



# SAN FRANCISCO PLANNING DEPARTMENT

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## Letter of Legitimization

June 4, 2013

David Silverman  
Reuben, Junius & Rose LLP  
1 Bush Street, Suite 600  
San Francisco, CA 94104

Site Address:	435-437 Potrero Avenue
Assessor's Block/Lot:	3974/022
Zoning District:	UMU
Staff Contact:	Corey Teague, (415) 575-9081 or <a href="mailto:corey.teague@sfgov.org">corey.teague@sfgov.org</a>

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

Dear Mr. Silverman:

This letter is in response to your request for a Letter of Legitimization per Planning Section 179.1 regarding the property at 435-437 Potrero Avenue. This parcel is located in the UMU Zoning District and a 58-X Height and Bulk District. The request is to legitimize the existing "Internet Services Exchange" use on the entirety of both floors in the existing two-story building totaling approximately 10,000 gross square feet.

### Procedural Background

The Department received the request for legitimization of office space at 435-437 Potrero Avenue on October 15, 2012. Staff reviewed the request and associated materials and the Zoning Administrator issued a 30-day public notice of the intent to issue the Letter of Legitimization on April 15, 2013. The public notice also included a draft letter for review, and was sent to 1) all owners of property within 300 feet of the subject property, 2) all current tenants of the subject property, and 3) all individuals and neighborhood associations that had requested to receive such notice. Additionally, notice was posted on the site during the notification period. The notification period expired on May 15, 2013.

### Eligibility

The land use proposed for legitimization is deemed eligible if it meets the following criteria:

- i. The land use existed as of the date of the application;

*Lease documents, business tax documents, building permits, utilities bills, and insurance documents indicate that the entirety of the subject building has been used as an "Internet Services Exchange" (d.b.a. RCN Telecom Services and Astound) since approximately May 30, 2000.*

- ii. The land use would have been principally permitted or permitted with conditional use authorization under provisions of the Planning Code that were effective on April 17, 2008;

*Prior to the Eastern Neighborhoods rezoning, the subject property was located in the M-1 Zoning District, which permitted an Internet Services Exchange with a Conditional Use Authorization.*

- iii. The land use would not be permitted under current provisions of the Planning Code;

*The subject property is located in the UMU Zoning District, which prohibits an Internet Services Exchange.*

- iv. The land use either has been (1) regularly operating or functioning on a continuous basis for no less than 2 years prior to the effective date of Planning Code Section 179.1, or (2) functioning in the space since at least April 17, 2008, and is associated with an organization, entity or enterprise which has been located in this space on a continuous basis for no less than 2 years prior to the effective date of Planning Code Section 179.1;

*Lease documents, business tax documents, building permits, utilities bills, and insurance documents indicate that the entirety of the subject building has been used as an "Internet Services Exchange" (d.b.a. RCN Telecom Services and Astound) since approximately May 30, 2000.*

- v. The land use is not accessory to any other use;

*The subject Internet Services Exchange is the principal use and is not accessory to any other uses within the building.*

- vi. The land use is not discontinued and abandoned pursuant to the provisions of Planning Code Section 183 that would otherwise apply to nonconforming uses.

*Lease documents, business tax documents, building permits, utilities bills, and insurance documents indicate that the building remained occupied until June 2010. Since that time, no new use was established in the building, and it has been actively marketed as an Internet Services Exchange. Therefore, the Internet Services Exchange use was not discontinued and abandoned pursuant to the provisions of Planning Code Section 183.*

## Determination

It is my determination that the request for legitimization of the existing approximately 10,000 gross square feet of Internet Services Exchange on the entirety of both floors in the existing two-story building as shown on the submitted plans meet all the required criteria of Planning Code Section 179.1. Therefore, the subject gross floor area is deemed to be a legitimate Internet Services Exchange space as defined in Planning Code Section 209.6(c). A Notice of Special Restrictions shall be filed on the subject property documenting the specific building area legitimized as Internet Services Exchange in this letter and

David Silverman  
Reuben, Junius & Rose LLP  
1 Bush Street, Suite 600  
San Francisco, CA 94104

June 4, 2013  
Land Use Legitimization Letter  
435-437 Potrero Avenue

documented on the submitted plans on file with this request, prior to the approval of a site or building permit establishing such Internet Services Exchange. This determination is not a project approval, or in any way a substitute for the Building Permit Application for the change of use to Internet Services Exchange.

Please note that a Conditional Use Authorization and subsequent Building Permit Application must be approved to legally convert the subject gross floor area to Internet Services Exchange. Additionally, the relevant impact fees outlined in Section 179.1(g), and elsewhere in the Municipal Code, shall be assessed as part of the Building Permit Application.

APPEAL: If you believe this determination represents an error in interpretation of the Planning Code or abuse in discretion by the Zoning Administrator, an appeal may be filed with the Board of Appeals within 15 days of the date of the Letter of Legitimization. For information regarding the appeals process, please contact the Board of Appeals located at 1650 Mission Street, Room 304, San Francisco, or call (415) 575-6880.

Sincerely,



Scott F. Sanchez  
Zoning Administrator

cc: Corey Teague, Planner  
Philip Blix, Property Owner  
William Spencer  
Planning Commissioners  
All Parties on the Notification Request List

I:\Current Planning\SE Team\ EASTERN NEIGHBORHOODS\EN Legitimization\435 Potrero Ave\Draft LoL.doc

**Eastern Neighborhoods Legitimization  
Application §179.1**

October 15, 2012

**By Hand Delivery**

Mr. Scott Sanchez  
Zoning Administrator  
1650 Mission Street, 4<sup>th</sup> floor  
San Francisco, CA 94103

ID #10741 (SE) J. BARRAS

OK #20855 \$588 -

NEEDS \$13 MORE.

**Re: Eastern Neighborhood Legitimization Application  
Planning Code Section 179.1  
435-437 Potrero Avenue (Block 3974, Lot 022)  
Our File No.: 7424.01**

Dear Mr. Sanchez:

Enclosed please find the application and supporting materials, including two additional copies, for an Eastern Neighborhoods ("EN") Legitimization request under Planning Code Section 179.1 for the property located at 435-437 Potrero Avenue ("Property"). We are filing this application on behalf of F.W. Spencer & Son, Inc., the owner of the Property.

**A. Introduction and Background.**

The Property is located at 435-437 Potrero Avenue, midblock between Mariposa and 17<sup>th</sup> Street, approximately two blocks from the Bayshore Freeway/Route 101. The building covers the full lot. The Property is improved with a 2-story, 10,000-square foot building used as an Internet Services Exchange since May 30, 2000 by RCN Telecom Services of California, Inc., which was purchased by Astound in 2005 but continued the same use. After a brief vacancy, during which marketing took place for the same use, the Property will be occupied by Industry Capital Data Centers for the identical use, immediately after this application is approved.

**B. Floor Plans, Photographs, and Upgrades.**

Floor plans for the Property are attached as **Exhibit A**. Interior and exterior photographs are attached as **Exhibit B**. The building comprises approximately 10,000 gross square feet of Internet Services Exchange area that is the subject of this request for legitimization.

**C. Evidence Supporting Eligibility.**

*i. The land use existed as of the date of the application.*

The entire building has been used since May 2000 by RCN Telecom Services of California Inc. (RCN) as an Internet Services Exchange. The lease between F.W. Spencer and Son, Inc., and RCN dated May 30, 2000 describes the “permitted uses” at the Property as follows:

“Telecommunications hub site for cable, internet and telephony, internet routing facility and other telecommunication uses and other related uses for Tenant’s telecommunications business.”

(See Triple Net Lease with RCN dated May 30, 2009, and First Amendment to Triple Net Lease dated June 2004, attached as **Exhibit C**.)

The owners significantly upgraded the building in 2000 at a cost exceeding \$1,000,000 to serve as an Internet Services Exchange for RCN. The building was seismically strengthened and mechanically upgraded to house a PG&E transformer vault to provide 400 kilowatts of power, including a diesel generator backup and related infrastructure for the Internet Services Exchange.

Continued use as an Internet Services Exchange will provide a vital and indispensable service to Internet startups and related small businesses in the South of Market neighborhood. Nearby businesses will access the Property to service and maintain their Internet servers on a continuing basis. Continuance of this Internet Services Exchange use will provide a significant benefit to the City as a whole and especially to the many Internet and technology companies located within walking distance to the Property. The Property has been upgraded to meet all current ADA requirements in connection with the seismic, electrical, and other other upgrades to the building conducted in May 2000.

This is a unique building that was outfitted with specialized electrical and mechanical upgrades to accommodate the Internet Services Exchange use twelve years ago, at the commencement of the boom of Internet startups. We are unaware of any other Internet Services Exchange in the neighborhood, and the use clearly provides an indispensable service for the most recent boom in the South of Market tech industry, which has been the primary creator of new employment opportunities for San Franciscans over the past several years, and a primary growth center in the San Francisco economy.

- ii. The land use would have been principally permitted or permitted with conditional use authorization under provisions of the Planning Code that were effective on April 17, 2008;

Prior to the EN rezoning, the Property was located in the M-1 (Light Industrial) Zoning District, which principally permitted “Commercial wireless transmitting, receiving or relay facility, including towers, antennae, and related equipment for the transmission, reception, or relay of radio, television, or other electronic signals” pursuant to Planning Code Section 227(h). “Internet Services Exchange” was not created as a separate land use category until May 13, 2002 by Ordinance No. 77-02. At that date, Sections 209.6, 790.80, and 890.80 were amended to define “Internet Services Exchange” as a new use within the “utility installation” use category. Had the use category for Internet Services Exchange existed at the time of the original permitting, it would have been permitted as Internet Use Exchange.

The land use would not be permitted under current provisions of the Planning Code;

Upon the conclusion of the EN rezoning process, the zoning district classification was changed from M-1 to Urban Mixed Use (“UMU”). Internet Services Exchanges are not permitted in the UMU zoning district. (Planning Code Section 843.14.)

The new zoning, UMU (Urban Mixed Use), was not adopted until June 11, 2008.

- iii. *The land use either has been (1) regularly operating or functioning on a continuous basis for no less than 2 years prior to the effective date of Planning Code Section 179.1, or (2) functioning in the space since at least April 17, 2008, and is associated with an organization, entity or enterprise which has been*

*located in this space on a continuous basis for no less than 2 years prior to the effective date of Planning Code Section 179.1;*

The Internet Services Exchange use has occupied the entire building since May 2000, well in excess of the two-year requirement for the EN Legitimization program under §179.1(2)(D)(1). The use has continued without interruption up to the present, except for a one-year period of marketing to find a replacement Internet Services Exchange. The new occupant will be Industry Capital Data Centers, and it will occupy the entire Property for Internet Services Exchange use as soon as this application is approved.

*iv. The land use is not accessory to any other use;*

The Internet Services Exchange use that is being requested for legitimization comprises the entire current use, which occupies the entire Property. The use that is the request of this legitimization is not accessory to any other use, but instead is the principal use of the building.

*v. The land use is not discontinued and abandoned pursuant to the provisions of Planning Code Section 183 that would otherwise apply to nonconforming uses.*

The Property has been under continuous, uninterrupted occupancy by RCN (purchased by Astound in 2005) for Internet Services Exchange use since May 2000. The use has not been discontinued or abandoned for a period of three years. (See Planning Code Section 183.) After a recent period of marketing for a new Internet Services Exchange, the new occupant, Industry Capital Data Centers, is awaiting approval of this application to commence its occupancy.

**D. Notification Materials.**

Mailing labels, 300-foot radius map and a list of owners within 300-foot radius are enclosed with this application.

**E. Fees.**

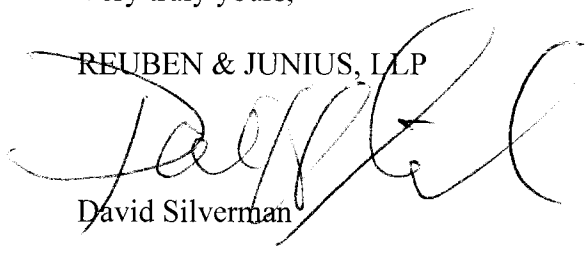
In addition to the evidence and other information and documents identified above, I have enclosed a check in the amount of \$588.00 made to the order of the Planning Department for the Department's filing fee.

Mr. Scott Sanchez  
Zoning Administrator  
San Francisco Planning Department  
October 15, 2012  
Page 5

Please do not hesitate to contact me or if you need any additional information or have any questions.

Very truly yours,

REUBEN & JUNIUS, LLP

  
David Silverman

Enclosures

Exhibit A – Floor plans  
Exhibit B – Photographs, Exterior and Interior  
Exhibit C – Lease and First Amendment to Lease  
Mailing labels, map and list of owners for 300-foot radius  
Check for \$588.00 for the Planning Department determination fee

cc: F.W. Spencer & Son, Inc. (w/o encls.)

### **FIRST AMENDMENT TO TRIPLE NET LEASE**

This First Amendment to Triple Net Lease ("Amendment") is made and entered into as of the \_\_\_\_ day of June, 2004, between F.W. Spencer & Son, Inc., a California corporation with an address of 99 South Hill Drive, Brisbane, California 94005 ("Landlord"), and RCN Telecom Services, Inc., a Pennsylvania corporation, successor by merger to RCN Telecom Services of California, Inc., having an address at 105 Carnegie Center, Princeton, New Jersey 08540 ("Tenant").

A. Landlord and Tenant have entered into a triple net lease dated as of May 30, 2000 (the "Lease") pursuant to which Landlord has leased to Tenant and Tenant has leased from Landlord certain Premises located at 437 Potrero Avenue, San Francisco, California.

B. Landlord and Tenant have agreed to amend the Lease to provide for an adjustment of the Fixed Rent payable under the Lease for the remainder of the Term.

C. Terms not otherwise defined herein shall have the same meaning as set forth in the Lease.

Now, therefore, in consideration of the mutual premises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. Section 1.2, Reference Data, "Fixed Rent" is deleted in its entirety from the Lease and the following is substituted in its place:

"Fixed Rent:	At an annual rental rate of Twenty-Nine Dollars Ninety-Four Cents (\$29.94) per square foot for the period from July 1, 2004 through July 31, 2004. Beginning on August 1, 2004 and on each August 1 thereafter through the expiration of the Term, Fixed Rent shall be adjusted annually by an amount equal to Three and One-Half Percent (3.5%) over the then prevailing Fixed rent for the Premises. Fixed Rent shall be payable in advance on the first day of each month."
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2. Except as otherwise expressly amended by this Amendment, the terms of the Lease are ratified and affirmed.

In witness whereof, Landlord and Tenant have caused this Amendment to be executed by their duly authorized officers as of the date first above referenced.

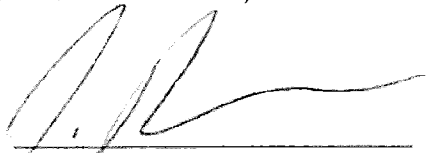
LANDLORD:

F.W. Spencer & Son, Inc.

By:   
Its: CEO

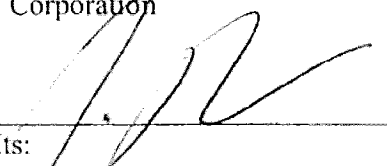
TENANT:

RCN Telecom Services, Inc.

By:   
Its: \_\_\_\_\_

RCN Corporation, the Guarantor under that Guarantee dated May 30, 2000, joins in this Amendment for the limited purpose of consenting to the Amendment and reaffirming its obligations under the Guarantee.

RCN Corporation

By:   
Its: \_\_\_\_\_  
James Horan  
VP of Real Estate

## **TRIPLE NET LEASE**

### **ARTICLE I**

1.1 **Parties.** This Triple Net Lease ("**Lease**") is executed this 30th day of May, 2000, between F. W. SPENCER & SON, INC., a California corporation with an address of 99 South Hill Drive, Brisbane, California 94005 ("**Landlord**") and RCN TELECOM SERVICES OF CALIFORNIA, INC., a California corporation having an office at 105 Carnegie Center, Princeton, New Jersey 08540 ("**Tenant**").

1.2 **Reference Data.** Each reference in this Lease to any of the following shall have the meaning set forth below:

**Building:** The building known as 437 Potrero Avenue, San Francisco, California, as more specifically described on the plan attached hereto as **Exhibit "A"**. The Building is located on the Land.

**Land:** The parcel of land on which the Building is located, which portion is more specifically shown on the plan attached hereto as **Exhibit "A"**.

**Premises:** Approximately 10,000 square feet of gross leasable area located in the Building, as shown on the plan attached hereto as **Exhibit "B"**.

**Term:** Ten (10) years.

**Option:** Tenant shall have the option and right to renew this Lease for one (1) additional term of ten (10) years. The renewal term shall commence on the day following the termination of the initial term. Fixed Rent for the renewal term shall be at 3.5% over the then prevailing Fixed Rent for the Premises and shall be adjusted annually on each anniversary of the Rent Commencement by an amount equal to 3.5% over the then prevailing Fixed Rent for the Premises.

**Commencement Date:** The date upon which Landlord and Tenant have executed this Lease. If Landlord is unable to deliver the Premises on or before July 10, 2000 ("**Possession Date**"), Landlord or Tenant may cancel this Lease without penalty by written notice to the other party, delivered to the other party prior to delivery of the Premises. If delivery of the Premises is delayed beyond the Possession Date, the Rent Commencement Date and the Expiration Date shall be adjusted to account for such delay.

**Expiration Date:** July 31, 2010

**Rent Commencement**

**Date:** August 1, 2000.

**Fixed Rent:** Thirty-Six Dollars (\$36.00) per square foot for the first year of the Lease Term commencing on the Rent Commencement Date. Fixed Rent shall be adjusted annually on each anniversary of the Rent Commencement by an amount equal to 3.5% over the then prevailing Fixed Rent for the Premises. Fixed Rent shall be payable in advance on the first day of each month.

**Permitted**

**Uses:** Telecommunications hub site for cable, internet and telephony, internet routing facility and other telecommunication uses and other related uses for Tenant's telecommunications business.

**Public Liability**

**Insurance Limits:** \$1,000,000.00 combined single limit

**Security Deposit:** RCN Corporation, a Delaware corporation, shall provide Landlord with a corporate guaranty in the form of **Exhibit "F"** attached hereto at the time of execution of the Lease securing Tenant's performance hereunder.

**Premises Delivery Fee:** On or before June 1, 2000, Tenant shall deposit the sum of Sixty-Five Thousand Dollars (\$65,000.00) ("**Premises Delivery Fee**") into an attorney trust account pursuant to escrow instructions in the form attached hereto as "**Exhibit "G."**" The Premises Delivery Fee is for the reimbursement of Landlord's costs and expenses associated with facilitating the delivery of the Premises to Tenant on or before July 10, 2000. The Premises Delivery Fee and any accrued interest shall be released from the attorney trust account and paid to Landlord at the time the existing tenant vacates the Premises, which is anticipated by the parties to be on or before the Possession Date. If Landlord fails to deliver the Premises to Tenant on the Possession Date described above and Tenant elects to cancel the Lease as set forth herein, the Premises Delivery Fee shall be paid to Tenant within two (2) days after receipt of the cancellation notice.

1.3 **Exhibits.** The exhibits listed below in this Section are incorporated in this Lease by reference and are to be construed as a part of this Lease:

- Exhibit A - Legal Description and Plan Showing Building and Land
- Exhibit B - Plan Showing Premises
- Exhibit C - Co-Location Agreement
- Exhibit D - Tenant Improvements Agreement
- Exhibit E - Form of Estoppel Certificate
- Exhibit F - Form of Guaranty
- Exhibit G - Premises Delivery Fee Escrow Instructions

## ARTICLE II

2.1 **Premises.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, subject to and with the benefit of the terms, covenants, conditions and provisions of this Lease, the Premises, as is. Landlord represents and warrants that it owns, manages, controls and/or operates the Building and the Premises and has the individual or corporate authority to enter into this Lease.

2.2 **Term.** Tenant shall hold the Premises for a term beginning with the Rent Commencement Date, and continuing for the Term, unless sooner terminated as hereinafter provided. Upon execution of this Lease, Tenant may take occupancy of the Premises prior to the scheduled Possession Date, in which event all of the terms and conditions of this Lease (with the exception of the rent provisions) shall be applicable from and after such earlier date. Such early occupancy by Tenant shall not affect the Term of this Lease.

2.3 **Option to Extend.** Tenant shall have the right, by notice given to Landlord at least six (6) months prior to the expiration of the Term or any prior extension term, to extend this Lease for one additional term of ten (10) years each, upon the same terms and conditions provided in the Lease ("Option"). The Fixed Rent during each such extension term shall be determined in accordance with Section 1.2 above. The Option shall be void if Tenant has breached any material term of the Lease, after receipt of written notice and an opportunity to cure such breach, prior to Tenant's submission of Tenant's written notice of its intent to exercise the Option.

2.4 **Offsite Customers.** Landlord acknowledges that Tenant's Permitted Use requires the installation in the Premises of certain communications equipment by certain licensees and customers of Tenant that do not occupy space in the Building (collectively, "**Offsite Customers**") in order for such Offsite Customers to interconnect with Tenant's Equipment or to permit Tenant to manage or operate such Offsite Customers' equipment, all in compliance with all applicable laws, covenants or restrictions of record, regulations and ordinances in effect on the Commencement Date ("**Applicable Requirements**"). Notwithstanding anything to the contrary contained in this Lease, Landlord has approved Tenant's use of the Co-Location Agreement attached to this Lease as **Exhibit "C"** ("**Co-Location Agreement**"), without material modification, for the limited purpose of permitting such arrangements as described above. A fully executed copy of such Co-Location Agreement shall be delivered to Landlord prior to the installation of an Offsite Customer's equipment. Tenant's right to co-locate the equipment of Offsite Customers is a right to site the Offsite Customer's equipment within, around, over and under the Premises, subject to Section 1.a. of the Co-Location Agreement.

## ARTICLE III

3.1 **Rent.** Tenant covenants to pay to Landlord, at the address of Landlord set forth above, or at such other place or to such other person or entity as Landlord may by notice in writing to Tenant from time to time direct, during the Term hereof and so long thereafter as Tenant or anyone claiming under Tenant occupies the Premises, the following rent:

3.1.1 Fixed Rent. The Fixed Rent set forth in Section 1.2, in equal monthly installments in advance on the first day of each month of the Term, and pro rata for any fraction of a month at the beginning or end of the Term, any fraction payable with respect to a portion of a month at the beginning of the Term is to be paid on the Commencement Date.

3.1.2 Additional Rent. Tenant shall pay to Landlord, as Additional Rent, the following (collectively, "Operating Expenses"):

- (a) 100% of real estate taxes and assessments by governmental authorities payable with respect to the rentable square footage of the Premises; and
- (b) 100% of all operating costs incurred by Landlord in the operation of the Building.

Tenant shall pay the aforesaid Additional Rent in monthly installments, based on Landlord's reasonable estimate of such amounts for the current calendar year. Not later than 30 days after the end of the calendar year, Landlord shall deliver to Tenant a statement detailing the actual Operating Expenses for the preceding calendar year together with copies of actual invoices and bills respecting said Operating Expenses, to the extent such bills are requested by Tenant. In the event Landlord's estimate of Operating Expenses exceeds the actual Operating Expenses for the preceding year, Tenant shall receive a credit against Additional Rent next due (or, if the Term has expired, a refund of such overpayment); in the event the actual Operating Expenses exceed Landlord's estimate, Tenant shall pay the difference to Landlord together with the next monthly installment of Fixed Rent.

If the real estate taxes for any tax year shall be reduced, whether as a result of a reduction in the tax rate or an appeal by Landlord of the real estate tax assessment, Landlord shall credit to Tenant, Tenant's proportionate share of such reduction minus the costs of such appeal to Landlord, against Tenant's Pro Rata Share of real estate taxes. If any reduction shall occur after the expiration of the Lease Term but shall apply to periods prior to such expiration, Tenant's proportionate share of such reduction shall be promptly refunded to Tenant.

3.1.3 Late Payments of Rent. If any installment of rent is paid more than ten (10) days after the date the same was due, it shall bear interest at the rate of ten percent (10%) per annum from the due date, but in no event more than the maximum rate of interest allowed by law, which shall be Additional Rent. In addition to such interest, for each installment of rent paid more than ten (10) days after the due date, Tenant shall pay to Landlord an amount equal to five (5%) percent of such installment to defer Landlord's costs of collection and administrative expenses relating to such late payment. If Tenant shall fail to pay three or more installments of rent on a timely basis within any consecutive twelve (12) month period, then, in lieu of the due date for payment of Fixed Rent set forth in Section 3.1.1, above, Tenant shall pay Fixed Rent on or before the 15<sup>th</sup> day of the month preceding the month to which such Fixed Rent applies, and payments made more than ten (10) days after such payment date shall be subject to all of the penalties for late payment set forth in this Section 3.1.3.

**3.1.4 Tenant's Insurance.** Tenant shall at its sole cost and expense obtain and maintain throughout the Term with reputable insurance companies qualified to do business in California, the following insurance, designating Landlord as a named insured:

(a) Commercial General Liability insurance indemnifying Landlord and Tenant against all claims and demands for any injury to person or property which may be claimed to have occurred in the Premises, in amounts which, at the beginning of the Term, shall be not less than the amounts set forth in Section 1.2, and, from time to time during the Term, may be for such higher amounts as Landlord may require, taking into account the region in which the Premises are located and similar properties used for similar purposes;

(b) So-called "all-risk" property insurance in the amount of the full replacement cost of all Tenant's property and fixtures and Landlord's property and fixtures;

(c) Workmen's compensation and any other insurance required by law or the nature of Tenant's business;

(d) Insurance against such other hazards as may from time to time be required by Landlord, or any bank, insurance company or other lending institution holding a first mortgage on the Premises, provided that such insurance is customarily carried in the region in which the Premises are located, on property similar to the Premises and used for similar purposes.

(e) If Tenant's use or occupancy of the Premises causes any increase in insurance premiums for the Building or Premises, Tenant will pay such additional cost.

Tenant shall furnish Landlord with certificates evidencing all such insurance prior to the beginning of the Term and of each renewal policy at least twenty (20) days prior to the expiration of the policy being renewed. Tenant's use and occupancy of the Premises shall conform to and comply with all requirements of Landlord's insurers, as such requirements may be amended or modified from time to time.

**3.1.5 Utilities.** Tenant shall pay directly to the proper authorities charged with the collection thereof all charges for the consumption of water use, sewer, electricity, gas, telephone and other services separately metered or billed to Tenant for the Premises, all such charges to be paid as the same from time to time become due. Tenant shall make its own arrangements for such utilities, and Landlord shall be under no obligation to furnish any utilities to the Premises and shall not be liable for any interruption or failure in the supply of any such utilities to the Premises. Landlord shall cooperate with Tenant in making any necessary utility connections available to Tenant.

**3.1.6 Permits and Approvals.** Tenant shall at its sole cost and expense obtain and maintain throughout the Term all of the authorizations, permits, approvals and licenses required for the construction of the improvements to the Premises and the conduct of Tenant's business

operations therein.

3.2 Audit Rights. In the event any dispute arises between Landlord and Tenant as to Operating Expenses, Tenant shall have the right, upon reasonable notice and at Landlord's offices, to inspect and photocopy, if desired, Landlord's records concerning the Operating Expenses of the Building. If, after such inspection, Tenant continues to dispute Operating Expenses, Tenant shall be entitled to retain an independent accountant or accountancy firm that has a specialty in auditing operating expenses to conduct an audit; provided that in no event shall Tenant conduct an audit more than one time in any twelve (12) month period. If any specific issue with respect to Operating Expenses is raised by Tenant and the same issue has been raised by any other Tenant and a change with respect to such issue has been granted to such other Tenant or if Tenant's audit reveals that Landlord has overcharged Tenant, after Landlord has been afforded an opportunity to explain any contrary position on the matter to Tenant's accounting firm (with any disputes being resolved in good faith by the parties), then Tenant shall receive a credit against the next month's Rent in the amount of such overcharge. If the audit reveals that Tenant was undercharged, then, within thirty (30) days after the results of such audit are made available to Tenant, Tenant shall reimburse Landlord for the amount of such undercharge. Tenant shall pay the cost of any audits requested by Tenant, unless any audit reveals that Landlord's determination of the Operating Expenses was in error by more than five percent (5%), in which case Landlord shall pay the cost of such audit. Landlord shall be required to maintain records of the Operating Expenses for the two-year period following each Operating Expense statement. Except in the event of fraud by Landlord, failure on the part of Tenant to object to the Operating Expense statement within one (1) year after its receipt thereof shall be conclusively deemed Tenant's approval of such Operating Expense statement.

#### ARTICLE IV

Tenant further covenants and agrees:

4.1 Repair and Maintenance. To keep the Premises in good order and repair, and in at least as good order and repair as they are in on the Commencement Date, reasonable use and wear and damage by fire or casualty insured against only excepted; and to keep all glass, fixtures and equipment now or hereafter on the Premises, including, without limitation, all heating, plumbing, electrical, air-conditioning, and mechanical fixtures and equipment serving the Premises, in good order and repair, and in at least as good order and repair as they are in on the Commencement Date, damage by fire or casualty only excepted; and to make all repairs and replacements and to do all other work necessary for the foregoing purposes. It is further agreed that the exception of reasonable use and wear shall not apply so as to permit Tenant to keep the Premises in anything less than suitable, efficient and usable condition, considering the nature of the Premises and the use reasonably made thereof, or in less than good order, repair, and condition.

4.2 Damage to the Premises. To pay the cost of all repairs to the Building including, without limitation, the roof, exterior walls and all structural components, if any damage thereto is caused by Tenant's improper use thereof.

4.3 Indemnity. To indemnify and save Landlord harmless from all claims, actions, damages, liability, cost or expense whatsoever arising or resulting from (i) any injury or damage to any person or property on the Premises or sidewalks or ways adjacent thereto, or otherwise arising directly or resulting directly from the use and maintenance and occupancy of the Premises, or any part thereof, by Tenant, (ii) any violation of this Lease by Tenant; or (iii) any act, omission or misconduct of Tenant, its agents, contractors, employees, licensees, subtenants or invitees.

4.4 Personal Property at Tenant's Risk. To the extent permitted by law, all merchandise, furniture, fixtures, effects and property of every kind, nature and description belonging to Tenant or to any persons claiming through or under Tenant, which may be on the Premises at any time, shall be at the sole risk and hazard of Tenant, and if the whole or any part thereof shall be destroyed or damaged by fire, water or otherwise, by theft or from any other cause, no part of said loss or damage is to be charged to or be borne by Landlord, except, however, in the event said loss or damage is attributable to Landlord's gross negligence or willful misconduct.

4.5 Assignment and Subletting. Not to assign or sublet this Lease, except to an "Affiliate" (as hereinafter defined), without first obtaining on each occasion the written consent of Landlord, which shall not be unreasonably withheld. No assignment or subletting shall in any way impair the continuing primary liability of Tenant hereunder, and no consent to any assigning or subletting in a particular instance shall be deemed to be a waiver of the obligation to obtain the Landlord's approval in the case of any other assignment or subletting. Notwithstanding the foregoing, Tenant may assign this Lease or sublet all or any part of the Premises to an Affiliate without Landlord's prior consent, but Tenant shall give Landlord prompt written notice of such assignment or subletting. For purposes of this Lease, an "Affiliate" of Tenant shall be a person (i) controlled by, controlling or under common control with Tenant, (ii) with whom or into whom Tenant is merged (regardless of whether Tenant is the surviving person after such merger), or (iii) acquiring all or substantially all of Tenant's assets and business operations for which the facilities located in the Premises are used by Tenant. An equipment collocation agreement with one or more carriers will not be considered an assignment or subletting by Tenant.

4.6 Compliance with Law. At Tenant's sole cost and expense, to conform to and comply with all zoning, building, environmental, fire, health and other codes, regulations, ordinances or laws.

4.7 Landlord's Right to Enter. To permit Landlord and Landlord's representatives to enter into and examine the Premises and show them to prospective purchasers, tenants and mortgagees at any reasonable time upon prior notice, subject, however, to Tenant's right to require that any such person entering the Premises be accompanied by a representative of Tenant as a condition of permitting entry into any secured area, except in the event of an emergency.

4.8 Expiration. At the expiration of the Term or upon earlier termination of this Lease:

- (i) to remove such of Tenant's goods and effects as are not permanently affixed to the Premises;
- (ii) to repair any damage caused by such removal; and
- (iii) peaceably to yield up the Premises and all previously approved alterations and additions thereto in the same order and repair as they were in at the beginning of the Term of this Lease or were put in during the Term hereof, reasonable use and wear and damage by fire or casualty insured against only excepted.

Tenant shall indemnify and hold Landlord harmless against any loss, cost or damage resulting from the failure and delay of Tenant or anyone claiming by or through it to surrender the Premises as provided in this Section.

4.9 Use. To use the Premises only for the Permitted Uses, and not to cause, permit or suffer the emission of objectionable odors, fumes, noise or vibration from the Premises. Landlord makes no representation or warranty that the use of the Premises for the Permitted Uses is allowed by local zoning or other bylaws, and any permits for such use shall be the exclusive responsibility of Tenant.

4.10 Additions or Alterations. Not to make or permit any installations, alterations or additions in, to or on the Premises over Twenty-Five Thousand Dollars (\$25,000.00) without the prior written consent of Landlord in each instance. Landlord expressly consents to Tenant's initial alterations and improvements to the Premises required for the Permitted Use, at Tenant's sole expense, including, without limitation, build out of the Premises and installation of Tenant's fixtures and equipment required for the Permitted Use, increasing the electric service to the Building to 2000 amps, installation of an FM200/Preaction fire suppression system in the Premises, installation by Tenant of an emergency generator and fuel source for the support of Tenant's Premises only, and placement of redundant fiber optic connections from the Premises to the public right of way.

4.11 Signs. Not to place or paint on the Premises or anywhere in the Building any placard or sign which is visible from the exterior of the Premises.

4.12 Loading and Nuisance. Not to injure, overload, deface, or permit to be injured, overloaded or defaced, the Premises or the Building, and not to permit, allow or suffer any waste or any unlawful, improper or offensive use of, or the accumulation of trash or debris on the Premises, or any occupancy thereof that shall be injurious to any person or property, or invalidate or increase the premiums for any insurance on the Building.

4.13 Tenant's Work. To procure at Tenant's sole expense all necessary permits and licenses before undertaking any work on the Premises expressly permitted by Landlord hereunder; to do all such work in a good and workmanlike manner, employing materials of good quality and so as to conform with all applicable zoning, building, environmental, fire, health and other codes, regulations, ordinances and laws; to pay promptly when due the entire cost of any work on the Premises undertaken by Tenant, so that the Premises shall at all times be free of liens of labor and materials; to employ for such work one or more responsible contractors; to

save Landlord harmless and indemnified from all injury, loss, claims or damage to any person or property occasioned by or growing out of such work; and to provide copies of as built plans of such work to Landlord upon completion. If any construction of tenant improvements is necessary for the continued occupancy of the Premises, such construction shall be accomplished and the cost of such construction shall be borne by Tenant in accordance with a separate "Leasehold Improvements Agreement" (herein so called) between Landlord and Tenant, set forth as Exhibit "D" and made a part hereof. Landlord shall have the right to post notices of non-responsibility in or on the Premises as provided by law. Notwithstanding the foregoing, Landlord shall be responsible for any structural latent defects in the Premises, at Landlord's expense. Landlord, at Landlord's expense, shall maintain or cause to be maintained, repaired and replaced in good order, condition and repair, structure, exterior walls and load-bearing columns of the Building.

4.14 Condition of the Premises. Landlord is not obligated to and shall not make any improvements to the Premises. Notwithstanding the foregoing, Landlord agrees to replace the roof and to construct and perform all necessary seismic work and repairs to the Building to render the Building and the Premises structurally sound in accordance with applicable building and safety codes at Landlord's sole cost and expense on or before August 31, 2000. In addition, Landlord represents and warrants that the roof is in good order and repair and the roof structure is sound. After completion of Landlord's work, Tenant understands and acknowledges that the Premises are leased without any further improvements or alterations thereto and in "as-is" condition. Except as set forth above, Tenant has inspected the Premises and has found the Premises' current state of repair, condition and maintenance to be acceptable to Tenant without further improvements by Landlord and, subject to the completion of Tenant's Work, to be sufficient for Tenant's use and occupancy.

4.15 Personal Property Taxes. Tenant shall pay prior to delinquency all taxes assessed against and levied upon Tenant owned alterations and utility installations, trade fixtures, furnishings, equipment and all personal property to be assessed and billed separately from the real property of Landlord. If any such of Tenant's property shall be assessed with Landlord's real property, Tenant shall pay Landlord the taxes attributable to Tenant's property within 10 days after receipt of a written statement setting forth the taxes applicable to Tenant's property.

4.16 Hazardous Substances. Tenant shall not manufacture, store, use, handle or dispose of any substance which is designated as a hazardous or toxic substance or waste under applicable federal or state law at the Premises, except in accordance with the statutes, rules and regulations governing the manufacture, storage, use, handling or disposition of such substance. Tenant shall be responsible for any and all costs, losses, damages, fines, penalties and other expenses relating to the manufacture, storage, use, handling or disposition of any such hazardous or toxic substance at the Premises by Tenant or any employee, agent or contractor of Tenant.

## ARTICLE V

5.1 Casualty or Taking; Termination. In the event that the Premises, or any part thereof, shall be taken by any public authority or for any public use, or shall be destroyed or

damaged by fire or casualty, or by the action of any public authority, and Landlord elects not to restore the Building or the Premises and so notifies Tenant, then either Landlord or Tenant may elect to terminate this Lease. Such election shall be made by the electing party giving written notice of its election to the other party within ninety (90) days after the right of election accrues.

5.2 Restoration. If this Lease is not terminated pursuant to Section 5.1 above, this Lease shall continue in force and a just proportion of the rent reserved, according to the nature and extent of the damages sustained by the Premises shall be abated until the Premises, or what may remain thereof, shall be put by Landlord in proper condition for use to the extent permitted by the net proceeds of insurance recovered or damages awarded for such taking, destruction or damage, and subject to zoning and building laws and ordinances then in existence. "Net proceeds of insurance recovered or damages awarded" refers to the gross amount of such insurance or damages less the reasonable expenses of Landlord in connection with the collection of the same, including without limitation, fees and expenses for legal and appraisal services.

5.3 Award. Irrespective of the form in which recovery may be had by law, all rights to damages or compensation for the Premises shall belong to Landlord in all cases. Tenant hereby grants to Landlord all of Tenant's rights to such damages and covenants to deliver such further assignments or endorsements as Landlord may from time to time request. Notwithstanding the foregoing, Tenant may seek a separate award from the condemning authority for Tenant's relocation damages.

## ARTICLE VI

6.1 Events of Default; Remedies. If (a) Tenant shall default in the performance of any of its monetary obligations under this Lease, and if such default shall continue for ten (10) days after written notice from Landlord to Tenant or (b) if within fifteen (15) days after written notice from Landlord to Tenant specifying any other default or defaults, Tenant has not commenced diligently to correct such default or has not thereafter diligently pursued such correction to completion, or (c) if any assignment shall be made by Tenant for the benefit of creditors, or if a petition is filed by or against Tenant under any provision of the Bankruptcy Code and, in the case of an involuntary petition, such petition is not dismissed within ninety (90) days, or (d) if the Tenant's leasehold interest shall be taken on execution or by other process of law, attached or subjected to any other involuntary encumbrance, then and in any of such cases Landlord and its agents and servants may lawfully, immediately or at any time thereafter, and without further notice or demand, and without prejudice to any other remedies available to Landlord for arrearages of rent or otherwise, either (i) enter into and upon the Premises or any part thereof, in the name of the whole, and repossess the same as of Landlord's former estate or (ii) mail a notice of termination addressed to Tenant at the Premises, and upon such entry or mailing this Lease shall terminate. In the event that this Lease is terminated under any of the foregoing provisions, or otherwise for breach of Tenant's obligations hereunder, Tenant covenants to pay forthwith to Landlord as compensation the total rent reserved for the residue of the Term. In calculating the rent reserved there shall be included the value of all other consideration agreed to be paid or performed by Tenant for such residue of the Term.

Tenant further covenants as an additional and cumulative obligation after any such

termination or entry to pay punctually to Landlord all the sums and perform all the obligations which Tenant covenants in this Lease to pay and to perform in the same manner and to the same extent and at the same times as if this Lease had not been terminated. In calculating the amounts to be paid by Tenant under the foregoing covenant, Tenant shall be credited with any amount actually paid to Landlord as compensation as hereinbefore provided and also with any additional rent actually obtained by Landlord by reletting the Premises, after deducting the expenses of collecting the same.

Nothing herein contained shall, however, limit or prejudice the right of Landlord to prove for and obtain in proceedings for bankruptcy or insolvency or reorganization or arrangement with creditors as liquidated damages by reason of such determination an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater than, equal to, or less than the amounts referred to above.

6.2 Landlord's Right to Cure. If Tenant remains in default at the expiration of the time periods specified in Section 6.1(a) or 6.1(b), Landlord shall have the right to perform such obligation. All sums so paid by Landlord and all necessary incidental costs and expenses in connection with the performance of any such act by Landlord shall be deemed to be Additional Rent under this Lease and shall be payable to Landlord immediately on demand. Landlord may exercise the foregoing rights without waiving or releasing Tenant from any of its obligations under this Lease.

## ARTICLE VII

7.1 Effect of Waivers of Default. Any consent or permission by Landlord to any act or omission which otherwise would be a breach of any covenant or condition herein, or any waiver by Landlord of the breach of any covenant or condition herein, shall not in any way be construed to operate so as to impair the continuing obligation of any covenant or condition herein.

7.2 No Accord and Satisfaction. No acceptance by Landlord of a lesser sum than the Fixed Rent, Additional Rent and any other charge then due shall be deemed to be other than on account of the earliest installment of rent then due, and Landlord may accept such payment without prejudice to Landlord's right to recover the balance of such installment or pursue any other remedy available to Landlord.

7.3 Subordination; Non-Disturbance. This Lease shall be subordinate to any mortgage now or hereafter placed upon the Premises by Landlord, and to each advance made or to be made under any such mortgage. Tenant agrees to execute and deliver any appropriate instruments necessary to confirm such subordination. Tenant's agreement to subordinate to any future mortgage is conditioned upon Tenant receiving from the holder of the lien of such mortgage assurances (a "non-disturbance agreement") that Tenant's possession and this Lease, including any options to extend the term thereof, shall not be disturbed so long as Tenant is not in breach hereof and attorns to the record holder of the Premises. Landlord agrees to use its best efforts to obtain from any existing a non-disturbance agreement from such mortgagee in favor of Tenant.

7.4 Successors and Assigns. This Lease shall be binding upon Landlord and Tenant and their respective successors and permitted assigns. Tenant agrees that the Landlord named herein and any subsequent Landlord shall be liable hereunder only for obligations accruing while owner of the Premises. No holder of a mortgage of the Landlord's interest shall be deemed to be the owner of the Premises until such holder shall have acquired indefeasible title to the Premises.

7.5 Quiet Enjoyment. Landlord agrees that upon Tenant's paying the rent and performing and observing the agreements and conditions herein on its part to be performed and observed, Tenant shall and may peaceably and quietly have, hold and enjoy the Premises during the Term hereof without any manner of hindrance or molestation from Landlord or anyone claiming under Landlord, subject, however, to the terms of this Lease.

7.6 Notices. All notices for Landlord shall be addressed to Landlord at the address of Landlord set forth above, or to such other place as may be designated by written notice to Tenant; and all notices for Tenant shall be addressed to Tenant at the Premises, with a copy in each instance addressed to RCN Corporation, 105 Carnegie Center, Princeton, New Jersey 08540, Attn: General Counsel, or to such other place as may be designated by written notice to Landlord. Any notice shall be deemed duly given when mailed to such address postage prepaid registered or certified mail, return receipt requested, or when delivered to such address by hand or by national overnight courier service.

7.7 Broker. Landlord and Tenant represent and warrant each to the other that it has had no dealings, negotiations, or consultation with, nor employed any broker or other intermediary with respect to this Lease and each shall hold harmless the other from any claim for brokerage or other commission arising from any breach of or misrepresentation contained in the foregoing warranty.

7.14 Holding Over. In the event Tenant or anyone claiming through Tenant shall retain possession of the Premises or any portion thereof after the termination or expiration of this Lease, such holding over shall be as a tenant at sufferance at an occupancy and use charge equal to 150 percent (150%) of the Fixed Rent and any Additional Rent due hereunder for the last month of the Term, and otherwise subject to all of the covenants and conditions of this Lease. The period of holding over shall not exceed two (2) months.

7.9 Environmental Matters. Landlord represents and warrants that to its best knowledge, there are no "hazardous wastes" or "hazardous substances" on or under the Land or the Building or within the Premises. Landlord shall be responsible for and shall indemnify Tenant against any loss, cost or damage resulting from the presence of any such hazardous wastes or substances on or under the Land or Building or within the Premises on or before the date of execution of this Lease, or resulting from any act or omission of Landlord, its employees, agents or contractors after the date of such execution. Tenant shall indemnify and hold Landlord harmless against any loss, cost or damage resulting from presence of any such hazardous wastes or substances on or under the Land or Building or within the Premises after the date of execution of this Lease resulting from any act or omission of Tenant, its employees, agents or contractors.

7.10 Applicable Law. This Lease, and the rights and obligations of the parties hereto,

shall be construed and enforced in accordance with the laws of the State of California. The parties agree that the proper and exclusive venue for any legal disputes arising out of this Lease shall be the federal or state courts sitting in or having jurisdiction over San Francisco County, California. In the event of any legal dispute pertaining to this Lease, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection therewith.

7.11 Partial Invalidity. If any term of this Lease, or the application thereof to any person or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Lease shall be valid and enforceable to the fullest extent permitted by law.

7.12 All Agreements Contained. This Lease contains all the agreements of the parties with respect to the subject matter thereof and supersedes all prior dealings between them with respect to such subject matter.

7.13 Waiver of Subrogation. All insurance which is carried by either party with respect to the Premises or to furniture, furnishings, fixtures or equipment therein or alterations or improvements thereto, whether or not required, if either party so requests and it can be so written, and if it does not result in additional premium, or if the requesting party agrees to pay any additional premium, shall include provisions which either designate the requesting party as one of the insured or deny to the insurer acquisition by subrogation of rights of recovery against the requesting party to the extent such rights have been waived by the insured party prior to occurrence of loss or injury. The requesting party shall be entitled to have duplicates or certificates of any policies containing such provisions. Each party hereby waives all rights of recovery against the other for loss or injury against which the waiving party is protected by insurance containing said provisions, reserving, however, any rights with respect to any excess of loss or injury over the amount recovered by such insurance.

7.14 Keys. Tenant agrees to notify Landlord if Tenant replaces or changes the lock on any exterior door to the Premises and to provide Landlord with copies of keys to any such lock prior to or upon its installation.

7.15 Estoppel Certificate. From time to time, upon prior written request by Landlord, Tenant shall execute, acknowledge and deliver to Landlord a statement in writing certifying that this Lease is unmodified and in full force and effect and that Tenant has no defenses, offsets or counterclaims against its obligations to pay the Rent and any other charges and to perform its other covenants under this Lease, except as otherwise disclosed in such writing.

7.16 Sale by Landlord. If Landlord sells or conveys the Premises and/or the Building, the same shall operate to release Landlord from any future liability upon any of the covenants or conditions, express or implied, herein contained in favor of Tenant, and in such event, Tenant agrees to look solely to the responsibility of the successor in interest of Landlord in and to this Lease, but such relief shall not extend to obligations of Landlord arising prior to such transfer or assignment unless the successor landlord specifically undertakes to perform such obligations in a

writing provided to Tenant in form and substance reasonably satisfactory to Tenant. Notwithstanding the foregoing, if Landlord sells or conveys the Premises and/or Building, this Lease shall not be terminated nor shall the rights and possession of Tenant hereunder be disturbed if Tenant shall not then be in default in the payment of rental or other sums or be otherwise in default under the terms of this Lease. Upon a sale of the Premises and/or Building by Landlord, Tenant agrees to attorn to the purchaser or assignee, such attornment to be effective and self-operative without the execution of any further instruments by the parties to this Lease.

7.17 Authority. If Tenant signs as a corporation or partnership, each of the persons executing this Lease on behalf of Tenant does hereby covenant and warrant that Tenant is a duly authorized and existing entity, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Lease, and that each and both of the persons signing on behalf of Tenant are authorized to do so. Upon Landlord's request, Tenant shall provide Landlord with evidence reasonably satisfactory to Landlord confirming the foregoing covenants and warranties.

7.18 Surrender Not Merger. The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subleases or subtenancies, or may, at the option of Landlord, operate as an assignment to it of any or all such subleases or subtenancies.

7.19 Nonrecourse. The obligations of Landlord under this Lease and any liability resulting therefrom are not personal obligations of Landlord, its officers, agents or employees and Tenant shall look solely to Landlord's interest in the Premises for satisfaction of any liability arising out of or relating to such obligations.


7.20 Attorneys' Fees. If any action or proceeding is commenced by either party to enforce their rights under this Lease or to collect damages as a result of the breach of any of the provisions of this Lease, the prevailing party in such action or proceeding, including any bankruptcy, insolvency or appellate proceedings, shall be entitled to recover all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and court costs, in addition to any other relief awarded by the court.

7.21 Captions. Captions are for convenience only and do not constitute a part of this Lease.

EXECUTED as a sealed instrument as of the day and year first above written.

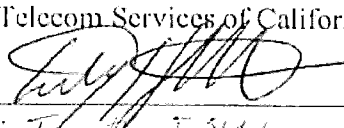
Landlord:

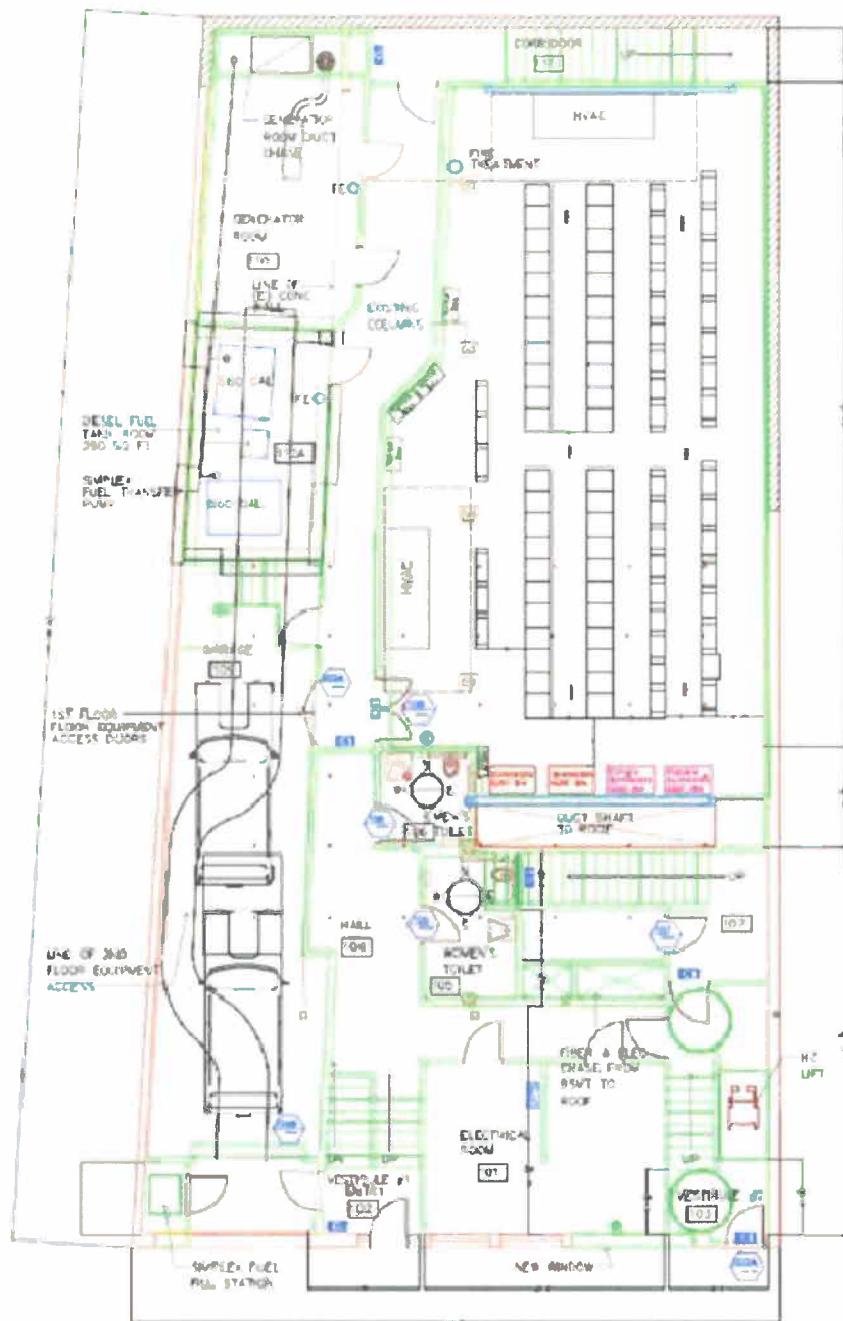
F. W. Spencer & Son, Inc., a California corporation

By:   
Name: W. SPENCER  
Title: PRESIDENT

Tenant:

RCN Telecom Services of California, Inc.

By:   
Name: Timothy J. Stoklosen  
Title: Exec Vice President & CFO





## Exterior



## 437 Potrero Interior Entrance



## 435 Potrero Interior Entrance



## 435 Potrero Interior Entrance



## First Floor Data Room



## First Floor Data Room



## Second Floor Data Room



PG&E Transformer



## Electrical Room



## Electrical Room

