (A) has not received and paid in full for at least one full month of service at the SMATV System's standard rates, (B) is more than 60 days' delinquent in payment for

any service (exclusive of balances less than \$10.00) provided by the SMATV System, (C) is pending disconnection for any reason, (D) was solicited during the 60-day period preceding the Closing Date by extraordinary promotions or offers of discounts, or (E) receives (or is entitled to receive) the benefits of any extraordinary promotions or offers of discounts at any time after the date which is 60 days preceding the Closing Date. The number of days a customer account is past due will be determined from the first day of the period for which the applicable billing relates.

"Governmental Authority" means any national, federal, state, departmental, county, municipal, regional or other governmental authority, agency, board, body, instrumentality or court in whatever country having jurisdiction in whole or in part over Seller or the SMATV Systems or Purchased Assets.

"Hazardous Substance" means any substance, material or waste which is as of the Closing Date regulated or, on or before the Closing Date, is proposed to be regulated, by any Governmental Authority, including, but not limited to, any material or substance which is designated as a hazardous or polluting substance or subject to regulation as a hazardous or toxic substance pursuant to any Applicable Law.

"Holdback Amount" has the meaning given in Section 2.3(b).

"Liability" means any liability, whether known or unknown, asserted or unasserted, absolute or contingent, whether accrued or unaccrued, liquidated or unliquidated, and whether due or to become due, including but not limited to any liability for Taxes.

"Loss" has the meaning given in Section 9.1.

"Material Adverse Effect" means a material adverse effect on the operation of the SMATV Systems, taken as a whole, but without taking into account any effect resulting from any regulatory or other change affecting the United States cable industry as a whole, including changes in FCC regulations.

"Operating Permits" means all of the permits, licenses, certifications, approvals, authorities or other franchises granted by any Governmental Authority or other third party required or appropriate for the continued operation of the SMATV Systems in the manner heretofore operated.

"Outside Closing Date" has the meaning given in Section 2.8(a).

"Purchase Price" has the meaning given in Section 2.3

"Purchased Assets" has the meaning given in Section 2.1.

"Records" means the books and records described in Section 2.1(d).

"Taxes" means all state, local or foreign taxes, social security contributions, fees, levies or other assessments, including, without limitation, all net income, gross receipts, sales, use, ad valorem, value added, transfer, recording, franchise, profits, inventory, capital stock, license, withholding, payroll, stamp, occupation and property taxes, customs duties or other similar fees, assessments and charges, however denominated, together with all interest, penalties, surcharges, additions to tax or additional amounts imposed by any Governmental Authority, and any transfer Liability in respect of any of the foregoing taxes.

ARTICLE II.

ACQUISITION OF ASSETS

2.1 **Purchased Assets.** On and subject to the terms and conditions set forth in this Agreement, Buyer will purchase from Seller, and Seller will sell, transfer, assign, convey and deliver to Buyer, effective as of 12:01 a.m., central time, on the Closing Date, free and clear of all liens, encumbrances, security interests, purchase rights, pledges, charges, mortgages, claims or any other limitations or restrictions whatsoever, all of Seller's right, title and interest in and to the following (collectively, the "Purchased Assets"):

(a) the tangible properties and assets of Seller of every kind used primarily in the operation of the SMATV Systems (including the interconnection of the buildings within the Complexes) including but not limited to cables, plant, fiber, wires, conduits, junction boxes, passive and active electronics, vaults and pedestals (including all related spare parts, accessories and supplies) and other similar equipment, the material items of which are listed on *Schedule 2.1(a)* to this Agreement (the "Equipment");

(b) the agreements and contracts, if any, set forth on *Schedule 2.1(b)* to this Agreement ("Contracts");

(c) all subscriber accounts receivable owed to Seller as payment for services rendered by Seller prior to 11:59 P.M., central time, on the day immediately prior to the Closing Date (the "Adjustment Time") in connection with the operation of the SMATV Systems, as reflected on the billing records of Seller; and

(d) all books and records of every kind pertaining to Equipment, Contracts, customers and sales prospects used in connection with the SMATV Systems (the "Records").

2.2 Excluded Assets. Notwithstanding the provisions of Section 2.1, the Assets shall not include the following, which shall be retained by Seller (the "Excluded Assets"): (a) programming contracts and retransmission consent agreements; (b) insurance policies and rights and claims thereunder; (c) bonds, letters of credit, surety instruments, and other similar items; (d) cash and cash equivalents; (e) Seller's trademarks, trade names, service marks, service names, logos, and similar proprietary rights; (f) all contracts and agreements not listed on *Schedule 2.1(b)*, including but not limited to all customer contracts; (g) the headend equipment used by Seller in connection with the SMATV Systems (the "Headend Equipment"); (h) the DirectTV set top receivers/converters; and (i) any rights, assets, and properties described on *Schedule 2.2*.

2.3 Purchase Price and Terms of Payment. Buyer shall assume the specified liabilities set forth in Section 2.4 and pay to Seller, as the purchase price for the Purchased Assets under Section 2.1, the aggregate amount of \$460,000 (the "Purchase Price"). The Purchase Price shall be payable by Buyer to Seller as follows:

(a) Buyer shall pay \$414,000 of the Purchase Price to Seller at Closing by wire transfer of immediately available funds (the "Closing Date Payment").

(b) Buyer shall hold back \$46,000 of the Purchase Price (the "Holdback Amount") for a period of six months from Closing (the "Holdback Period") as partial security to satisfy (i) any claims of third parties relating to the SMATV Systems which have not been assumed by Buyer, and (ii) any claims made by Buyer against Seller under or with respect to this Agreement. To the extent that the Holdback Amount is not applied by Buyer to cover any such claims, Buyer shall pay to Seller, within 10 days after the end of the Holdback Period, all or any remaining portion of the Holdback Amount, together with interest on such amount at the rate of five percent per annum. The Holdback Amount shall not constitute the limit of Seller's liability to Buyer, and

Buyer shall retain all rights and remedies against Seller under this Agreement and pursuant to law, both during and after the Holdback Period.

2.4 Assumed Liabilities. Buyer shall assume, pay, discharge, and perform the following (the "Assumed Obligations and Liabilities"): (a) those obligations and Liabilities attributable to periods on and after the Closing Date under the Contracts assigned and transferred to Buyer at Closing; (b) other obligations and Liabilities of Seller only to the extent that there shall be an adjustment in favor of Buyer with respect thereto pursuant to Section 2.6; and (c) all obligations and Liabilities arising out of Buyer's ownership of the Assets on and after the Closing Date.

2.5 Excluded Liabilities. Seller hereby represents, covenants and agrees that Buyer shall not assume, and shall not in any way become liable for, any contracts, obligations or Liabilities of Seller of any nature whatsoever not included in the Assumed Obligations and Liabilities, including, without limitation, the following Liabilities, which shall be paid, performed or otherwise discharged by Seller:

(a) any obligation or Liability of Seller accrued or incurred by Seller after the Closing Date;

(b) any obligation or Liability in connection with any customer contract or any other contract or agreement retained by Seller;

(c) any Liability of Seller with respect to its outstanding shares of capital stock or any warrants, options or rights to purchase its shares which may be outstanding;

(d) any Liability for deferred Taxes or for Taxes, penalties or interest occurring as a result of an examination of Seller's federal or state Tax returns filed by Seller;

(e) any Liability of Seller related to or arising out of any profits sharing plan, defined benefit or contribution plan, money purchase plan or any other employee benefit plan sponsored by Seller relating to its employees;

(f) any Liabilities to employees or former employees of Seller, including but not limited to any liability for wages, salary, vacation pay, sick leave pay or any other pay for time not worked, back pay, damages payable under make whole remedies pursuant to Applicable Law governing employment practices;

(g) any obligation of Seller to perform this Agreement, and any Liabilities and obligations incurred by Seller in connection with this Agreement or the consummation of the transactions provided herein or contemplated hereby, including, without limitation, fees and expenses of Seller's counsel, accountants and other experts and all other expenses incurred by Seller incident to the negotiation, preparation and execution of this Agreement or any transaction incident hereto or

contemplated hereby, including expenses incurred in proving or perfecting title to property, Taxes, commissions and all other expenses of Seller pertaining to the performance by it of its obligations under this Agreement;

(h) any debt, obligation or Liability of Seller which may arise out of any litigation, whether or not described in *Schedule 4.5* attached hereto;

(i) any of Seller's debts, Liabilities and obligations arising out of or relating to any transactions entered into at or prior to the Closing Date, any action or omission at or prior to the Closing Date or any state of facts existing at or prior to the Closing Date; and

(j) any obligations or Liability in connection with any customer deposit retained by Seller, including but not limited to any Liability related to the return of such customer deposits to customers.

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2.6 Current Items Amount. Buyer or Seller, as appropriate, shall pay to the other (by increasing or decreasing the funds paid as the Purchase Price) the net amount of the adjustments and prorations effected pursuant to this Section 2.6 (the "Current Items Amount").

2.6.1 Eligible Accounts Receivable. Seller shall be entitled to an amount equal to the sum of (i) 95% of the face amount of all Eligible Accounts Receivable that are current or 30 days or less past due as of the Adjustment Time, plus (ii) 80% of the face amount of all Eligible Accounts Receivable that are between 31 days and 60 days past due as of the Adjustment Time, plus (iii) 0% of the face amount of all Eligible Accounts Receivable that are 61 days or more past due. "Eligible Accounts Receivable" shall mean accounts receivable resulting from the provision of cable television service by the SMATV Systems to active subscribers (as of the Adjustment Time) that relate to periods of time prior to the Adjustment Time. For purposes of making "past due" calculations under this subsection, an Eligible Account Receivable shall be deemed "past due" when the payment due under an original monthly billing statement of Seller has not been received by the SMATV System within 30 days following the first day of the period to which such original monthly billing statement relates.

2.6.2 Advance Payments and Deposits. Buyer shall be entitled to an amount equal to the aggregate of (i) all deposits of subscribers of the SMATV Systems for converters, decoders, and similar items, and (ii) all payments made to Seller for (A) services to be rendered by Buyer to subscribers of the SMATV Systems after the Adjustment Time or (B) other services to be rendered by Buyer to other third parties after the Adjustment Time for services or rentals, to the extent that the obligations of Seller relating thereto are assumed by Buyer at Closing.

2.6.3 Expenses. As of the Adjustment Time, the following expenses shall be prorated, in accordance with generally accepted accounting principles, so that all expenses for periods prior to the Adjustment Time shall be for the account of Seller, and all expenses for periods after the Adjustment Time shall be for the account of Buyer:

- (a) all payments and charges under the Contracts;
- (b) general property Taxes, special assessments, and ad valorem taxes levied or assessed against any of the Assets;
- (c) sales and use Taxes, if any, payable with respect to cable television service and related sales to the SMATV Systems' subscribers;
- (d) charges for utilities and other goods or services furnished to the SMATV Systems;
- (e) copyright expense; and
- (f) all other items of expense relating to the SMATV Systems;

provided, however, that Seller and Buyer shall not prorate any items of expense payable under any Excluded Assets, all of which shall remain and be solely for the account of Seller.

2.6.4 Subscriber Adjustment.

(a) On the Closing Date, Buyer shall be entitled to an amount equal to the product of (a) the Subscriber Shortfall, if any, multiplied by (b) \$990. For purposes of this Agreement, the "Subscriber Shortfall" equals the sum of (i) the number by which the total number of Equivalent Basic Subscribers residing at the Complexes other than The Echelon at the Ballpark as of the Adjustment Time is less than 296, and (ii) the number by which the total number of Equivalent Basic Subscribers residing at The Echelon at the Ballpark is less than 33.

(b) Within 10 days after the six-month anniversary of the Closing Date, Buyer shall determine the number of Equivalent Basic Subscribers at the Complexes on such six-month

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anniversary date (the "Six-Month Subscriber Number"). In the event that the Six-Month Subscriber Number is less than the lesser of (a) 329 and (b) the aggregate number of Equivalent Basic Subscribers served by the SMATV Systems as of the Closing Date, then Seller shall pay to Buyer, as a post-Closing adjustment to the Purchase Price, an amount equal to (i) the adjusted Purchase Price paid to Seller at Closing (taking into account only the adjustment, if any, to the Purchase Price pursuant to Section 2.6.4(a)) minus (ii) the product of \$990 and the Six-Month Subscriber Number.

2.7 Current Items Amounts Calculated. The Current Items Amount shall be estimated in good faith by Seller, and set forth, together with a detailed statement of the calculation thereof, in a certificate (the "Initial Adjustment Certificate") executed by an officer of Seller and delivered to Buyer not later than five days prior to Closing. If accepted by Buyer, the Initial Adjustment Certificate shall constitute the basis on which the Current Items Amount is calculated for purposes of Closing. Seller and Buyer shall endeavor in good faith to agree upon an estimate of the Current Items Amount, on the basis of the Initial Adjustment Certificate and such other information as they deem relevant, prior to Closing. At Closing, the party against whose favor the estimated Current Items Amount is so determined shall pay to the other the estimated Current Items Amount by way of adjustment to the Purchase Price paid to Seller at Closing. Buyer and Seller shall use good faith efforts to determine the actual Current Items Amount within 90 days after Closing. If Buyer and Seller are unable to agree on the actual Current Items Amount within 90 days after Closing, the disputed portion of the Current Items Amount shall be determined by a partner in a major accounting firm with substantial cable television audit experience but which is not an auditor of either Buyer or Seller (the "Qualified Auditor") and the determination of the Qualified Auditor shall be final and binding upon the parties. If Buyer and Seller cannot agree with respect to selection of the Qualified Auditor, Buyer and Seller shall each select an auditor and those two auditors shall select the Qualified Auditor whose determination shall be final and binding upon the parties. Buyer and Seller shall bear equally the expenses arising in connection with the determination of the Qualified Auditor. Not later than 15 days after Seller and Buyer shall have finally agreed upon the actual Current Items Amount, or the actual Current Items Amount is determined by the Qualified Auditor, Seller or Buyer, as appropriate, shall pay to the other an amount equal to the amount by which the Current Items Amount as finally determined differs from the estimated Current Items Amount paid at Closing.

2.8 Closing.

(a) The closing of the transactions contemplated by this Agreement ("Closing") will be held effective as of the first calendar day of the next calendar month 45 days following the first business day in which all conditions to Closing contained in this Agreement (other than those based on acts to be performed at Closing) have been satisfied or waived. In no event will Closing occur later than December 1, 2002 (the "Outside Closing Date"), unless the parties otherwise agree. Closing will be held via facsimile and overnight courier, or at such place and at such time as Buyer and Seller may agree. If Closing Date is not a business day, then Buyer will pay the Purchase Price on the immediately following business day.

(b) Subject to the conditions set forth in this Agreement, on the Closing Date:

- (i) Seller will convey to Buyer good and marketable title to all of the Purchased Assets, free and clear of all liens, charges, security interests and other encumbrances; and
- (ii) Buyer will deliver to Seller the Closing Date Payment.

**ARTICLE III.
REPRESENTATIONS AND WARRANTIES OF BUYER**

To induce Seller to enter into this Agreement, Buyer represents and warrants to Seller that the following are true and correct on the date hereof and will be true and correct as of the Closing Date:

3.1 Organization. Buyer is a limited partnership lawfully existing and in good standing under the laws of its state of its formation with full power and authority to own or lease its properties and to conduct its business in the manner and in the places where such properties are owned or leased or such business is conducted by it.

3.2 Binding Nature of Agreement. This Agreement has been duly and validly executed and delivered by Buyer and is, and each Ancillary Agreement contemplated hereby when executed and delivered will be, the legal, valid and binding obligation of Buyer, enforceable in accordance with its respective terms, except as such may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally, and by general equitable principles.

3.3 **Regulatory Approvals.** All consents, approvals and authorization and all other requirements prescribed by any Applicable Law which must be obtained or satisfied by Buyer and which are necessary for the execution and delivery by Buyer of this Agreement and the documents to be executed and delivered by Buyer in connection herewith and in order to permit the consummation of the transactions contemplated by this Agreement have been obtained and satisfied or shall be obtained and satisfied by Closing.

3.4 **No Violation.** The execution, delivery and performance of this Agreement by Buyer and the consummation by Buyer of the transactions contemplated hereby do not and will not contravene or constitute a default under or give rise to a right of termination, cancellation or acceleration of any right or obligation of Buyer or to a loss of any benefit to which Buyer is entitled under (i) any provision of Applicable Law to which Buyer may be subject; (ii) the limited partnership agreement of Buyer; or (iii) any judgment, injunction, order or decree binding upon Buyer.

3.5 **No Brokerage Fees.** No broker or finder has acted for Buyer in connection with this Agreement or the transactions contemplated hereby, and no broker or finder is entitled to any brokerage or finder's fees or other commission in respect of such transactions based in any way on agreements, arrangements or understandings made by or on behalf of Buyer.

3.6 **Litigation.** To Buyer's Best Knowledge, there is no litigation pending or threatened, which seeks to enjoin or obtain damages in respect of the consummation of the transactions contemplated hereby.

ARTICLE IV.

REPRESENTATIONS AND WARRANTIES OF SELLER

To induce Buyer to enter into this Agreement, Seller represents and warrants to Buyer that the following are true and correct on the date hereof and will be true and correct as of the Closing Date:

4.1 **Authority of Seller.** Seller has full right, authority and power to enter into this Agreement and each Ancillary Agreement and to carry out the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement and the Ancillary Agreements by Seller and the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements have been duly authorized by all necessary corporate action on the part of Seller. Except as set forth on *Schedule 4.1*, the execution, delivery and performance of this Agreement and the Ancillary Agreements by Seller and the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements do not and will not conflict with, result in a default of, constitute a breach or default under, or create in any party the right to accelerate, terminate, modify, or cancel, or require any notice

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or consent to, or filing with, any person that has not been obtained or made under or in connection with:

- (a) any provision of the Articles of Incorporation or Bylaws of Seller;
- (b) any Applicable Law to which Seller or the Purchased Assets may be subject; or
- (c) any of the Purchased Assets.

The execution, delivery and performance of this Agreement and of each of the Ancillary Agreements by Seller does not and will not result in the creation or imposition of any mortgage, pledge, lien, security interest or other charge or encumbrance on any of the Purchased Assets.

4.2 **Organization and Qualification.** Seller is a corporation lawfully existing and in good standing under the laws of its state of incorporation with full power and authority to own or lease its properties and to conduct its business in the manner and in the places where such properties are owned or leased or such business is conducted by it.

4.3 **Binding Nature of Agreement.** This Agreement has been duly and validly executed and delivered by Seller and is, and each Ancillary Agreement contemplated hereby when executed and delivered will be, the legal, valid and binding obligation of Seller, enforceable in accordance with its respective terms, except as such may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally, and by general equitable principles.

4.4 **Tangible Personal Property.** Except as indicated in *Schedule 4.4*, with respect to all tangible personal property (including but not limited to Equipment) of Seller included in the Purchased Assets:

- (a) Seller has good and marketable title to each item of owned tangible personal property, free and clear of all liens, leases, encumbrances and restrictions;
- (b) Each item of tangible personal property included in the Purchased Assets is, and as of the Closing Date will be, in good operating condition and repair subject to ordinary wear and tear; and

(c) Seller owns or otherwise has the right to use all of the tangible personal property now used by it in the operation of the SMATV Systems.

4.5 **Litigation.** Except as set forth in *Schedule 4.5*, there are no legal actions, suits, arbitrations or other legal, administrative or governmental proceedings or investigations pending, or, to the Best Knowledge of Seller, threatened against Seller which in any way relate to the SMATV Systems or the Purchased Assets.

4.6 **Compliance with Laws.** Except as set forth on *Schedule 4.6*, (a) Seller is in compliance with all material respects with all Applicable Laws, and (b) Seller has not received notice of a violation or alleged violation of any such Applicable Law, in each case which relates to the SMATV Systems or the Purchased Assets.

4.7 **Records.** The Records of Seller to be purchased by Buyer are, and will be as of the Closing Date, materially true and complete, and have been and will have been kept in accordance with Applicable Law and good business practices.

4.8 **Consents and Approvals.** Except for those listed in *Schedule 4.8*, no consent, authorization, order or approval of or filing with or notice to any Governmental Authority or other entity or person, including, without limitation, consents from parties to the Contracts, is required for the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement.

4.9 **Environmental Laws.** Seller is in compliance in all material respects with all Applicable Laws with respect to the environment and Hazardous Substances in connection with the operation of the

SMATV System. There are no pending or, to the Seller's Best Knowledge, threatened environmental investigations or proceedings with respect to the operation of the SMATV System. To the Best Knowledge of Seller, there is and has been no current or past usage or practice of Seller with respect to any Hazardous Substances which may support a claim or cause of action against Seller with respect to the SMATV Systems under Applicable Law.

4.10 **No Brokerage Fees.** No broker or finder has acted for Seller in connection with this Agreement or the transactions contemplated hereby, and no broker or finder is entitled to any brokerage or finder's fees or other commission in respect of such transactions based in any way on agreements, arrangements or understandings made by or on behalf of Seller.

4.11 **Taxes.** Except as described on *Schedule 4.11*, (a) Seller has duly and timely paid all Taxes with respect to the Purchased Assets and the SMATV Systems which have become due and payable; (b) Seller has received no notice of, nor has Seller received any notice of deficiency or assessment or proposed deficiency or assessment from any Governmental Authority with respect to, the Purchased Assets or the SMATV Systems; (c) there are no audits pending with respect to the Purchased Assets or the SMATV Systems and there are no outstanding agreements or waivers by Seller that extend the statutory period of limitations applicable to any Federal, State, local or foreign Tax returns or Taxes with respect to the SMATV Systems or the Purchased Assets; and (d) Seller has duly and timely filed in true and correct form all Tax returns and Tax reports required to be filed by Seller.

4.12 **Contracts.** Except as set forth on *Schedule 4.12*, all of the Contracts are in full force and effect, and neither Seller nor, to the Best Knowledge of Seller, the other party thereto is in default under any Contract (nor, to the Best Knowledge of Seller, has any event occurred which with notice, lapse of time or both would constitute a default thereunder). Seller has not received any notice (a) of any alleged default under any Contract prior to the date of this Agreement or (b) that any Contract will be cancelled. Except as set forth on *Schedule 4.12*, each Contract is assignable to Buyer and neither such assignment nor the consummation of any of the transactions contemplated by this Agreement will result in a default under, or termination of or payment penalty under, any Contract.

4.13 **SMATV Systems Information.** *Schedule 4.13* sets forth a true and accurate description of the following information as of the date of this Agreement:

4.13.1 the number of individual dwelling units in each of the Complexes;

4.13.2 a description of the services available from each of the SMATV Systems, the rates charged by Seller for each, together with the number of subscribers receiving each of the services, and any other charges by Seller for services to subscribers of the SMATV Systems; and

4.13.3 the channel and bandwidth capacity of the SMATV Systems, the stations and signals carried by the SMATV Systems, and the channel position of each such signal and station.

4.14 **No Other Operators.** Other than direct-to-home satellite services, the SMATV Systems are the only multiple channel video operator presently serving the Complexes.

4.15 **Material Omissions.** No representation or warranty by Seller in this Agreement, any of the Ancillary Agreements, or any written statement, certificate or schedule furnished to or to be furnished by Seller to Buyer pursuant to this Agreement or in connection with the transactions contemplated herein, contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances.

ARTICLE V.
CONDITIONS TO CLOSING

5.1 **Conditions to Buyer's Obligation.** The obligation of Buyer to consummate the transactions contemplated by this Agreement is subject to the satisfaction of the following conditions on or before the Closing Date:

(a) The representations and warranties set forth in Article 4 hereof or in any document delivered to Buyer pursuant to this Agreement will be true and correct in all material respects at and as of Closing as though then made and as though the Closing Date was substituted for the date of this Agreement;

(b) Seller will have performed and complied with, in all material respects, all of the covenants and agreements required to be performed and complied with by it under this Agreement prior to Closing;

(c) There will have been no Material Adverse Effect, other than the decision of Seller to sell the Purchased Assets, and there will have been no material casualty or other loss or damage to the Purchased Assets, whether or not covered by insurance, and there has been no other event which may have a Material Adverse Effect;

(d) All consents by third parties that are required for the consummation of the transactions contemplated hereby will have been duly made and obtained;

(e) No action or proceeding before any court or government body will be pending or threatened wherein an unfavorable judgment, decree or order could have a Material Adverse Effect or would prevent the carrying out of this Agreement or any of the transactions contemplated hereby, declare unlawful the transactions contemplated hereby or cause such transactions to be rescinded;

(f) Upon written notice from Buyer to Seller given at least 10 days prior to Closing, or given 10 days prior to the date designated by Buyer for deletion, if earlier than Closing, Seller shall have deleted from the SMATV Systems any programming services that (i) Buyer does not have the right to carry on the SMATV Systems after Closing or (ii) Buyer determines, in its reasonable judgment, could potentially result in liability on the part of Buyer for copyright payments after Closing in excess of those payments made by Seller with respect to carriage of such signals prior to Closing.

(g) Buyer shall have obtained an executed service agreement for each of the Complexes, such agreement to have a term of at least 10 years, to expressly supersede and terminate Seller's existing service agreement for the Complex (subject only to the occurrence of Closing), and to be otherwise in form and substance reasonably acceptable to Buyer.

(h) The Echelon at the Ballpark Complex shall have no fewer than 385 habitable residential dwelling units.

(i) On the Closing Date, Seller will have delivered to Buyer all of the following:

(i) copies of all necessary third party and governmental consents, releases, approvals and filings required in order to effect the transactions contemplated by this Agreement;

(ii) a certificate from the State of Tennessee stating that no taxes, interest or penalties are due from Seller;

(iii) the Ancillary Agreements, including a Bill of Sale and Assignment in substantially the form attached hereto as *Exhibit A*, duly executed by Seller, as are required in order to transfer to Buyer good and marketable title to the Purchased Assets, free and clear of all liens, charges, security interests and other encumbrances;

(iv) an executed Noncompetition Covenant substantially in the form attached hereto as *Exhibit B* from Seller and certain named affiliates; and

(v) all other documents, instruments or writings required to be delivered to Buyer at or prior to Closing pursuant to this Agreement, and such other certificates of authority and documents as Buyer may reasonably request.

(j) Within the 45 day period following the first business day in which all conditions to Closing contained in this Agreement (other than those based on acts to be performed at Closing) have been satisfied or waived, Buyer shall have completed its interconnection of the SMATV Systems to Buyer's cable television system; provided, however, any failure by Buyer to interconnect must be beyond Buyer's reasonable control including, but not limited to, any casualty or other loss or damage to the Purchase Assets, lack of access or cooperation by the owners of the Complexes, interference by any Governmental Authority, etc.

Any condition specified in this Section 5.1 may be waived by Buyer; provided that no such waiver will be effective unless it is set forth in a writing executed by Buyer.

5.2 *Conditions to Seller's Obligations.* The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction of the following conditions on or before the Closing Date:

(a) The representations and warranties set forth in Article 3 hereof or in any document delivered to Seller pursuant to this Agreement will be true and correct in all material respects as of Closing as though then made and as though the Closing Date was substituted for the date of this Agreement; and

(b) On the Closing Date, Buyer will have delivered to Seller all of the following:

(i) the Closing Date Payment; and

(ii) any Ancillary Agreements, duly executed by Buyer.

ARTICLE VI.

ADDITIONAL COVENANTS

6.1 *Certain Affirmative Covenants of Seller.* Except as Buyer may otherwise consent in writing, between the date of this Agreement and Closing Seller shall (a) operate the SMATV Systems only in the usual, regular, and ordinary course and in accordance with past practices (including, but not limited to, maintaining appropriate personnel and fulfilling installation requests), (b) maintain the Purchased Assets in good condition and repair, ordinary wear excepted, (c) duly comply with all applicable legal requirements, (d) perform all of its obligations under all the Contracts without default, (e) give to Buyer, and its counsel, accountants, and other representatives, full access during normal business hours to the SMATV Systems, all of the Purchased Assets, Seller's books and records relating to the SMATV Systems and the Purchased Assets, and the System's personnel including but not limited to, access for the purpose of interconnecting the SMATV Systems to Buyer's cable television system, (f) furnish to Buyer and such representatives all such additional documents, financial information, and other information with respect to the SMATV Systems or the Purchased Assets as Buyer may from time to time reasonably request, and (g) use its best efforts to obtain in writing as promptly as possible all approvals, authorizations, and consents required in order to consummate the transactions contemplated hereby and deliver to Buyer copies, satisfactory in form and substance to Buyer, of such approvals, authorizations, and consents; provided, however, that Seller shall not accept or agree or accede to any modifications or amendments to, or any conditions to the transfer of, the Contracts that are not acceptable to Buyer.

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6.2 *Certain Negative Covenants of Seller.* Except as Buyer may otherwise consent in writing, or as contemplated by this Agreement, between the date of this Agreement and Closing, Seller shall not (a) modify, terminate, renew, suspend, or abrogate any Contract, (b) enter into any transaction or permit the taking of any action that would result in any of the representations and warranties contained in this Agreement not being true and correct when made or at Closing, (c) engage in any marketing, subscriber installation, or collection practices that are inconsistent with such practices of Seller, or (d) implement any increase or decrease in the rates for cable television service or charges for equipment or installation or make any changes in channel lineups.

6.3 *Mutual Assistance.* Subsequent to Closing, Seller and Buyer shall at their own expense assist each other in preparation of their respective Tax returns and the filing and execution of Tax elections, if required, as well as any audits or litigation that ensues as a result of the filing thereof, to the extent that such assistance is reasonably requested.

6.4 *Press Release and Announcements.* No press releases related to this Agreement and the transactions contemplated herein, or other announcements to Seller's employees, customers and suppliers will be issued without the joint approval of Buyer and Seller. Buyer and Seller may cooperate to prepare a joint press release to be issued on or following the Closing Date.

6.5 *Further Transfers.* Subsequent to Closing, Seller will execute and deliver such further instruments of conveyance and transfer and take such additional action as Buyer may reasonably request to effect, consummate, confirm or evidence the transfer to

Buyer of the Purchased Assets. Seller will execute such documents as may be necessary to assist Buyer in preserving or perfecting its rights in the Purchased Assets.

6.6 Confidentiality. If the transactions contemplated by this Agreement are not consummated, Buyer will maintain the confidentiality of all information and materials reasonably designated by Seller as confidential, and Buyer will return, or destroy and certify the destruction of, all materials (and all copies of such materials) received in connection with this Agreement and the transactions contemplated hereby. If the transactions contemplated by this Agreement are consummated, Seller will maintain the confidentiality of all information and materials relating to the SMATV Systems (including all customer lists), except as necessary to file tax returns and other reports to governmental agencies. Whether or not the transactions contemplated hereby are consummated, Seller will maintain the confidentiality of all information and materials regarding Buyer and its affiliates designated as confidential by Buyer.

6.7 Bulk Transfer Laws. Seller agrees to indemnify and hold harmless Buyer against any claims or demands asserted against Buyer by any creditor of Seller in connection with any liabilities and obligations of Seller other than those assumed by Buyer under this Agreement, and any costs and expenses reasonably incurred by Buyer in defending against such claims or demands. Seller shall be given prompt notice of any such claims or demands, upon Buyer's learning of the same.

6.8 Transfer Taxes. All sales, use, transfer, and similar Taxes, fees, and assessments arising from or payable in connection with the transfer of the Purchased Assets or by reason of the transactions contemplated by this Agreement shall be the liability of and for the account of Seller.

6.9 Transitional Services; Removal of Equipment. Seller shall provide to Buyer, upon written request and at the cost of Buyer (not to exceed the actual cost to Seller of providing such services), subscriber billing and/or other transitional services (the "Transitional Services") in connection with the SMATV Systems, which may include Buyer's use of the Headend Equipment, for a period not to exceed 30 days following the Closing. Buyer shall notify Seller in writing at least 10 days prior to the Closing as to what, if any, Transitional Services it will require from Seller. Seller shall remove the Headend Equipment from the Complexes, and all DirectTV set top receivers/converters from its customers at the Complexes, at its expense, promptly upon notice from Buyer. Buyer shall provide Seller with access to the Complexes during normal business hours to remove such equipment.

ARTICLE VII.

TERMINATION AND DEFAULT

7.1 Termination Events. This Agreement may be terminated and the transactions contemplated hereby may be abandoned:

7.1.1 at any time, by the mutual written agreement of Buyer and Seller;

7.1.2 by either Buyer or Seller, upon written notice to the other, at any time, if the other is in breach or default of its respective covenants, agreements, or other obligations herein, or if any of its representations herein are not true and accurate when made or when otherwise required by this Agreement to be true and accurate, and such breach, default or failure is not cured within 30 days of receipt of notice that such breach, default or failure exists or has occurred;

7.1.3 by either Buyer or Seller upon written notice to the other, if Closing shall not have occurred on or before the Outside Closing Date for any reason other than a breach or default by such party of its respective covenants, agreements, or other obligations hereunder, or any of its representations herein not being true and accurate in all material respects when made or when otherwise required by this Agreement to be true and accurate in all material respects; or

7.1.4 as otherwise provided herein.

7.2 Effect of Termination.

7.2.1 Buyer's Remedies. If both (i) this Agreement is terminated by Buyer pursuant to Sections 7.1.2 or 7.1.3, and (ii) Seller is in breach in any material respect of any of its representations and warranties made herein or its covenants or agreements made herein (and Buyer is not in breach in any material respect of any of its representations and warranties or covenants made herein), then Buyer shall have the right to seek specific performance and/or money damages from Seller for any losses or damages incurred by Buyer.

7.2.2 Seller's Remedies. If both (i) this Agreement is terminated by Seller pursuant to Sections 7.1.2 or 7.1.3, and (ii) Buyer is in breach in any material respect of any of its representations and warranties made herein or its covenants or agreements made herein (and Seller is not in breach in any material respect of any of its representations and warranties or

covenants made herein), then Seller shall have the right to seek money damages from Buyer for any losses or damages incurred by Seller.

ARTICLE VIII.

NATURE AND SURVIVAL OF REPRESENTATIONS AND WARRANTIES

8.1 **Nature of Statements.** All statements contained in this Agreement or any Schedule or Exhibit hereto shall be deemed representations and warranties of the Party executing or delivering the same.

8.2 **Survival of Representations and Warranties.** All representations and warranties made hereunder or pursuant hereto or any Schedule or Exhibit hereto or in connection with the transactions contemplated hereby and thereby shall not terminate but shall survive Closing and continue in effect thereafter until the first anniversary of the Closing Date, except for those representations and warranties contained in Sections 4.1, 4.2 and 4.3, which shall survive indefinitely, and those representations and warranties contained in Sections 4.9 and 4.11, which shall survive for a period ending 30 days after the expiration of the statutory period of limitations applicable to third party claims with respect to the matters that are the subject of the representations set forth in such Sections. Notwithstanding the foregoing, those representations and warranties for which a specific claim has been asserted prior to expiration of the survival period shall, with respect to any such specific claim, continue until such claim is finally resolved. The covenants of Buyer and Seller shall survive indefinitely.

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ARTICLE IX.

INDEMNIFICATION

9.1 **Indemnification by Seller.** Seller agrees to indemnify and hold harmless Buyer and its successors and assigns, together with any of their officers, directors, partners, agents and employees, from and against any and all losses, damages, liabilities, obligations, costs or expenses (any one such item being herein called a "Loss" and all such items being herein collectively called "Losses") which are caused by or arise out of (a) any breach or default in the performance by the Seller of any covenant or agreement of the Seller contained in this Agreement, (b) any breach of warranty or inaccurate or erroneous representation made by the Seller herein, in any Schedule delivered to the Buyer pursuant hereto or in any certificate or other instrument delivered by or on behalf of the Seller pursuant hereto (subject to all terms and provisions of Section 8.2 herein), (c) any claim made against the Buyer in respect of any of the Excluded Liabilities, and (d) any and all actions, suits, proceedings, claims, demands, judgments, costs and expenses (including reasonable legal fees) arising out of the foregoing.

9.2 **Indemnification by Buyer.** Buyer agrees to indemnify and hold harmless Seller and its successors and assigns, together with any of their officers, directors, and shareholders, from and against any Losses which are caused by or arise out of (a) any breach or default in the performance by the Buyer of any covenant or agreement of the Buyer contained in this Agreement, (b) any breach of warranty or inaccurate or erroneous representation made by the Buyer herein or in any certificate or other instrument delivered by or on behalf of the Buyer pursuant hereto (subject to all terms and provisions of Section 8.2 herein), (c) any claim made against the Seller in respect of the Assumed Obligations and Liabilities, (d) Buyer's use of the Headend Equipment (including damage to the Headend Equipment in connection with such use, but not including ordinary wear and tear) after the Closing, and (e) any and all actions, suits, proceedings, claims, demands, judgments, costs and expenses (including reasonable legal fees) arising out of the foregoing.

9.3 **Third Party Claims.** If any third person asserts a claim against an indemnified party hereunder that, if successful, might result in a claim for indemnification against any indemnifying party hereunder, the indemnifying party shall be given prompt written notice thereof and shall have the right (a) to participate in the defense thereof and be represented, at this or its own expense, by advisory counsel selected by it, and (b) to approve any settlement if the indemnifying party is, or will be, required to pay any amounts in connection therewith. Notwithstanding the foregoing, if within 10 business days after delivery of the indemnified party's notice described above, the indemnifying party indicates in writing to the indemnified party that, as between such parties, such claims shall be fully indemnified for by the indemnifying party as provided herein, then the indemnifying party shall have the right to control the defense of such claim, provided that the indemnified party shall have the right (x) to participate in the defense thereof and be represented, at his or its own expenses, by advisory counsel selected by it, and (y) to approve any settlement if the indemnified party's interests are, or would be, affected thereby, which approval shall not be unreasonably withheld, conditioned or delayed.

9.4 **Exclusive Remedy.** Except with respect to claims based on fraud or intentional misrepresentation or knowing breach of this Agreement or claims for equitable relief, the enforcement of the indemnification agreement contained in this Article IX shall be, after the Closing Date, the exclusive remedy of the parties.

ARTICLE X.
MISCELLANEOUS

10.1 **Expenses.** Each Party will pay all of its expenses, including attorney's fees incurred in connection with the negotiation of this Agreement, the performance of its obligations hereunder and the consummation of the transactions contemplated by this Agreement.

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10.2 **Notices.** All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given when personally delivered, transmitted by facsimile (with telephonic confirmation of receipt) or mailed by first class mail, return receipt requested. Notices, demands and communications to Seller and Buyer will, unless another address is specified in writing, be sent to the addresses indicated below:

Seller:

Cable Concepts, Inc. d/b/a Direct Digital Communications
10012 Norwalk Boulevard
Suite 150
Santa Fe Springs, CA 90670
Attention: Mr. Gary Langendoen
Facsimile: 562-941-3416

Buyer:

Time Warner Cable
290 Harbor Drive
Stamford, CT 06902-6732
Attention: Ms. Bonnie Blecha
Facsimile: 203-328-0691

and

Legal Department
Time Warner Cable
290 Harbor Drive
Stamford, CT 06902-6732
Attention: Todd Brecher, Esq.
Facsimile: 203-328-4804

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

Holland & Hart LLP
555 Seventeenth Street
Suite 3200
P.O. Box 8749 (80201)
Denver, CO 80202
Attention: Stephen P. Villano, Esq.
Facsimile: 303-295-8261

10.3 **Entire Agreement; Amendment.** This Agreement and the Ancillary Agreements constitute the entire agreement between the Parties and supersede all prior discussions, negotiations and understanding relating to the subject matter hereof, whether written or oral. This Agreement shall not be amended, altered, enlarged, supplemented, abridged, modified, or any provisions waived, except by a writing duly signed by all of the Parties hereto.

10.4 **Benefit; Assignability.** This Agreement shall be enforceable by, and shall inure to the benefit of, the Parties to this Agreement and their respective successors and assigns, provided, however, that no Party may assign its rights or obligations under this Agreement without the consent of the other Party.

10.5 **Severability.** Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the

extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement.

10.6 **Captions.** The captions used in this Agreement are for convenience of reference only and do not constitute a part of this Agreement and will not be deemed to limit, characterize or in any way affect any provision of this Agreement, and all provisions of this Agreement will be enforced and construed as if no caption had been used in this Agreement.

10.7 **Counterparts.** This Agreement and any Ancillary Agreements may be executed by facsimile and in one or more counterparts all of which taken together will constitute one and the same instrument.

10.8 **Governing Law.** The laws of the State of New York govern all questions concerning the construction, validity and interpretation of this Agreement and the performance of the obligations imposed by this Agreement.

10.9 **Tax Treatment.** It is expressly understood and agreed that Buyer and Seller, or their respective officers, agents, accountants and attorneys have not made any warranty or agreement, express or implied, as to the Tax consequences of this transaction or the Tax consequences of any transaction pursuant to or arising out of this Agreement.

10.10 **Non-Exclusivity.** Except as provided in Section 8.4, the rights, remedies, powers and privileges provided in this Agreement are cumulative and not exclusive and shall be in addition to any and all rights, remedies, powers and privileges granted by law, rule, regulation or instrument.

* * * * *

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

SELLER:

CABLE CONCEPTS, INC., d/b/a DIRECT DIGITAL COMMUNICATIONS

By: _____

Its: _____

Date: _____

BUYER:

TIME WARNER ENTERTAINMENT COMPANY, L.P.,
through its Time Warner Cable Division

By: _____

Name: Bonnie J. Blecha
Title: Vice President

EXHIBITS

| | |
|-----------|-----------------------------|
| Exhibit A | Bill of Sale and Assignment |
| Exhibit B | Non-competition Covenant |

SCHEDULES

| | |
|-----------------|---------------------------|
| Schedule 2.1(a) | Equipment |
| Schedule 2.1(b) | Contracts |
| Schedule 2.2 | Excluded Assets |
| Schedule 4.1 | Authority of Seller |
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Exhibit 21

LIST OF SUBSIDIARIES OF USA BROADBAND, INC.

Cable Concepts, Inc.
Direct Digital Midwest
USAB Video Corp II, Inc.

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Exhibit 99.1

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002
(18 U.S.C. SECTION 1350)**

I, Grant Miller, certify that:

To the best of my knowledge and belief, the Transition Report on Form 10-KSB filed with the Securities and Exchange Commission on November 21, 2002 by USA Broadband, Inc. and to which this certification is appended (the "Periodic Report") fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934, and the information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of USA Broadband, Inc.

/s/ GRANT MILLER

Date: November 21, 2002

Grant Miller

Principal Executive Officer

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Exhibit 99.2

**CERTIFICATION OF CHIEF FINANCIAL OFFICER PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002
(18 U.S.C. SECTION 1350)**

I, Grant Miller, certify that:

To the best of my knowledge and belief, the Transition Report on Form 10-KSB filed with the Securities and Exchange Commission on November 21, 2002 by USA Broadband, Inc. and to which this certification is appended (the "Periodic Report") fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934, and the information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of USA Broadband, Inc.

Date: November 21, 2002

/s/ GRANT MILLER

Grant Miller

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[Exhibit 99.2](#)