

EXHIBIT B

**Complete Copy of Verizon's Response
To Staff's Data Request No. 35
(Page numbers added)**

Docket No. UT-040788
WUTC Staff Data Requests to Verizon Nos. 35-41
June 9, 2004

Data Request No. 35:

Verizon Northwest Inc.'s response to WUTC STAFF DATA REQUEST NO. 3 (General) stated, in part, the following:

“The Company’s position is that it is experiencing an actual emergency for the simple reason that its Washington Intrastate operations are earning a negative rate of return as a result of the Access Charge case, and it cannot meet its intrastate financial obligations with its intrastate revenues.”

Please identify any debt covenants or any conditions or criteria that Verizon Northwest Inc., Verizon Communications, Inc. (or any affiliate thereof) must comply with to avoid default on the Company’s intrastate financial obligations. Produce the documents containing the covenants, conditions or criteria.

RESPONSE:

The Company has two active indentures that must be satisfied: 1) First Mortgage Bond Indenture (FMB Indenture) dated March 1, 1939, which has been supplemented 36 times and 2) a Debenture Indenture dated April 1, 1994, which has been supplemented 1 time.

Events of default and remedies associated with the FMB Indenture are outlined in Article VI, which is attached as Attachment 35a. Included as default are the non-payment of interest and principal. Dr. Vander Weide’s testimony clearly shows that the contribution of the Company’s Washington Intrastate Operation towards the payment of interest and principal has declined sharply over the last 5 years. Article I, Section 14 of the FMB Indenture as supplemented also requires the Company to maintain 2.00 times interest coverage in order to issue new First Mortgage Bonds, which takes a financing tool away from the Company. Dr. Vander Weide’s testimony shows that this requirement is not being met by the Company’s Washington Intrastate Operation. Article V, Section 1 of the FMB Indenture as supplemented and modified requires the Company to maintain a minimum net worth of \$160.4 million. Default for a period of 60 days or more causes any debt issued under the Indenture to become due and payable immediately.

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Events of default and remedies associated with the Debenture Indenture are outlined in Article Six, which is attached as Attachment 35b. Included as default are the non-payment of interest and principal. Dr. Vander Weide's testimony clearly shows that the contribution of the Company's Washington Intrastate Operation towards the payment of interest and principal has declined sharply over the last 5 years. Default for a period of 30 days or more causes any debt issued under the Indenture to become due and payable immediately.

Prepared By: Robert G. Deter
Date: June 2, 2004
Witness: James H. Vander Weide

Verizon Response to WUTC Staff Interim Data Request No. 35
UT-040788

Attachment 35a

VERIZON NORTHWEST INC.
FIRST MORTGAGE BOND INDENTURE DATED MARCH 1, 1939

REMEDIES UPON DEFAULT
ARTICLE VI

Section 1. An event of default is hereby defined to be the happening of one or more defaults or failures on the part of the Company in cases as follows:

(a) In case default shall be made in the payment of any interest on any bonds secured hereby, or in the payment of any sinking fund payment required in respect of any bonds issued hereunder, when and as the same shall become payable, and any such default shall continue for a period of sixty (60) days; or

(b) In case default shall be made in the payment of the principal of any bonds secured hereby, when the same shall become due and payable, whether at maturity as therein expressed or by declaration or otherwise; or

(c) In case the Company shall be dissolved or lose its charter by forfeiture or otherwise or be adjudged bankrupt or insolvent; or

(d) In case, upon its own application, a receiver shall be appointed for substantially all of the property of the Company; or in case such receiver is so appointed otherwise than upon application of the Company and not thereafter discharged within a period of ninety (90) days from the date of such appointment; or

(e) In case a petition to reorganize the Company pursuant to Chapter 10 of the Federal Bankruptcy Act, as amended, or any section thereof, shall be filed

against the Company and not dismissed within ninety (90) days after such filing, or in case the Company shall file a petition in bankruptcy under any provisions of said Bankruptcy Act or shall consent to the filing of any bankruptcy or reorganization petition against it, or shall file a petition to reorganize the Company pursuant to said Chapter 10 of said Bankruptcy Act, as amended, or any other section thereof, as now or hereafter in effect; or

(f) In case default shall be made in the due observance or performance of any other covenant or condition contained herein required to be kept or performed by the Company, and such default shall continue for a period of ninety (90) days after written notice thereof to the Company from the Corporate Trustee.

The Company shall not be deemed to be in default hereunder during any period of grace allowed in subdivisions (a) to (f), inclusive, of this section.

“(g) In case default shall be made by the Company in the payment of any amount in respect of the special redemption fund for the Bonds of Series Z pursuant to Section 4 of Article I of the Twentieth Supplemental Indenture or default shall be made by the Company in the purchase or delivery to the Corporate Trustee of any Bonds of Series Z pursuant to any written agreement filed with the Corporate Trustee pursuant to said Section.”

Section 2. If one or more of the events of default shall happen then and in every such case the Trustees may, and upon the written request of the holders of twenty-five per cent (25%) in amount of the bonds then outstanding hereunder, and upon being reasonably indemnified, shall, by notice in writing to the Company, declare the principal of all bonds then outstanding to be due and payable immediately, and upon any such declaration the said principal shall become and be due and payable immediately, anything in this

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new subdivision (g)

Indenture, or in such bonds, to the contrary notwithstanding.

Section 3. In case any one or more of the events of default shall happen, then and in every such case the Trustees personally or by their agents or attorneys (a) may enter upon and take possession of the mortgaged and pledged property, or any part or parts thereof, collect and receive all rents, issues, income and profits therefrom, and operate and conduct the business of the Company to the same extent and in the same manner as the Company might lawfully do; (b) may by such officer or agent as they or either of them may appoint, with or without entry, sell all the mortgaged and pledged property as an entirety or in such parcels as the holders of a majority in interest of the bonds then outstanding shall in writing request, at public auction at some convenient place in San Francisco, California, or at such other place or places as may be required by law, having first given notice of such sale to the Company in writing at its office in Everett, Washington, and having also given notice by publication in at least one daily newspaper published in San Francisco, California, for at least once a week for four weeks next preceding the time set for sale, and such other notice or notices given and published for such period or periods as may be required by law, and from time to time may adjourn such sale in its discretion without further notice, except such as may be required by law, and upon such sale or sales may make and deliver to the purchaser or purchasers good and sufficient deeds for the same, which sale or sales

shall be a perpetual bar at law or in equity against the Company, and against all persons claiming or purporting to claim by, through or under the Company; (c) may cause this Indenture to be foreclosed and the mortgaged and pledged property, or any part thereof, to be sold; (d) may proceed to protect and enforce the rights of the Trustees and the holders of the bonds whether for the specific performance of any covenant, condition or agreement herein contained, or in aid of the execution of any power herein granted or for the enforcement of such other appropriate legal or equitable remedy as may in the opinion of counsel be most effectual to protect and enforce the rights aforesaid; and (e) shall be entitled as of right, without notice, to the appointment of a receiver of the mortgaged and pledged property, or any part thereof, and the Company does hereby irrevocably consent to such appointment. The Trustees shall take any such action if requested so to do by the holders of twenty-five per cent (25%) in amount of the bonds then outstanding hereunder, and after being reasonably indemnified.

Section 4. The Company covenants that (1) in case default shall be made in the due and punctual payment of any interest on any bond outstanding hereunder, and such default shall continue for a period of sixty (60) days; or (2) default shall be made in the due and punctual payment of the principal of any bond when the same shall have become payable, whether at the maturity of said bond or by a declaration as authorized by this Indenture, or upon a sale, as set forth in this Article, then, upon demand of the Trustees the Com-

pany will pay to the Corporate Trustee, for the benefit of the holders of the bonds and coupons hereby secured and then outstanding, the whole amount then due and payable on all such bonds and coupons then outstanding, for interest or principal, or both, as the case may be, with interest upon the overdue principal and the overdue installments of interest at the rates specified in said respective bonds; and, in case the Company shall fail to pay the same forthwith upon such demand the Trustees, or either of them, in their own names and as trustees of an express trust, shall be entitled to recover judgment against the Company for the whole amount so due and unpaid.

The Trustees, or either of them, shall be entitled to recover judgment as aforesaid, either before or after or during the pendency of any proceedings for the enforcement of the lien of this Indenture, and the right of the Trustees to recover such judgment shall not be effected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this Indenture or the foreclosure of the lien hereof, and in the case of a sale of the mortgaged property and of the application of the proceeds of sale to the payment of the indebtedness hereby secured, the Trustees in their own names and as trustees of an express trust, shall be entitled to enforce payment of and to receive all amounts then remaining due and unpaid upon any and all of the bonds and coupons hereby secured then outstanding— for the benefit of the holders thereof, and shall be entitled to recover judgment for any portion of the in-

debtfulness remaining unpaid, with interest, as aforesaid. No recovery of any such judgment by the Trustees, or either of them, and no levy of any execution upon any such judgment upon the mortgaged property, or any part thereof, or upon any other property shall in any manner or to any extent affect the lien of this Indenture upon the mortgaged property, or any part thereof, or any rights, powers or remedies of the Trustees, or either of them, hereunder, or any lien, rights, powers or remedies of the holders of the bonds, but such lien, rights, powers or remedies shall continue unimpaired as before.

All moneys collected by the Trustees, or either of them, under this Section 4 shall be applied toward payment of the amounts then due and unpaid upon such bonds and coupons in respect whereof such moneys shall have been collected, ratably and without any preference or priority of any kind according to the amounts due and payable upon such bonds and coupons, respectively, at the date fixed by the Corporate Trustee for the distribution of such moneys, upon presentation of the several bonds and coupons and stamping such payments thereon, if partly paid, and upon surrender and cancellation thereof, if fully paid.

Section 5. Anything in this Indenture to the contrary notwithstanding, the holders of a majority in principal amount of the bonds then outstanding hereunder, at any time, by an instrument in writing executed and delivered to the Trustees, may reasonably direct the method and place of conducting all proceedings to be taken for any sale of the property sub-

ject to the lien of this Indenture, or for the foreclosure of this Indenture, or for the appointment of a receiver; provided that such direction shall not be contrary to the provisions of law or of this Indenture.

Section 6. The Trustees may, and, upon the written request of the holders of a majority in ^{principal} amount of the bonds then outstanding, and upon being reasonably indemnified, shall waive any ^{past} default hereunder and its consequences and rescind any declaration of maturity of principal, except (1) a default in the payment of the principal of said bonds at the date of maturity specified therein, and except (2) a default in the payment of interest unless prior to such waiver or rescission, all arrears of interest, with interest on overdue installments of interest at the rates specified in said respective bonds, and all expenses of the Trustees shall have been paid or provided for; and in case of any such waiver or rescission, or in case any proceedings taken by the Trustees, or either of them, on account of any such default shall have been discontinued or abandoned, or determined adversely, then and in every such case the Company, the Trustees, and the holders of the bonds shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon.

Section 7. In case of default under this Indenture the Company will not, nor will anyone claiming through or under it, at any time, insist upon or plead, or in any manner whatever claim, or take the benefit or advan-

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tage of, any stay or extension law now or at any time hereafter in force, nor will it claim, take or insist upon any benefit or advantage from any law now or hereafter in force, providing for the valuation or appraisal of the mortgaged and pledged property, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained, or to the decree, judgment or order of any Court of competent jurisdiction; nor after any such sale or sales will the Company claim or exercise any rights under any statute, now or hereafter made or enacted by any state or otherwise, to redeem the property so sold or any part thereof; and the Company expressly waives all benefit and advantage of any such law or laws, and covenants that it will not invoke or utilize any such law or laws in order to hinder, delay or impede the execution of any power herein granted and delegated to the Trustees, but that it will suffer and permit the execution of every such power as though no such law or laws had been made or enacted. The Company and all claiming under or through it further waive any and all right to have the estate comprised in the security intended to be created hereby marshalled upon any foreclosure of the lien hereof.

Section 8. The proceeds of any sale of the mortgaged and pledged property, or any part thereof, whether under any power herein contained or by virtue of any judgment or decree, shall be applied by the Corporate Trustee (or in the event the Individual Trustee shall have received such proceeds, the same shall be paid by such Individual Trustee to the Corporate Trustee

and applied by the Corporate Trustee) as follows: First—To the payment of the costs and expenses of such sale, including a reasonable compensation to the Trustees, their agents, attorneys and counsel, to the payment of all necessary or proper expenses, liabilities and advances made or incurred by the Trustees, or either of them, under this Indenture, with interest thereon at the rate of six per cent (6%) per annum, and to the payment of all taxes, assessments and liens superior to the lien of this Indenture, except any taxes, assessments or other superior liens subject to which such sale shall have been made. Second—To the payment of the whole amount then owing and unpaid upon the principal and interest of the bonds then outstanding, with interest on the principal and on the overdue installments of interest, at the rates specified in said respective bonds, and, in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon the bonds, then to the payment of such principal and interest, without preference or priority of principal over interest or of interest over principal or of any installment of interest over any other installment of interest ratably to the aggregate of such principal and the accrued and unpaid interest. Such payments shall be made on the date fixed therefor by the Trustees, upon presentation of the several bonds and coupons and stamping thereon the amount paid if such bonds and interest thereon be only partly paid, and upon surrender and cancellation thereof if fully paid.

The foregoing provisions, however, are subject to the provisions of Section 2 of Article II hereof.

The overplus of the proceeds, if any, shall then be paid to the Company or whomsoever shall be lawfully entitled thereto.

Section 9. In case of any such sale of the mortgaged and pledged property, or any part thereof, whether under any power herein contained, or by virtue of any judgment or decree, any holder of any of the bonds, or the Trustees, or either of them, may bid for and purchase such property, and upon compliance with the terms of sale, may hold, retain, possess and dispose of such property in his or its own absolute right, without further accountability, and shall be entitled, for the purpose of making settlement or payment for the property purchased, to use and apply any bonds and any matured and unpaid coupons hereby secured by presenting such bonds and coupons, in order that there may be credited thereon the sum apportionable and applicable thereto out of the net proceeds of such sale; and thereupon such purchaser shall be credited on account of such purchase price payable by him, with the sum apportionable and applicable out of such net proceeds to the payment of or as credit on the bonds and coupons so presented.

Section 10. Upon sale of any of the mortgaged and pledged property under any of the provisions of this Article, all bonds then outstanding, if not previously due, shall forthwith be and become due and payable.

Section 11. No holder of any bond or coupon hereby secured shall have any right as such holder to institute any suit, action or proceeding in equity or at law, on

account of any such bond or coupon, or for the foreclosure of this Indenture or for the execution of any trust hereof, or for the appointment of a receiver, or for any other remedy hereunder, or by reason hereof, all rights of action hereunder and on account of the bonds and coupons hereby secured being vested exclusively in the Trustees, as herein provided, except in case of refusal or neglect of the Trustees, or either of them, to act after default and after request by holders of twenty-five (25) per cent of the amount of the bonds then outstanding hereunder, and upon being reasonably indemnified, as herein provided, and, provided, further, that nothing contained in this paragraph shall be deemed to prevent any holder of any bond on the maturity thereof as said maturity is specified in said bonds from proceeding to collect the amount due on his bond according to the terms thereof if the same has not been theretofore paid.

Section 12. No remedy herein conferred upon or reserved to the Trustees is intended to be exclusive of any other remedy or remedies; but each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default continuing as aforesaid, shall impair any such right or power or shall be construed to be a waiver of any such default, or acquiescence therein; and every such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 13. Notwithstanding the foregoing provisions of this Article, the powers hereby granted to the Trustees are strictly subject to the limitation that if, by the commencement of an action at law to recover judgment for any amount due and unpaid hereunder or upon the bonds secured hereby, or by the exercise of any other remedy prior to or concurrently with proceedings to enforce the lien of this Indenture upon the property subject hereto, the lien of this Indenture upon such property or the security hereby provided for would, despite the foregoing provisions of this Article, be surrendered, waived or lost, neither of the Trustees shall have the power to commence such action at law or to exercise such prior or concurrent remedy. But in case any statute or other rule of law now or hereafter in force providing in terms or effect that the commencement of an action to recover a debt secured by a mortgage shall be deemed a waiver of such security, or prohibiting the exercise of any other remedy prior to or concurrently with proceedings to enforce the lien of a mortgage upon the property, or any statute or other rule of law which now impairs or suspends the virtue of the foregoing provisions of this Article, or any thereof, and of which the Company might take advantage despite such provisions, shall hereafter be repealed or ceased to be in force, such statute or other rule of law shall not be deemed to have become or to be a part of the contract contained in this Indenture.

Section 14. Notwithstanding the use of the term "Trustees" in this Article, all of the remedies hereinbefore specified, when and if exercised, shall be exer-

cised by the Corporate Trustee acting alone, except where the Corporate Trustee shall be disqualified by any law or otherwise, in which event the Individual Trustee is hereby empowered, acting alone, to exercise all the powers hereby conferred on the Trustees.

Verizon Response to WUTC Staff Interim Data Request No. 35
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Attachment 35b

VERIZON NORTHWEST INC.
FIRST MORTGAGE BOND INDENTURE DATED APRIL 1, 1994

**REMEDIES OF THE TRUSTEE AND SECURITYHOLDERS
UPON EVENT OF DEFAULT
ARTICLE SIX**

SECTION 6.01. (a) Whenever used herein with respect to Securities of a particular series, "Event of Default" means any one or more of the following events which has occurred and is continuing:

- (1) default in the payment of any installment of interest upon any of the Securities of that series, as and when the same shall become due and payable, and continuance of such default for a period of 30 business days;
 - (2) default in the payment of the principal of (or premium, if any, on) any of the Securities of that series as and when the same shall become due and payable whether at maturity, upon redemption, by declaration or otherwise, or in any payment required by any sinking or analogous fund established with respect to that series;
 - (3) failure on the part of the Company duly to observe or perform any other of the covenants or agreements on the part of the Company with respect to that series contained in such Securities or otherwise established with respect to that series of Securities pursuant to Section 2.01 hereof or contained in this Indenture (other than a covenant or agreement which has been expressly included in this Indenture solely for the benefit of one or more series of Securities other than such series) for a period of 90 days after the date on which written notice of such failure, requiring the same to be remedied and stating that such notice is a "Notice of Default" hereunder, shall have been given to the Company by the Trustee, by registered or certified mail, or to the Company and the Trustee by the holders of at least 25% in principal amount of the Securities of that series at the time outstanding;
 - (4) a decree or order by a court having jurisdiction in the premises shall have been entered adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition seeking liquidation or reorganization of the Company under the Federal Bankruptcy Code or any other similar applicable Federal or State law, and such decree or order shall have continued unvacated and unstayed for a period of 90 days; or an involuntary case shall be commenced under such Code in respect of the Company and shall continue undismissed for a period of 90 days or an order for relief in such case shall have been entered; or a decree or order of a court having jurisdiction in the premises shall have been entered for the appointment on the ground of insolvency or bankruptcy of a receiver or custodian or liquidator or trustee or assignee in bankruptcy or insolvency of the Company or of its property, or for the winding up or liquidation of its affairs, and such decree or order shall have remained in force unvacated and unstayed for a period of 90 days; or
 - (5) the Company shall institute proceedings to be adjudicated a voluntary bankrupt, or shall consent to the filing of a bankruptcy proceeding against it, or shall file a petition or answer or consent seeking liquidation or reorganization under the Federal Bankruptcy Code or any other similar applicable Federal or State law, or shall consent to the filing of any such petition, or shall consent to the appointment on the ground of insolvency or bankruptcy of a receiver or custodian or liquidator or trustee or assignee in bankruptcy or insolvency of it or of its property, or shall make an assignment for the benefit of creditors.
- (b) In each and every such case, unless the principal of all the Securities of that series shall have already become due and payable, either the Trustee or the holders of not less than 25% in aggregate principal amount of the Securities of that series then outstanding hereunder, by notice in writing to the Company (and to the Trustee if given by such Securityholders), may declare the principal of all the Securities of that series to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything contained in this Indenture or in the Securities of that series or established with respect to that series pursuant to Section 2.01 hereof to the contrary notwithstanding.

(c) This provision, however, is subject to the condition that if, at any time after the principal of the Securities of that series shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay all matured installments of interest upon all the Securities of that series and the principal of (and premium, if any, on) any and all Securities of that series which shall have become due otherwise than by acceleration (with interest upon such principal and premium, if any, and, to the extent that such payment is enforceable under applicable law, upon overdue installments of interest, at the rate per annum expressed in the Securities of that series to the date of such payment or deposit) and the amount payable to the Trustee under Section 7.06, and any and all defaults under the Indenture, other than the nonpayment of principal on Securities of that series which shall not have become due by their terms, shall have been remedied or waived as provided in Section 6.06 then and in every such case the holders of a majority in aggregate principal amount of the Securities of that series then outstanding, by written notice to the Company and to the Trustee, may rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair any right consequent thereon.

(d) In case the Trustee shall have proceeded to enforce any right with respect to Securities of that series under this Indenture and such proceedings shall have been discontinued or abandoned because of such rescission or annulment or for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Company and the Trustee shall be restored respectively to their former positions and rights hereunder, and all rights, remedies and powers of the Company and the Trustee shall continue as though no such proceedings had been taken.

SECTION 6.02. (a) The Company covenants that (1) in case default shall be made in the payment of any installment of interest on any of the Securities of a series, or any payment required by any sinking or analogous fund established with respect to that series as and when the same shall become due and payable, and such default shall have continued for a period of 30 business days, or (2) in case default shall be made in the payment of the principal of (or premium, if any, on) any of the Securities of a series when the same shall have become due and payable, whether upon maturity of the Securities of a series or upon redemption or upon declaration or otherwise--then, upon demand of the Trustee, the Company will pay to the Trustee, for the benefit of the holders of the Securities of that series, the whole amount that then shall have become due and payable on all such Securities for principal (and premium, if any) or interest, or both, as the case may be, with interest upon the overdue principal (and premium, if any) and (to the extent that payment of such interest is enforceable under applicable law) upon overdue installments of interest at the rate per annum expressed in the Securities of that series; and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, and the amount payable to the Trustee under Section 7.06.

(b) In case the Company shall fail forthwith to pay such amounts upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceeding to judgment or final decree, and may enforce any such judgment or final decree against the Company or other obligor upon the Securities of that series and collect in the manner provided by law out of the property of the Company or other obligor upon the Securities of that series wherever situated the moneys adjudged or decreed to be payable.

(c) In case of any receivership, insolvency, liquidation, bankruptcy, reorganization, readjustment, arrangement, composition or other judicial proceedings affecting the Company, any other obligor on such Securities, or the creditors or property of either, the Trustee shall have power to intervene in such proceedings and take any action therein that may be permitted by the court and shall (except as may be otherwise provided by law) be entitled to file such proofs of claim and other papers and documents as may be necessary or advisable in order to have the claims of the Trustee and of the holders of Securities of such series allowed for the entire amount due and payable by the Company or such other obligor under the Indenture at the date of institution of such proceedings and for any additional amount which may become due and payable by the Company or such other obligor after such date, and to collect and receive any moneys or other property payable or deliverable on any such claim, and to distribute the same after the deduction of the amount payable to the Trustee under Section 7.06; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the holders of Securities of such series to make such payments to the Trustee, and, in the event that the Trustee shall consent to the making of such payments directly to such Securityholders, to pay to the Trustee any amount due it under Section 7.06.

(d) All rights of action and of asserting claims under this Indenture, or under any of the terms established with respect to Securities of that series, may be enforced by the Trustee without the possession of any of such Securities, or the production thereof at any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for payment to the Trustee of any amounts due under Section 7.06, be for the ratable benefit of the holders of the Securities of such series.

In case of an Event of Default hereunder the Trustee may in its discretion proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any of such rights, either at law or in equity or in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in the Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Securityholder any plan of reorganization, arrangement, adjustment or composition affecting the Securities of that series or the rights of any holder thereof or to authorize the Trustee to vote in respect of the claim of any Securityholder in any such proceeding.

SECTION 6.03. Any moneys collected by the Trustee pursuant to Section 6.02 with respect to a particular series of Securities shall be applied in the order following, at the date or dates fixed by the Trustee and, in case of the distribution of such moneys on account of principal (or premium, if any) or interest, upon presentation of the several Securities of that series, and stamping thereon the payment, if only partially paid, and upon surrender thereof if fully paid:

FIRST: To the payment of costs and expenses of collection and of all amounts payable to the Trustee under Section 7.06;

SECOND: To the payment of the amounts then due and unpaid upon Securities of such series for principal (and premium, if any) and interest, in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities for principal (and premium, if any) and interest, respectively.

SECTION 6.04. No holder of any Security of any series shall have any right by virtue or by availing of any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless such holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof with respect to Securities of such series specifying such Event of Default, as hereinbefore provided, and unless also the holders of not less than 25% in aggregate principal amount of the Securities of such series then outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as trustee hereunder and shall have offered to the Trustee such reasonable indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee for 60 days after its receipt of such notice, request and offer of indemnity, shall have failed to institute any such action, suit or proceeding; it being understood and intended, and being expressly covenanted by the taker and holder of every Security of such series with every other such taker and holder and the Trustee, that no one or more holders of Securities of such series shall have any right in any manner whatsoever by virtue or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of the holders of any other of such Securities, or to obtain or seek to obtain priority over or preference to any other such holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all holders of Securities of such series. For the protection and enforcement of the provisions of this Section, each and every Securityholder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Notwithstanding any other provisions of this Indenture, however, the right of any holder of any Security to receive payment of the principal of (and premium, if any) and interest on such Security, as therein provided, on or after the

respective due dates expressed in such Security (or in the case of redemption, on the redemption date), or to institute suit for the enforcement of any such payment on or after such respective dates or redemption date, shall not be impaired or affected without the consent of such holder.

SECTION 6.05. (a) All powers and remedies given by this Article to the Trustee or to the Securityholders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any others thereof or of any other powers and remedies available to the Trustee or the holders of the Securities, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture or otherwise established with respect to such Securities.

(b) No delay or omission of the Trustee or of any holder of any of the Securities to exercise any right or power accruing upon any Event of Default occurring and continuing as aforesaid shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein; and, subject to the provisions of Section 6.04, every power and remedy given by this Article or by law to the Trustee or to the Securityholders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Securityholders.

SECTION 6.06. The holders of a majority in aggregate principal amount of the Securities of any series at the time outstanding, determined in accordance with Section 8.04, shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee with respect to such series; provided, however, that such direction shall not be in conflict with any rule of law or with this Indenture or unduly prejudicial to the rights of holders of Securities of any other series at the time outstanding determined in accordance with Section 8.04, not parties thereto. Subject to the provisions of Section 7.01, the Trustee shall have the right to decline to follow any such direction if the Trustee in good faith shall, by a responsible officer or officers of the Trustee, determine that the proceeding so directed would involve the Trustee in personal liability. The holders of a majority in aggregate principal amount of the Securities of any series at the time outstanding, determined in accordance with Section 8.04, may on behalf of the holders of all of the Securities of that series waive any past default in the performance of any of the covenants contained herein or established pursuant to Section 2.01 with respect to such series and its consequences, except a default in the payment of the principal of, or premium, if any, or interest on, any of the Securities of that series as and when the same shall become due by the terms of such Securities or a call for redemption of Securities of that series. Upon any such waiver, the default covered thereby shall be deemed to be cured for all purposes of this Indenture and the Company, the Trustee and the holders of the Securities of that series shall be restored to their former positions and rights hereunder, respectively; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

SECTION 6.07. The Trustee shall, within 90 days after the occurrence of a default with respect to a particular series, transmit by mail, first class postage prepaid, to the holders of Securities of that series, as their names and addresses appear upon the Security Register, notice of all defaults with respect to that series known to the Trustee, unless such defaults shall have been cured before the giving of such notice (the term "defaults" for the purposes of this Section being hereby defined to be the events specified in subsections (1), (2), (3), (4) and (5) of Section 6.01(a), not including any periods of grace provided for therein and irrespective of the giving of notice provided for by subsection (3) of Section 6.01(a)); provided, that, except in the case of default in the payment of the principal of (or premium, if any) or interest on any of the Securities of that series or in the payment of any sinking fund installment established with respect to that series, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee, or a trust committee of directors and/or responsible officers, of the Trustee in good faith determine that the withholding of such notice is in the interests of the Securityholders of Securities of that series; provided further, that in the case of any default of the character specified in Section 6.01(a)(3) with respect to Securities of such series no such notice to the holders of the Securities of that series shall be given until at least 30 days after the occurrence thereof.

The Trustee shall not be deemed to have knowledge of any default, except (i) a default under subsections (a)(1) or (a)(2) of Section 6.01 as long as the Trustee is acting as paying agent for such series of Securities or (ii) any default as to which the Trustee shall have received written notice or a responsible officer charged with the administration of this Indenture shall have obtained actual knowledge.

SECTION 6.08. All parties to this Indenture agree, and each holder of any Securities by his or her acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by the Trustee, to any suit instituted by any Securityholder, or group of Securityholders, holding more than 10% in aggregate principal amount of the outstanding Securities of any series, or to any suit instituted by any Securityholder for the enforcement of the payment of the principal of (or premium, if any) or interest on any Security of such series, on or after the respective due dates expressed in such Security or established pursuant to this Indenture.