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October 24, 2001

**BY HAND DELIVERY**

Erin McGrath  
Policy Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20006

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01-315]

Re: Applications for Consent to Assignment of Licenses from TeleCorp PCS, Inc. and AT&T Wireless Services, Inc. (File Nos. 0000635066 *et al.*)

Dear Ms. McGrath:

For your reference and convenience, I have enclosed four bound courtesy copies of the divestiture applications seeking FCC consent to the assignment of certain licenses from licensee subsidiaries of TeleCorp PCS, Inc. and AT&T Wireless Services, Inc.

Should any questions arise concerning these applications, please contact the undersigned at 202.719.7534.

Respectfully yours,

Nicole M. McGinnis

Enclosure

**DELIVER TO:**

Erin McGrath  
Policy Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20006

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Applications for Consent to the )  
Transfer of Control of Licenses )  
)  
TeleCorp PCS, Inc. et al. )  
(collectively, "TeleCorp"), )  
Transferors )  
)  
AT&T Wireless Services, Inc. )  
Transferee )

File Nos. 0000634850 *et al.*

*WT 01-315*

**APPLICATIONS AND PUBLIC INTEREST STATEMENT**

**DESCRIPTION OF THE TRANSACTION, PUBLIC INTEREST SHOWING  
AND RELATED DEMONSTRATIONS**

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## PUBLIC INTEREST STATEMENT

### I. INTRODUCTION

Applicants AT&T Wireless Services, Inc. ("AT&T Wireless"), TeleCorp PCS, Inc. ("TeleCorp"), and the TeleCorp licensee subsidiaries (collectively, "TeleCorp Subs")<sup>1/</sup> seek approval for the transfer of control, from TeleCorp to AT&T Wireless, of the licenses held by the TeleCorp Subs and detailed in the attached FCC Form 603.<sup>2/</sup> In support of this transfer, the Applicants provide the following description of the merger's competitive effects and public interest benefits according to the framework set forth in the Bell Atlantic/NYNEX merger order.<sup>3/</sup>

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<sup>1/</sup> The TeleCorp licensee subsidiaries include TeleCorp Holding Corp. II, L.L.C.; TeleCorp PCS, L.L.C.; TeleCorp of Puerto Rico, Inc.; TeleCorp Communications, Inc.; Wisconsin Acquisition Corp.; Tritel A/B Holding Corp.; Tritel C/F Holding Corp.; AirCom PCS, Inc.; DigiCall, Inc.; DigiCom, Inc.; and QuinCom, Inc. Separate FCC Form 603 applications are being simultaneously filed for each licensee subsidiary.

<sup>2/</sup> Applicants hereby request that the grant of the instant application include the authority for AT&T Wireless to acquire control, to the extent permitted by the Commission's rules, of (1) any authorization issued to the Applicants during the pendency of transfer applications or during the period required for consummation of the transaction following approval; (2) construction permits held by such licensees that mature into licenses after closing and that may have been omitted from the applications; and (3) applications that will have been filed by such licensees and that are pending at the time of consummation of the proposed transaction. Such action would be consistent with prior Commission decisions. See, e.g., In re PacifiCorp Holdings, Inc. Transferor, and Century Telephone Enterprises, Inc. Transferee, 13 FCC Rcd 8891, 8915-16 (1997) ("PacifiCorp Holdings"); Applications of Pacific Telesis Group and SBC Communications, Inc., 12 FCC Rcd 2624, 2665 (1997). TeleCorp has either filed construction notifications for, or filed applications to spin-off, all of its designated entity licenses.

<sup>3/</sup> See In re Applications of NYNEX Corporation and Bell Atlantic Corporation For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries, 12 FCC Rcd 19985 (1997) ("Bell Atlantic/NYNEX"); see also In re Applications of Voicestream Wireless Corporation, Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee, for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Petition for Declaratory Ruling Pursuant to Section 310 of the Communications Act, 16 FCC Rcd 9779 (2001) ("Voicestream/DT"); In re Applications of Motorola, Inc.; Motorola SMR, Inc.; and Motorola Communications and Electronics, Inc. Assignors; and FCI 900, Inc. Assignee, For Consent to Assignment of 900 MHz Specialized Mobile Radio Licenses, 16 FCC Rcd 8451 (2001), rehearing

As a preliminary matter, this merger is manifestly in the public interest and the processing of these applications should raise no significant regulatory issues:

- TeleCorp operates as a name brand affiliate of AT&T Wireless and, due to franchising considerations, TeleCorp's operations do not overlap with the operations of AT&T Wireless.
- Because AT&T Wireless already owns 23 percent of TeleCorp's voting stock and has the right to appoint three of thirteen seats on TeleCorp's board, AT&T Wireless has an attributable interest in TeleCorp for spectrum cap purposes, and the proposed merger therefore does not increase the spectrum attributable to AT&T Wireless.<sup>4/</sup>

Under these circumstances, a complete Bell Atlantic/NYNEX analysis of competitive issues is unnecessary.<sup>5/</sup> Nevertheless, in the interest of providing the Commission with fullest possible

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denied, DA 01-1903 (2001) ("Motorola/Nextel"); In re Applications of SBC Communications Inc. and Bellsouth Corporation For Consent to Transfer of Control or Assignment of Licenses and Authorizations, 15 FCC Rcd 25459 (2000) ("SBC/BellSouth"); In re Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License, 15 FCC Rcd 14032 (2000) ("GTE/Bell Atlantic").

<sup>4/</sup> See 47 C.F.R. § 20.6(d) (attribution rules). With only limited exceptions discovered during due diligence on this transaction and described below, AT&T Wireless's spectrum holdings, including the TeleCorp spectrum attributed to it, are at or below the FCC's spectrum cap in each of their markets. See 47 C.F.R. § 20.6. As described below, in markets where the combined spectrum exceeds the cap AT&T Wireless is proposing to divest the excess amount to a trust.

<sup>5/</sup> Compliance with the spectrum cap should be sufficient to address any competitive concerns. See Amendment of Parts 20 and 24 of the Commission's Rules, 11 FCC Rcd 7824, 7869 ¶ 95 (1996) ("We adopted the [cap] to discourage anti-competitive behavior while at the same time maintaining incentives for innovation and efficiency."). While the Commission has expressly reserved the right to review the competitive effects of a transaction in which the party acquiring spectrum remains at or below the spectrum cap, it has not contemplated a situation in which the acquirer was expressly not adding new spectrum to its existing holdings. Cf. 1998 Biennial Regulatory Review Spectrum Aggregation Limits for Wireless Telecommunications Carriers, 15 FCC Rcd 9219, 9244-45 n.138 (1999) (noting that "transfers resulting in consolidation of spectrum below the spectrum cap should not necessarily be exempt from section 310(d) review" (emphasis added) ("1998 Biennial Review"). AT&T Wireless, by contrast, already holds an attributable interest in the spectrum of the acquired company. The instant merger therefore does not result in any new consolidation of spectrum.

record in support of the transaction, the parties will provide the Commission with information upon which to undertake a Bell Atlantic/NYNEX-type analysis.

The wireless marketplace is characterized by robust competition,<sup>6/</sup> as the number of nationwide providers delivering mobile services increases.<sup>7/</sup> More than 90 percent of the total U.S. population has access to three or more mobile telephony operators; 75 percent live in areas with five or more choices; and almost half have at least six choices.<sup>8/</sup> As the Commission has noted, “increased competition and innovation are evidenced by lower prices for consumers and increased diversity of service offerings,”<sup>9/</sup> and prices continue to fall.<sup>10/</sup>

Against this backdrop, the merger of AT&T Wireless and TeleCorp seamlessly integrates two affiliated service providers in complementary geographic areas. The result will be a stronger company that can compete more effectively with other national wireless providers. Consumer benefits will flow from the merged entity’s enhanced economies of scale and scope, including greater purchasing and billing system efficiencies and reductions in common and duplicative expenses. Investment in new technology will also speed the rollout of “3G” advanced wireless services. And TeleCorp customers will be able to take advantage of even more attractive, seamless offers under the strong AT&T Wireless brand.

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<sup>6/</sup> See In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Conditions with Respect to Commercial Mobile Services, 16 FCC Rcd 13350, 13432 (2001) (“Sixth Annual CMRS Report”).

<sup>7/</sup> Id. at 4-5. Personal Communications Services (“PCS”) and Specialized Mobile Radio (“SMR”) providers both compete directly with cellular telephone providers (“CMRS”). Indeed, from a consumer’s perspective, broadband PCS and cellular are substitutes. Id. at 4.

<sup>8/</sup> Id. at 6.

<sup>9/</sup> Id. at 4-5. See also id. at 6.

<sup>10/</sup> Id. at 6.

Applicants seek authority to transfer to AT&T Wireless Part 24 broadband PCS (including Part 101 point-to-point microwave licenses used in connection therewith), local multipoint distribution service ("LMDS") and 39 GHz licenses currently held by the TeleCorp subs. Applications to transfer TeleCorp's three international 214 authorizations to AT&T Wireless are being simultaneously filed with the Commission. The TeleCorp LMDS and 39 GHz licenses are not operational; AT&T Wireless has LMDS licenses that are not operational and do not overlap with TeleCorp's LMDS licenses, either. Under these circumstances, the transfer of the LMDS and 39 GHz licenses presents no issues for further analysis.<sup>11/</sup>

The Commission itself has recognized that the efficiencies of larger footprints and the marketing possibilities of multiple product offerings that mergers such as this make possible.<sup>12/</sup> As detailed herein, by integrating AT&T Wireless and TeleCorp, the merger will enhance competition for the delivery of interconnected mobile telephone services and therefore promote the public interest. Accordingly, the Commission should approve this application.

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<sup>11/</sup> The relevant market for LMDS has not evolved sufficiently so as to predict future competitive conditions with any certainty. See Amendment to the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services Market, 15 FCC Rcd 14680 (2000). Especially in the absence of spectrum aggregation limits for LMDS, analysis of this application properly should focus upon the other licenses at issue. Accord Voicestream/DT, 16 FCC Rcd at 9783 ¶ 4, 9825 ¶81 (treating LMDS as a "supporting service" and not inquiring further).

<sup>12/</sup> See Sixth Annual CMRS Report, 16 FCC Rcd at 13; see also In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, 13 FCC Rcd 19746 at 17669 (2000) ("Fifth Annual CMRS Report"); In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, 15 FCC Rcd 17660 (1998) ("Third Annual CMRS Report").

## II. DESCRIPTION OF THE PARTIES

### A. *AT&T Wireless*

AT&T Wireless is the largest independent wireless carrier in the United States. It was spun off from AT&T Corp. on July 9, 2001. The company operates one of the largest digital wireless networks in North America. With more than 16.4 million subscribers, AT&T Wireless is committed to being among the first to deliver the next generation of wireless products and services. Today, AT&T Wireless offers customers high-quality mobile wireless voice and data communications services to businesses or consumers, in the U.S. and internationally. The company's innovative "Digital One Rate" national calling plan revolutionized the wireless industry -- and continues to spur competition -- by eliminating roaming and long-distance fees for all domestic calls across the country.

### B. *TeleCorp PCS*

TeleCorp is AT&T Wireless' largest affiliate, serving nearly one million customers in fourteen states from the Great Lakes to the Gulf of Mexico. As an affiliate, TeleCorp markets its services under the "SunCom" brand in connection with AT&T Wireless. The company provides its digital wireless services in selected markets in fourteen states and the Commonwealth of Puerto Rico.

## III. DESCRIPTION OF THE TRANSACTION

AT&T Wireless and TeleCorp have entered into an Agreement and Plan of Merger<sup>13/</sup> by which AT&T Wireless will acquire TeleCorp in an all-stock transaction valued at \$4.7 billion.

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<sup>13/</sup> Certain authorizations held by TeleCorp or its affiliates were awarded pursuant to the auction process less than three years ago. In accordance with section 1.2111(a) of the Commission's rules, a copy of the

AT&T Wireless will acquire the 77 percent of the company it does not already own for AT&T Wireless common stock currently valued at \$2.4 billion and assume \$2.1 billion in net debt and approximately \$221 million in preferred securities.<sup>14/</sup> The transaction affords AT&T Wireless a 20 percent expansion of its existing footprint, adding 32 million covered POPs in fourteen states and the Commonwealth of Puerto Rico.

#### IV. PUBLIC INTEREST ANALYSIS

In the Bell-Atlantic/NYNEX merger,<sup>15/</sup> the Commission used a four-part framework to conduct its public interest analysis of the competitive effects of the proposed merger. First, the Commission defined the relevant product and geographic markets. Second, the Commission identified the current and potential participants in each relevant market, focusing on those likely to have a significant competitive impact. Third, the Commission evaluated the competitive effects the merger may have in the relevant markets. Fourth, the Commission considered possible merger-specific efficiencies resulting from the transaction such as cost reductions, productivity enhancements, or improved incentives for the parties.

For the reasons set out above, a complete Bell Atlantic/NYNEX review is not required for this transaction. If the Commission were to perform such a review, however, the following

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Agreement and Plan of Merger giving rise to this transaction is attached to this exhibit. See 47 C.F.R. § 1.2111(a).

<sup>14/</sup> The merger will be accomplished by TeleCorp merging with TL Acquisition Corp., a wholly owned subsidiary of AT&T Wireless. TeleCorp will be the surviving corporation. Upon the effective date of the merger, each share of TeleCorp stock will be exchanged for AT&T Wireless stock. As a result, TeleCorp will become a wholly owned subsidiary of AT&T Wireless.

<sup>15/</sup> Bell Atlantic/NYNEX, 12 FCC Rcd 19995. See also In re Applications of Pittencrieff Communications, Inc. and Nextel Communications, Inc. For Consent to Transfer Control of Pittencrieff Communications, Inc. and its Subsidiaries, 13 FCC Rcd 8935 (1997) ("Pittencrieff"); Voicestream/DT, 16 FCC Rcd at 9789 ¶ 17; Motorola/Nextel, 16 FCC Rcd at 8460 ¶ 9; SBC/BellSouth, 15 FCC Rcd at 25464 ¶ 13; GTE/Bell Atlantic, 15 FCC Rcd at 14046 ¶ 22.

analysis demonstrates that the proposed merger of AT&T Wireless and TeleCorp will not adversely affect competition in the relevant markets and will in fact provide substantial pro-competitive benefits. As the analysis makes clear, the proposed merger is in the public interest and should be approved.

## V. COMPETITIVE ANALYSIS

### A. *Product and Geographic Markets*

The Commission has defined a relevant product market as a product or group of products for which there no close substitutes in demand.<sup>16/</sup> AT&T Wireless and TeleCorp each provide mobile wireless communications services to businesses and consumers. A properly defined geographic market aggregates consumers that face similar choices regarding vendors of a particular product or service.<sup>17/</sup>

#### 1. *Interconnected Mobile Telephone Services*

Both AT&T Wireless and TeleCorp provide interconnected mobile telephone services. This product market consists of all commercial, two-way mobile telephone services that are interconnected to the public switched network.<sup>18/</sup> These services include cellular, broadband PCS, and interconnected digital specialized mobile radio services ("SMRS").<sup>19/</sup> Wireline services are not included within this product market because the Commission currently does not

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<sup>16/</sup> Pittencrieff, 13 FCC Rcd at 8944 ¶ 18; Motorola/Nextel, 16 FCC Rcd at 8460 ¶ 9.

<sup>17/</sup> Pittencrieff, 13 FCC Rcd at 8951 ¶ 37; PacifiCorp Holdings, 13 FCC Rcd at 8903-04 ¶ 22; Motorola/Nextel, 16 FCC Rcd at 8483 ¶ 25.

<sup>18/</sup> See PacifiCorp Holdings, 13 FCC Rcd at 8906 ¶ 28; See also Sixth Annual CMRS Report, 16 FCC Rcd at 13359 (overview of the CMRS industry). The formation of national and near-national competitors has led to a market that is less "local" in scope than ever before.

treat wireline and mobile services as presently interchangeable.<sup>20/</sup> AT&T Wireless holds PCS licenses and cellular licenses that are used to provide mobile telephone services. TeleCorp also holds PCS licenses. Presently, AT&T Wireless and TeleCorp do not compete directly for customers in any local market.

## 2. *Other Services*

AT&T Wireless provide long distance services to its customers.<sup>21/</sup> AT&T Wireless also offers customers cellular digital packet data ("CDPD") wireless data transmission.<sup>22/</sup> Using CDPD, AT&T launched its voice and Internet-ready service, "PocketNet," in October 1997. PocketNET is available in over one hundred markets across the country. AT&T Wireless also offers fixed wireless (data and voice) and air-to-ground wireless services.<sup>23/</sup>

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<sup>19/</sup> In addition, the Commission has also made spectrum available for the provision of wireless services such as Wireless Communications Services. See In the Matter of Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS"), 12 FCC Rcd 10785 (1997).

<sup>20/</sup> See, e.g., Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499, 15995-96 ¶ 1004 (1996) (declining to treat CMRS providers as local exchange providers), vacated in part on other grounds, Iowa Utilities Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), appeal pending sub nom. Iowa Utilities Board v. Federal Communications Commission, 219 F.3d 744 (2000), cert. granted January 22, 2001, 2001 U.S. LEXIS 947, oral argument October 10, 2001. See also Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Notice of Proposed Rulemaking, 11 FCC Rcd 14171, 14175-76 ¶ 7 (1996) (stating that substantial investment will be required before wireless systems are capable of providing a substitute for wireline services); Sixth Annual CMRS Report, 16 FCC Rcd at 13382 (approximately 3 percent of mobile telephone subscribers rely on their wireless phone as their only phone). But see Sixth Annual CMRS Report, 16 FCC Rcd at 13382 (discussing the boom in non-business use of wireless telephony).

<sup>21/</sup> The Commission has previously found that this service constitutes a distinct product market. See Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, 12 FCC Rcd 15756, 15762 ¶ 5, 15787 ¶ 54 (1997).

<sup>22/</sup> See Third Annual CMRS Report, 15 FCC Rcd at 17718.

<sup>23/</sup> Applicants also request transfer of certain LMDS and 39 GHz licenses from TeleCorp to AT&T Wireless. Because these licenses do not overlap in any relevant geographic market, and in any case are

### 3. *Relevant Markets*

For the purposes of this review, the relevant market is commercial mobile radio services (“CMRS”), *i.e.*, interconnected mobile telephone services, provided to subscribers in markets nationwide. There are at least six national providers of such service, including AT&T Wireless. TeleCorp is not a national provider of CMRS. Significantly, AT&T Wireless and TeleCorp do not compete against each other in any geographic area for the delivery of this or any service. To the contrary, the wireless service areas of the two companies are entirely complementary.

#### *B. Current and Potential Market Participants*

The relevant product markets in this transaction are all characterized by relative ease of entry and the potential for increased competition from new market participants.<sup>24/</sup> The merged company will face robust competition in the CMRS market from other cellular, PCS, and SMR providers. Cingular, Verizon, Nextel, Sprint PCS and Voice Stream are all investing heavily to expand services on a national basis. The Commission has found that the market for mobile telephony is highly competitive.<sup>25/</sup> Subscriber growth has continued at record levels.<sup>26/</sup> Minutes of use are increasing, while prices are falling.<sup>27/</sup> Providers are expanding their footprints,<sup>28/</sup> and

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not being used to provide services to the public, their transfer does not create any issues for purposes of Bell Atlantic/NYNEX review. *See supra* n.11.

<sup>24/</sup> In past merger analysis involving the monopolized landline local exchange markets, the Commission has defined market participants to include both “actual competitors” and “precluded competitors,” *viz.*, those entrants precluded from the wireline markets prior to 1996. In *Pittencrieff*, the Commission refused to consider precluded competitors in the mobile phone services context because the wireless markets are more competitive, and subject to less restrictive regulatory barriers. *Pittencrieff*, 13 FCC Rcd at 8942 ¶ 14. Instead of precluded competitors, the Commission focused on potential market participants. *Id.*

<sup>25/</sup> *Sixth Annual CMRS Report*, 16 FCC Rcd at 13371.

<sup>26/</sup> *Id.*

<sup>27/</sup> *Id.* at 22-23, 28.

entry “continues to reduce prices.”<sup>29/</sup> Moreover, “the continued rollout of differentiated pricing plans” indicates a competitive marketplace.<sup>30/</sup> Thus, the current merger takes place in a dynamic market already characterized by robust competition. There is nothing specific to this merger that will reduce competition among these providers; in fact, the merger will make AT&T Wireless a more effective competitor and benefit consumers as a result.<sup>31/</sup>

**C. Competitive Effects**

The proposed transaction will not affect competition adversely in any relevant product market, and in fact will further the public interest by expanding consumer choice and enhancing the quality of existing services. Under the Commission’s rules, AT&T Wireless is already attributed with TeleCorp’s spectrum.<sup>32/</sup> The merger allows AT&T Wireless to unlock the full potential of the spectrum by integrating TeleCorp’s operations and maximizing its nationwide footprint. Because of the existence of so many other strong competitors, however, this merger does not give AT&T Wireless any increased ability to price strategically, nor increase the potential of coordinated interaction.<sup>33/</sup>

**D. Spectrum Cap Issues**

During the Applicants’ due diligence prior to the announcement of this transaction, several markets were discovered in which their combined spectrum holdings exceeded the FCC’s

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<sup>28/</sup> Id. at 25-27.

<sup>29/</sup> Id. at 28.

<sup>30/</sup> Id.

<sup>31/</sup> Cf. Third Annual CMRS Report, 15 FCC Rcd at 17679 (discussing price competition among service providers).

<sup>32/</sup> See supra n.4.

spectrum cap. In those geographic markets, Applicants propose to disaggregate sufficient spectrum to bring the merged entity within the spectrum cap limits. Pursuant to the Commission's rules, Applicants request authority to assign such spectrum as exceeds the Commission's limits in each market into a fully independent divestiture trust prior to closing the transaction.<sup>34/</sup> A request for such approval is being made concurrently with this application. Under the terms of the Trust Agreement, the trustee would be required to sell the rights to this excess spectrum to an entity or entities unaffiliated with the merged entity no later than 180 days after the spectrum is transferred to the trust. The Commission has previously authorized the use of divestiture trusts of similar duration and structure to insulate spectrum from attribution.<sup>35/</sup>

The proposed divestiture trust plainly services the public interest. It will ensure that customers do not suffer any disruption in service, and that they benefit as soon as possible from the merger. The arrangement also raises no competitive concerns because of the insulated nature of the trust and the independence of the trustee. Finally, as noted above, none of the spectrum cap issues addressed by the divestiture trust actually arise from the proposed merger; grant of the

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<sup>33/</sup> See In re Applications of Teleport Communications Group, Inc. and AT&T Wireless Corp., 13 FCC Rcd 15236, 15258 ¶ 40 (1998) ("Teleport").

<sup>34/</sup> See 47 C.F.R. § 20.6(e)(4).

<sup>35/</sup> See, e.g., In re Applications of GTE Corporation, Vodafone AirTouch Plc and Bell Atlantic Corporation, 15 FCC Rcd 11608 (2000); In re Applications for Vanguard Cellular Systems, Inc., Transferor, and Winston, Inc., Transferee, for Consent to Transfer of Control of Licenses and Authorizations, 14 FCC Rcd 3844 (1999); Shareholders of Jacor Communications, Inc., 14 FCC Rcd 6867 (1999); Tele-Communications, Inc., 14 FCC Rcd 3160 (1999); Stockholders of Infinity Broadcasting, 12 FCC Rcd 5012 (1996); Letter to Philip V. Permut from Gregory J. Vogt, Chief, Mobile Services Division (Mar. 4, 1991); Shareholders of American Radio Systems Corp., 13 FCC Rcd 12430 (1988); Lorimar Telepictures Corporation, 3 FCC Rcd 6250 (1988); Reexamination of the Commission's Rules and Policies Regarding the Attribution of Ownership Interests, 97 FCC 2d 997 (1984). See also 1998 Biennial Review, 15 FCC Rcd 9219, 9269 (divestiture trustee has six months to complete an orderly sale of spectrum rights)

assignment of spectrum to the trust would remove a potential impediment to the closing of a transaction that promises substantial public interest benefits.

Applicants seek authority to continue to hold the excess spectrum until it is transferred to the divestiture trust. If a waiver of the Commission's rules is necessary in connection with such authority, Applicants hereby request one.<sup>36/</sup> Such a waiver will serve the public interest by facilitating the instant transaction and making possible the benefits described herein.<sup>37/</sup> Given the limited scope and duration of such a waiver, the public would not be harmed by granting Applicants' request.

Applicants note that the Commission is currently considering whether to modify or repeal its spectrum cap rules.<sup>38/</sup> Applicants therefore request authority to structure the divestiture trust so that, in the event that the Commission relaxes the spectrum cap during the pendency of this application, the trustee may return back to AT&T Wireless any spectrum allowed under the revised rules.

***E. Merger-Specific Benefits***

The proposed merger is a direct result of the Commission's wireless marketplace reforms. Consumers are enjoying increasing choices in the wireless market as new regional and national providers emerge, encouraged by the deregulation afforded by Congress in 1993 and by the Commission. As providers consolidate and service territories expand, services can be delivered

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<sup>36/</sup> See 47 C.F.R. § 1.3.

<sup>37/</sup> See 47 C.F.R. § 20.6 note 3. See also WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).

<sup>38/</sup> See In the Matter of 2000 Biennial Regulatory Review, Spectrum Aggregation Limits For Commercial Mobile Radio Services, 16 FCC Rcd 2763 (2001).

at higher quality and a lower cost than is possible by relying on roaming agreements.<sup>39/</sup> Bringing together TeleCorp and AT&T Wireless will accordingly result in significant benefits to consumers.<sup>40/</sup>

The merger will expand AT&T Wireless' footprint by 32 million covered POPs in fourteen states and the Commonwealth of Puerto Rico. AT&T Wireless and TeleCorp are already committed to the same "3G" technology strategy, and the integrated network facilitated by the merger will foster the more rapid roll-out of this technology and result in other system-wide efficiencies.<sup>41/</sup> Uniform engineering and management, common purchasing, and integrated marketing efforts will drastically reduce administrative costs. Integration will also facilitate the deployment of advanced digital facilities and the services they make possible. Customers will benefit from the widespread introduction and availability of new offerings under the strong AT&T Wireless brand. The Commission has already recognized that the public interest is serviced by the benefits resulting from integration of wireless operations.<sup>42/</sup> The efficiencies of

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<sup>39/</sup> See Pittencrieff, 13 FCC Rcd at 8952 ¶ 38.

<sup>40/</sup> Where a merger is unlikely to result in any anti-competitive effects, the Commission does not require a detailed recitation of the merger's public interest benefits. Teleport, 13 FCC Rcd at 15262 ¶ 48.

<sup>41/</sup> The Commission has recognized that the cost savings and increased revenue opportunities that result from such integration allow companies to provide "higher quality and more reliable services" than each company is able to offer on their own. In the Matter of Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc., 13 FCC Rcd 18025, 18138 ¶ 199 (1998).

<sup>42/</sup> See, e.g., Third Annual CMRS Report, 15 FCC Rcd at 17665; Bell Atlantic Mobile/NYNEX Mobile, 10 FCC Rcd 13368, 13384-85 at ¶ 46 (1995).

integration are increasingly important in a wireless market characterized by vigorous competition among national providers.<sup>43/</sup>

## VI. OTHER ISSUES

TeleCorp holds some "closed" C and F block PCS licenses. Consistent with the Commission's rules, TeleCorp is transferring to AT&T Wireless only those licenses for which it has satisfied the five-year construction requirement. Closing of this transaction will be contingent on payment by AT&T Wireless of any outstanding installment debt on the transferred licenses and any bidding credits that have not already been repaid. These issues are addressed more fully in Exhibit II to the Applications.

## VII. CONCLUSION

For the foregoing reasons, this transaction will serve the public interest, convenience and necessity. The Applicants therefore respectfully request that the Commission expeditiously grant this application.

WDC 225118v2

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<sup>43/</sup> Third Annual CMRS Report, 15 FCC Red at 17662 ("competition in a number of segments of the CMRS industry has grown more than it has ever before"; "substantial progress has been made towards a truly competitive mobile telephone marketplace").



## DESIGNATED ENTITY ISSUES

The attached applications seek the consent of the Federal Communications Commission to transfer control of personal communications service ("PCS"), local multipoint distribution service ("LMDS") and 38.6-40.0 GHz ("39 GHz") licenses held by subsidiaries of TeleCorp PCS, Inc. (collectively, "TeleCorp") to AT&T Wireless Services, Inc. ("AT&T Wireless"). Certain of TeleCorp's PCS licenses authorize operation on the C and F block channels. The Commission's rules generally provide that "[n]o assignment or transfer of control of a license for frequency Block C or frequency Block F won in closed bidding pursuant to the eligibility requirements of § 24.709 will be granted,"<sup>1/</sup> except when, among other instances, "[t]he application for assignment or transfer of control is filed on or after the date the licensee has notified the Commission pursuant to § 24.203(c) that its five-year construction requirement has been satisfied."<sup>2/</sup> As shown in Schedule A, five-year build out notifications have been filed for all of the C and F Block licenses implicated by these applications. This list comprises all of the designated entity PCS licenses held by TeleCorp entities with the exception of WPOK659, the 30 MHz C Block license for the Somerset, KY BTA (BTA423).<sup>3/</sup> In applications filed contemporaneously herewith, TeleCorp has proposed to assign the license for WPOK659, to Skagit Wireless, L.L.C. ("Skagit").<sup>4/</sup>

While the Commission's rules permit AT&T Wireless to acquire control of the C and F Block licenses for which the five-year build-out requirement has been met, section 1.2111 of the those rules requires an "unjust enrichment" payment for certain C and F Block authorizations that were obtained using bidding credits or installment payment financing. In addition, section 1.2111 requires a similar payment in order for AT&T Wireless to obtain control of the LMDS and 39 GHz licenses held by TeleCorp that were obtained using bidding credits. For the C and F Block licenses, the required repayment consists of (a) installment payment debt, if applicable, and (b) under certain circumstances, all or part of the original bidding credits applicable to such licenses. Accordingly, each C and F Block license that is the subject of the attached application is subject to different repayment criteria under section 1.2111. Schedules B, C, D and E hereto set out what the parties believe will be the repayment obligation for these C and F Block

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<sup>1/</sup> 47 C.F.R. § 24.839(a).

<sup>2/</sup> 47 C.F.R. §24.839(a)(6).

<sup>3/</sup> Applicants manually filed an application proposing the transfer of control to AT&T Wireless of an additional C block license that has not yet been issued to TeleCorp, but for which an application for assignment is pending. Applicants requested a waiver of the FCC's ULS filing rules to permit manual filing in this case. That C block authorization has been constructed, and the FCC so notified.

<sup>4/</sup> Assignment to TeleCorp of certain other unbuilt C and F block authorizations remains pending. TeleCorp manually filed an application to transfer these authorizations to Skagit. This application is accompanied by a request for a waiver of the FCC's ULS licensing rules to permit the manual filing.

authorizations, without considering interest payments.<sup>5/</sup> The C and F Block licenses listed on Schedule B were issued more than five years ago and therefore no bidding credit repayment is required, although there is installment debt associated with virtually all of the licenses.<sup>6/</sup> The licenses listed on Schedule C are those F Block licenses that were issued less than five years ago, and for which partial repayment of the applicable bidding credit is required.<sup>7/</sup> Schedule D lists the F Block authorizations that have previously been subject to repayment of some of the bidding credit in a prior third party transaction.<sup>8/</sup> A final category of C Block licenses, contained on Schedule E, are those for which full repayment of the bidding credit is likely to be required.<sup>9/</sup> While the licenses on Schedule E are not subject to installment payments, the licenses on Schedules B, C, and D all generally carry FCC debt. For the LMDS and 39 GHz licenses, the payment obligation consists, in each case, of the repayment of some or all of the bidding credits. Schedule F hereto sets out the repayment obligations for the LMDS licenses and Schedule G specifies the repayment obligations for the 39 GHz licenses. AT&T Wireless acknowledges and accepts the requirements to satisfy these repayment obligations in full prior to closing.

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<sup>5/</sup> The application proposing the transfer of control of the pending C Block license, see note 3, supra, contains a separate schedule specifying the required repayment.

<sup>6/</sup> 47 C.F.R. § 1.2111(d)(2)(i)(E).

<sup>7/</sup> If the parties consummate the transfer of control of these licenses after April 28, 2002, certain of the licenses will no longer be subject to any repayment obligations because they will have been issued for longer than five years. See 47 C.F.R. §1.2111(d)(2)(i)(E).

<sup>8/</sup> For example, when TeleCorp acquired Tritel, Inc. through its merger in November of 2000, TeleCorp qualified only as a "small business" and made a repayment because Tritel, Inc. was considered a "very small business" and was entitled to a greater bidding credit than was TeleCorp. If the parties consummate the transfer of control of these licenses after April 28, 2002, certain of the licenses will no longer be subject to any repayment obligations because they will have been issued for longer than five years. See note 7, supra.

<sup>9/</sup> The earliest time at which there would be a reduction in the amount of bidding credit repayment due would be June 30, 2002. For one license listed on Schedule E, WPOJ806, no bidding credit repayment is required because the entity from which TeleCorp acquired this license did not qualify for a bidding credit.



AGREEMENT AND PLAN OF MERGER

by and among

AT&T WIRELESS SERVICES, INC.

TL ACQUISITION CORP.

and

TELECORP PCS, INC.

Dated as of October 7, 2001

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## EXHIBITS

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Exhibit C	Form of Affiliates Letter
Exhibit D	Form of AWS Tax Representation Letter
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Exhibit F	Transfer Agreements
Exhibit G	Change of Control Severance Policy
Exhibit H	Letter Agreement with TeleCorp Management Corp.

## AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER (this "Agreement"), dated as of October 7, 2001, by and among TeleCorp PCS, Inc., a Delaware corporation ("TeleCorp"), AT&T Wireless Services, Inc., a Delaware corporation ("AWS") and TL Acquisition Corp., a newly formed Delaware corporation and a wholly owned subsidiary of AWS ("Merger Sub").

### WITNESSETH:

**WHEREAS**, the respective Boards of Directors of TeleCorp, AWS and Merger Sub, as well as all of the directors of TeleCorp who are not employees of AWS (the "Disinterested Directors"), have approved this Agreement, and deem it advisable and in the best interests of their respective stockholders to consummate the merger of Merger Sub with and into TeleCorp on the terms and conditions set forth in this Agreement (the "Merger");

**WHEREAS**, for United States federal income tax purposes, it is intended that either the Merger or the combination of the Merger and the Follow-On Merger, as applicable, qualify as a "reorganization" within the meaning of Section 368 of the Internal Revenue Code of 1986, as amended (the "Code"), and the rules and regulations promulgated thereunder;

**WHEREAS**, as an inducement to and a condition to AWS entering into this Agreement, simultaneously herewith certain stockholders of TeleCorp are entering into Voting Agreements relating to the agreement of such stockholders to vote to approve the transactions contemplated by this Agreement (the "Voting Agreements"); and

**NOW, THEREFORE**, in consideration of the premises and mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

### ARTICLE I

#### THE MERGER

1.1 The Merger. At the Effective Time and subject to the terms and conditions of this Agreement, and in accordance with the General Corporation Law of the State of Delaware ("DGCL"), Merger Sub shall be merged with and into TeleCorp, with TeleCorp as the surviving corporation. From and after the Effective Time, the separate corporate existence of Merger Sub shall cease, and TeleCorp, as the surviving corporation, shall continue its existence under the laws of the State of Delaware as a wholly owned subsidiary of AWS. TeleCorp, as the surviving corporation after the Merger, is hereinafter sometimes referred to as the "Surviving Corporation."

1.2 Effective Time. As soon as practicable after satisfaction or, to the extent permitted hereunder, waiver of the conditions set forth in Article V (excluding, but subject to the satisfaction or waiver of, conditions that, by their nature, cannot be satisfied prior to the Closing Date), but in no event prior to the Closing, TeleCorp and AWS shall cause the Merger to be consummated by filing a certificate of merger (the "Certificate of Merger") with the Secretary of State of the State of Delaware, executed in accordance with the relevant provisions of the DGCL

(the date and time of such filing, or such later date and time as may be specified by mutual agreement in the Certificate of Merger, being the “Effective Time”).

1.3 Effect of the Merger. At the Effective Time, the effect of the Merger shall be as provided in the applicable provisions of the DGCL and the Certificate of Merger. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time all the assets, property, rights, privileges, immunities, powers and franchises of TeleCorp and Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities and duties of TeleCorp and Merger Sub shall become the debts, liabilities and duties of the Surviving Corporation.

1.4 Certificate of Incorporation and By-laws of the Surviving Corporation. At the Effective Time, by virtue of the Merger and without further action on the part of any party, the Restated Certificate of Incorporation of TeleCorp shall be amended to read in its entirety as the certificate of incorporation of Merger Sub in effect immediately prior to the Effective Time (except that the name of the corporation shall remain TeleCorp, and the provision relating to the incorporator shall be omitted) and as so amended shall be the certificate of incorporation of the Surviving Corporation, until thereafter amended as provided by the DGCL; provided that, if the votes received in connection with the Required Stockholder Approval are not sufficient under the Restated Certificate of Incorporation of TeleCorp to cause such amendment, then the Restated Certificate of Incorporation of TeleCorp as in effect immediately prior to the Effective Time shall remain the certificate of incorporation of the Surviving Corporation, until thereafter amended as provided by the DGCL. At the Effective Time, the by-laws of Merger Sub shall be the by-laws of the Surviving Corporation until thereafter amended as provided by the DGCL.

1.5 Directors and Officers.

(a) The directors of Merger Sub immediately prior to the Effective Time shall be the initial directors of the Surviving Corporation, each to hold office in accordance with the Certificate of Incorporation and the By-laws of the Surviving Corporation until their respective successors are duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Surviving Corporation’s Certificate of Incorporation and By-laws.

(b) The officers of TeleCorp immediately prior to the Effective Time shall be the initial officers of the Surviving Corporation, each to hold office in accordance with the Certificate of Incorporation and the By-laws of Merger Sub until their respective successors are duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with Merger Sub’s Certificate of Incorporation and By-laws.

1.6 Conversion of Capital Stock, Etc. Subject to the provisions of this Article I, at the Effective Time, by virtue of the Merger, and without any action on the part of any party:

(a) With respect to each share of Common Stock, par value \$0.01 per share, of TeleCorp (“TeleCorp Common Stock”):

(i) each share of TeleCorp Class A Voting Common Stock, par value \$0.01 per share, issued and outstanding immediately prior to the Effective Time (other than any shares to be canceled pursuant to Section 1.7) shall be converted automatically into and

become changeable for .9 shares of AWS, par value \$0.01 per share (“AWS Common Stock”);

(ii) each share of TeleCorp Class C Common Stock, par value \$0.01 per share, issued and outstanding immediately prior to the Effective Time (other than any shares to be canceled pursuant to Section 1.7 or the Dissenting Shares) shall be converted automatically into and become exchangeable for .9 shares of AWS Common Stock;

(iii) each share of TeleCorp Class D Common Stock, par value \$0.01 per share, issued and outstanding immediately prior to the Effective Time (other than any shares to be canceled pursuant to Section 1.7 or the Dissenting Shares) shall be converted automatically into and become exchangeable for .9 shares of AWS Common Stock;

(iv) each share of TeleCorp Class E Common Stock, par value \$0.01 per share, issued and outstanding immediately prior to the Effective Time (other than any shares to be canceled pursuant to Section 1.7 or the Dissenting Shares) shall be converted automatically into and become exchangeable for .9 shares of AWS Common Stock;

(v) each share of TeleCorp Class F Common Stock, par value \$0.01 per share, issued and outstanding immediately prior to the Effective Time (other than any shares to be canceled pursuant to Section 1.7 or the Dissenting Shares) shall be converted automatically into and become exchangeable for .9 shares of AWS Common Stock; and

(vi) each share of TeleCorp Voting Preference Common Stock, par value \$0.01 per share, issued and outstanding immediately prior to the Effective Time (other than any shares to be canceled pursuant to Section 1.7 or the Dissenting Shares) shall be converted automatically into and become exchangeable for .9 shares of AWS Common Stock.

(b) With respect to each share of Preferred Stock, par value \$0.01 per share, of TeleCorp (“TeleCorp Preferred Stock” and, together with the TeleCorp Common Stock, “TeleCorp Capital Stock”) that is outstanding:

(i) each share of TeleCorp Series A Convertible Preferred Stock, par value \$0.01 per share, issued and outstanding immediately prior to the Effective Time (other than any shares to be canceled pursuant to Section 1.7 or the Dissenting Shares) shall be converted automatically into and become exchangeable for 82.9849 shares of AWS Common Stock;

(ii) each share of TeleCorp Series B Preferred Stock, par value \$0.01 per share, issued and outstanding immediately prior to the Effective Time (other than any shares to be canceled pursuant to Section 1.7 or the Dissenting Shares) shall be converted automatically into and become exchangeable for 81.2439 shares of AWS Common Stock;

(iii) each share of TeleCorp Series C Preferred Stock, par value \$0.01 per share, issued and outstanding immediately prior to the Effective Time (other than any shares to be canceled pursuant to Section 1.7 or the Dissenting Shares) shall be converted automatically into and become exchangeable for one share of a new series of preferred

stock of AWS to be designated as Series C Preferred Stock of AWS (“AWS Series C Preferred Stock”) having terms substantially as set forth in the form of the Series C Preferred Certificate of Designation attached as Exhibit A hereto;

(iv) each share of TeleCorp Series D Preferred Stock, par value \$0.01 per share, issued and outstanding immediately prior to the Effective Time (other than any shares to be canceled pursuant to Section 1.7 or the Dissenting Shares) shall be converted automatically into and become exchangeable for 27.6425 shares of AWS Common Stock;

(v) each share of TeleCorp Series E Preferred Stock, par value \$0.01 per share, issued and outstanding immediately prior to the Effective Time (other than any shares to be canceled pursuant to Section 1.7 or the Dissenting Shares) shall be converted automatically into and become exchangeable for one share of a new series of Preferred Stock of AWS to be designated as Series E Preferred Stock of AWS, having terms substantially as set forth in the form of the Series E Preferred Certificate of Designation attached as Exhibit B hereto (together with the AWS Series C Preferred Stock, the “AWS Preferred Stock”; the AWS Common Stock and the AWS Preferred Stock, the “AWS Capital Stock”);

(vi) each share of TeleCorp Series F Preferred Stock, par value \$0.01 per share, issued and outstanding immediately prior to the Effective Time (other than any shares to be canceled pursuant to Section 1.7 or the Dissenting Shares) shall be converted automatically into and become exchangeable for .9 shares of AWS Common Stock; and

(vii) each share of TeleCorp Series G Preferred Stock, par value \$0.01 per share, issued and outstanding immediately prior to the Effective Time (other than any shares to be canceled pursuant to Section 1.7 or the Dissenting Shares) shall be converted automatically into and become exchangeable for .9 shares of AWS Common Stock.

(c) As of the Effective Time, all shares of TeleCorp Capital Stock shall no longer be outstanding and shall automatically be deemed canceled and shall cease to exist, and each holder of a certificate representing any such shares shall cease to have any rights with respect thereto, except the right to receive shares of the applicable AWS Capital Stock as specified in Section 1.6 (the “Merger Consideration”), and any cash, in lieu of fractional shares to be issued or paid in consideration therefor upon surrender of such certificate in accordance with Section 1.10 hereof without interest. The number of shares of AWS Capital Stock into which shares of each class of TeleCorp Capital Stock are converted in accordance with Section 1.6 shall be, with respect to such class, the “Exchange Ratio.”

#### 1.7 Cancellation of Certain Shares; Conversion of Merger Sub Stock.

(a) At the Effective Time, each share of TeleCorp Capital Stock held in the treasury of TeleCorp or owned by AWS immediately prior to the Effective Time shall be canceled and extinguished without any conversion thereof and no consideration shall be delivered in exchange therefor.

(b) Each share of common stock of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and exchanged for one share of common stock of the Surviving Corporation.

1.8 Stock Options; Restricted Stock.

(a) At the Effective Time, all options (the "Outstanding Employee Options") to purchase shares of TeleCorp Common Stock then outstanding and unexercised under the TeleCorp PCS, Inc. 2000 Employee, Director and Consultant Stock Plan, the TeleCorp PCS, Inc. 1999 Stock Option Plan, as amended to the date hereof, the Amended and Restated Tritel, Inc. 1999 Stock Option Plan, and the Amended and Restated Tritel, Inc. 1999 Stock Option Plan for Non-employee Directors (the "TeleCorp Option Plans"), whether or not then vested or exercisable, by virtue of the Merger and without any action on the part of the holder thereof, shall no longer be options to acquire TeleCorp Common Stock and shall automatically become options to acquire AWS Common Stock with such terms as provided in Section 1.8(b).

(b) At the Effective Time, each such Outstanding Employee Option shall continue to have, and be subject to, the same terms and conditions set forth in the TeleCorp Option Plans, option agreements thereunder and other relevant documentation immediately prior to the Effective Time, except that such Outstanding Employee Options will cease to represent an option to purchase shares of TeleCorp Common Stock and will be automatically converted into an option to purchase that number of whole shares of AWS Common Stock equal to the product of (i) the number of shares of TeleCorp Common Stock that were purchasable under such Outstanding Employee Options immediately prior to the Effective Time and (ii) the applicable Exchange Ratio, rounded up to the nearest whole number of shares of AWS Common Stock. The per-share exercise price for the shares of AWS Common Stock issuable upon exercise of such converted Outstanding Employee Options will be equal to the quotient determined by dividing (x) the exercise price per share of TeleCorp Common Stock at which such Outstanding Employee Options were exercisable immediately prior to the Effective Time by (y) the applicable Exchange Ratio, and rounding the resulting exercise price to the nearest whole cent.

(c) At the Effective Time, all shares of restricted and unvested TeleCorp Common Stock ("Restricted Shares") granted under any of the TeleCorp Option Plans or otherwise, which are outstanding and subject to restriction as of the Effective Time, shall, without any further action on the part of the holders thereof, automatically and immediately be converted into a number of restricted shares of AWS Common Stock ("AWS Restricted Shares") equal to the product of (i) the number of Restricted Shares held by the grantee immediately prior to the Effective Time and (ii) the applicable Exchange Ratio. Following the Effective Time, each AWS Restricted Share will otherwise continue to be subject to the same terms and conditions set forth in the TeleCorp Option Plans, restricted stock agreements thereunder and any other relevant documentation immediately prior to the Effective Time. At the Effective Time, AWS shall assume all of the further obligations of TeleCorp under the TeleCorp PCS, Inc. 1998 Restricted Stock Plan, which was assumed by TeleCorp on November 13, 2000.

(d) AWS or one of its Affiliates shall reserve for issuance a sufficient number of shares of AWS Common Stock for delivery upon exercise of Outstanding Employee Options. As soon as practicable after the Effective Time, AWS shall file a registration statement on Form

S-8 (or any successor form or other appropriate form) under the Securities Act covering the shares of AWS Common Stock issuable upon the exercise of the Outstanding Employee Options assumed by AWS, and shall use all its reasonable efforts to cause such registration statement to become effective as soon thereafter as practicable and to maintain such registration in effect until the exercise or expiration of such assumed Outstanding Employee Options.

(e) Notwithstanding the foregoing, the number of shares and the per share exercise price of each Outstanding Employee Option that is intended to be an “incentive stock option “ (as defined in Section 422 of the Code) shall be adjusted in accordance with the requirements of Section 422 of the Code.

(f) TeleCorp shall take all steps necessary prior to the Effective Time to ensure that no individual shall have the right to exercise any Outstanding Employee Options (or other TeleCorp equity awards) for TeleCorp Common Stock following the Effective Time.

1.9 Adjustments. If at any time during the period between the date of this Agreement and the Effective Time, (a) any change in the outstanding shares of TeleCorp Capital Stock or AWS Common Stock shall occur by reason of any reclassification, recapitalization, stock split or combination, exchange or readjustment of shares, or any similar transaction, or any stock dividend thereon with a record date during such period, or (b) if the representations set forth in Section 2.3(a), Section 2.3(b) or the first sentence of Section 2.3(c) shall not be true and correct and, solely in the case of clause (b) AWS elects to do so, the Merger Consideration shall be appropriately adjusted to provide the holders of shares of TeleCorp Capital Stock or AWS, as the case may be, the same economic effect as contemplated by this Agreement prior to such event or in the absence of such failure to be true and correct, as the case may be.

1.10 Fractional Shares. No fraction of a share of AWS Common Stock shall be issued, but in lieu thereof each holder of shares of TeleCorp Capital Stock who would otherwise be entitled to a fraction of a share of AWS Common Stock (after aggregating all fractional shares of AWS Common Stock to be received by such holder) shall receive from the Exchange Agent (as defined below) in lieu of such fractional shares of AWS Common Stock, an amount of cash (rounded to the nearest whole cent and without interest) representing such holder’s proportionate interest, if any, in the net proceeds from the sale by the Exchange Agent in one or more transactions (which sale transactions shall be made at such times, in such manner and on such terms as the Exchange Agent shall determine in its reasonable discretion) on behalf of all such holders of the aggregate of the fractional shares of AWS Common Stock which would otherwise have been issued (the “Excess Shares”). The sale of the Excess Shares by the Exchange Agent shall be executed on the New York Stock Exchange and shall be executed in round lots to the extent practicable. Until the net proceeds of such sale or sales have been distributed to the holders of TeleCorp Capital Stock, the Exchange Agent will hold such proceeds in trust for the holders of TeleCorp Capital Stock. AWS shall pay or cause to be paid all commissions, transfer taxes and other out-of-pocket transaction costs, including, without limitation, the expenses and compensation of the Exchange Agent, incurred in connection with such sale of the Excess Shares. AWS may decide, at its sole option, exercised prior to the Effective Time, in lieu of the issuance and sale of Excess Shares that AWS shall pay or cause to be paid to the Exchange Agent an amount sufficient for the Exchange Agent to pay each holder of TeleCorp Capital Stock the amount such holder would have received pursuant to the foregoing assuming that the

sales of AWS Common Stock were made at a price equal to the average of the closing bid prices of AWS Common Stock on the New York Stock Exchange, for the ten consecutive trading days immediately following the Effective Time and, in such case, all references herein to the cash proceeds of the sale of the Excess Shares and similar references shall be deemed to mean and refer to the payments calculated as set forth in this sentence. In such event, Excess Shares shall not be issued or otherwise transferred to the Exchange Agent. As soon as practicable after the determination of the amount of cash, if any, to be paid to holders of TeleCorp Capital Stock in lieu of any fractional shares of AWS Common Stock, the Exchange Agent shall make available such amounts to such holders of shares of the applicable TeleCorp Capital Stock without interest.

#### 1.11 Surrender of Certificates.

(a) Exchange Agent. Prior to the Effective Time, AWS shall designate a bank or trust company to act as exchange agent (the "Exchange Agent") in connection with the Merger.

(b) AWS to Provide Capital Stock. When and as needed, AWS shall use reasonable best efforts to make available to the Exchange Agent for exchange in accordance with this Article I, through such reasonable procedures as AWS may adopt, the Merger Consideration.

(c) Exchange Procedures. Promptly after the Effective Time (but in no event later than five days after the Effective Time), AWS shall cause to be mailed to each holder of record of a certificate or certificates (the "Certificates") which immediately prior to the Effective Time represented outstanding shares of TeleCorp Capital Stock whose shares were converted into the right to receive shares of AWS Capital Stock pursuant to Section 1.6, a letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to the Exchange Agent and shall be in such form and have such other provisions as TeleCorp may reasonably specify) and instructions for use in effecting the surrender of the Certificates in exchange for certificates representing shares of AWS Capital Stock. Upon surrender of a Certificate for cancellation to the Exchange Agent, together with such letter of transmittal, duly completed and validly executed in accordance with the instructions thereto, the holder of such Certificate shall be entitled to receive in exchange therefor a certificate representing the number and type of shares of AWS Capital Stock or, as the case may be, payment in lieu of fractional shares which such holder has the right to receive pursuant to Section 1.10, and the Certificate so surrendered shall forthwith be canceled. Until so surrendered, each outstanding Certificate that, prior to the Effective Time, represented shares of TeleCorp Capital Stock shall be deemed from and after the Effective Time, for all legal purposes, to evidence only the right to receive the number of shares of AWS Capital Stock into which the holder of such shares of TeleCorp Capital Stock is entitled and, as the case may be, the right to receive an amount in cash in lieu of the issuance of any fractional shares in accordance with Section 1.10. Any portion of the shares of AWS Capital Stock and cash deposited with the Exchange Agent pursuant to Section 1.11(b) which remains undistributed to the holders of Certificates representing shares of TeleCorp Capital Stock for six months after the Effective Time shall be delivered to AWS, upon demand, and any holders of shares of TeleCorp Capital Stock who have not theretofore complied with the provisions of this Article I shall thereafter look only to AWS and only as general creditors thereof for payment of

their claim for AWS Capital Stock, any cash in lieu of fractional shares and any dividends or distributions with respect to AWS Capital Stock to which such holders may then be entitled.

(d) Distributions With Respect to Unexchanged Shares. No dividends or other distributions declared or made after the Effective Time with respect to AWS Capital Stock with a record date after the Effective Time will be paid to the holder of any unsurrendered Certificate with respect to the shares of AWS Capital Stock represented thereby until the holder of record of such Certificate shall surrender such Certificate. Subject to applicable law, following the surrender of any such Certificate, there shall be paid to the record holder of the certificates representing shares of AWS Capital Stock issued in exchange therefor, without interest, at the time of such surrender, the amount of dividends or other distributions with a record date after the Effective Time theretofore paid with respect to such shares of AWS Capital Stock.

(e) Transfers of Ownership. If any certificate for shares of AWS Capital Stock is to be issued in a name other than that in which the Certificate surrendered in exchange therefor is registered in the stock register of TeleCorp, it shall be a condition of the issuance thereof that the Certificate so surrendered shall be properly endorsed and otherwise be in proper form for transfer and that the stockholder requesting such exchange shall have paid to AWS, or any agent designated by it, any transfer or other taxes required by reason of the issuance of a certificate for shares of AWS Capital Stock in any name other than that of the registered holder of the Certificate surrendered, or established to the reasonable satisfaction of AWS or any agent designated by it that such tax has been paid or is otherwise not payable.

(f) No Liability. Notwithstanding anything to the contrary in this Agreement, none of the Exchange Agent, AWS or the Surviving Corporation shall be liable to a holder of shares of TeleCorp Capital Stock or any amount properly paid to a public official pursuant to any applicable abandoned property, escheat or similar law.

(g) Withholding of Tax. Either AWS or the Exchange Agent shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any holder of shares of TeleCorp Capital Stock such amounts as AWS (or any Affiliate thereof) or the Exchange Agent shall determine in good faith they are required to deduct and withhold with respect to the making of such payment under the Code or any provision of any applicable state, local or foreign tax law. To the extent that amounts are so withheld by AWS or the Exchange Agent, such withheld amounts will be treated for all purposes of this Agreement as having been paid to the holder of the shares of TeleCorp Capital Stock in respect of whom such deduction and withholding were made by AWS.

1.12 Further Ownership Rights in Shares. All shares of AWS Capital Stock issued upon the surrender for exchange of shares of TeleCorp Capital Stock in accordance with the terms of this Article I (including any cash paid in respect thereof) shall be deemed to have been issued in full satisfaction of all rights pertaining to such shares of TeleCorp Capital Stock, and there shall be no further registration of transfers on the records of either AWS or the Surviving Corporation of shares of capital stock of TeleCorp which were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates are presented

to either AWS or the Surviving Corporation for any reason, they shall be canceled and exchanged as provided in this Article I.

1.13 Closing. Unless this Agreement shall have been terminated and the transactions contemplated by this Agreement abandoned pursuant to the provisions of Article VI, and subject to the provisions of Article V, the closing of the Merger (the "Closing") shall take place at 10:00 a.m. (eastern standard time) on a date (the "Closing Date") to be mutually agreed upon by the parties, which date shall be not later than the third business day after all the conditions set forth in Article V (excluding, but subject to the satisfaction or waiver of, conditions that, by their nature, cannot be satisfied prior to the Closing Date) shall have been satisfied or waived, unless another time and/or date is agreed to in writing by the parties. The Closing shall take place at the offices of Wachtell, Lipton, Rosen & Katz, 51 West 52<sup>nd</sup> Street, New York, NY, unless another place is agreed to by the parties.

1.14 Lost, Stolen or Destroyed Certificates. In the event any Certificates evidencing shares of TeleCorp Capital Stock shall have been lost, stolen or destroyed, the Exchange Agent shall issue in exchange for such lost, stolen or destroyed Certificates, upon the making of an affidavit of that fact by the holder thereof in form and substance reasonably acceptable to AWS, such shares of AWS Capital Stock to which the holder of such Certificate would otherwise be entitled to pursuant to the provisions of Section 1.6 and cash for fractional shares, if any, as may be required pursuant to Section 1.10; provided, however, that AWS may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed Certificates to deliver a bond in such sum as it may reasonably direct as indemnity against any claim that may be made against AWS or the Exchange Agent with respect to the Certificates alleged to have been lost, stolen or destroyed.

1.15 Follow-On Merger. In the event that either of the tax opinions required by Section 5.2(b) and 5.3(b) could otherwise not be delivered, AWS shall cause the Surviving Corporation to be merged with and into AWS immediately after the Effective Time (the "Follow-On Merger").

1.16 Dissenting Shares.

(a) Notwithstanding any provision of this Agreement to the contrary, shares of TeleCorp Capital Stock (other than the TeleCorp Class A Voting Common Stock, par value \$0.01 per share) that are outstanding immediately prior to the Effective Time and that are held by stockholders who shall have neither voted in favor of the Merger nor consented thereto in writing and who shall have demanded properly in writing appraisal for such shares in accordance with Section 262 of the DGCL (collectively, the "Dissenting Shares") shall not be converted into, or represent the right to receive, the Merger Consideration. Such stockholders shall be entitled to receive payment of the appraised value of such shares held by them in accordance with the provisions of such Section 262, except that all Dissenting Shares held by stockholders who shall have failed to perfect or who effectively shall have withdrawn or lost their rights to appraisal of such shares under such Section 262 shall thereupon be deemed to have been converted into, and to have become exchangeable for, as of the Effective Time, the right to receive the Merger Consideration, without any interest thereon, upon surrender, in the manner provided in Section 1.11, of the certificate or certificates that formerly evidenced such shares.

(b) TeleCorp shall give AWS (i) prompt notice of any demands for appraisal received by TeleCorp, withdrawals of such demands, and any other instruments served pursuant to the DGCL and received by TeleCorp and (ii) the opportunity to direct all negotiations and proceedings with respect to demands for appraisal under the DGCL. TeleCorp shall not, except with the prior written consent of AWS, make any payment with respect to any demands for appraisal or offer to settle or settle any such demands.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES OF TELECORP

Except as set forth in the TeleCorp Disclosure Schedule delivered to AWS concurrently herewith (the "TeleCorp Disclosure Schedule"), TeleCorp, on behalf of itself and its Subsidiaries, represents and warrants to AWS that the statements contained in this Article II are true, complete and correct. The TeleCorp Disclosure Schedule shall be arranged in paragraphs corresponding to the numbered and lettered paragraphs contained in this Article II, and the disclosure in any paragraph shall qualify only the corresponding paragraph of this Article II. As used in this Agreement, a "TeleCorp Material Adverse Effect" means any change, event, occurrence, effect or state of facts (a) that is materially adverse to or materially impairs (i) the business, assets (including intangible assets), liabilities, financial condition or results of operations of TeleCorp and its Subsidiaries, taken as a whole, or (ii) the ability of TeleCorp to perform its obligations under this Agreement, or (b) prevents consummation of any of the transactions contemplated by this Agreement; provided that none of the following shall be considered a Material Adverse Effect except to the extent TeleCorp is affected in a materially disproportionate manner as compared to other wireless telecommunications service providers: (x) changes in general economic conditions in the United States, (y) conditions affecting the wireless telecommunications services industry generally, and (z) any changes resulting from the announcement of the Merger.

#### 2.1 Organization and Qualification; Subsidiaries.

(a) TeleCorp is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware and has all the requisite corporate power and authority necessary to own, lease and operate its properties and to carry on its business as it is now being conducted. TeleCorp is duly qualified or licensed as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its activities makes such qualification or licensing necessary, except where the failure to be so qualified would not, individually or in the aggregate, reasonably be expected to have a TeleCorp Material Adverse Effect.

(b) All of the shares of capital stock of each Subsidiary of TeleCorp are owned by TeleCorp or by a Subsidiary of TeleCorp (other than director's qualifying shares in the case of foreign Subsidiaries), and are validly issued, fully paid and non-assessable, and there are no outstanding subscriptions, options, calls, contracts, voting trusts, proxies or other commitments, understandings, restrictions, arrangements, rights or warrants with respect any such Subsidiaries capital stock.

(c) Each Subsidiary of TeleCorp is a legal entity, duly incorporated or organized, validly existing and in good standing under the laws of its respective jurisdiction of incorporation or organization and has all the requisite power and authority necessary to own, lease and operate its properties and to carry on its business as it is now being conducted. Each Subsidiary of TeleCorp is duly qualified or licensed as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its activities makes such qualification or licensing necessary, except where the failure to be so qualified would not, individually or in the aggregate, reasonably be expected to have a TeleCorp Material Adverse Effect.

2.2 Certificate of Incorporation; By-laws. TeleCorp has heretofore made available to AWS a true, complete and correct copy of its and each of its Subsidiaries' respective Certificate of Incorporation and By-laws (or other equivalent organizational or constitutive documents), each as amended or restated to date. Each such Certificate of Incorporation and By-laws (or other equivalent organizational documents) of TeleCorp and each of its Subsidiaries are in full force and effect. Neither TeleCorp nor any of its Subsidiaries is in violation of any of the provisions of its Certificate of Incorporation or By-laws or other equivalent organizational documents.

### 2.3 Capitalization.

(a) The authorized capital of TeleCorp consists of: (i) 1,934,463,093 shares of TeleCorp Common Stock, consisting of: (A) 1,108,550,000 shares of TeleCorp Class A Voting Common Stock, (B) 808,550,000 shares of TeleCorp Class B Non-Voting Common Stock, (C) 313,000 shares of TeleCorp Class C Common Stock, (D) 1,047,000 shares of TeleCorp Class D Common Stock, (E) 4,000,000 shares of TeleCorp Class E Common Stock, (F) 12,000,000 shares of TeleCorp Class F Common Stock, and (G) 3,093 shares of TeleCorp Voting Preference Common Stock; (ii) 20,000,000 shares of TeleCorp Preferred Stock, consisting of: (A) 100,000 shares of TeleCorp Series A Convertible Preferred Stock, (B) 200,000 shares of TeleCorp Series B Preferred Stock, (C) 215,000 shares of TeleCorp Series C Preferred Stock, (D) 50,000 shares of TeleCorp Series D Preferred Stock, (E) 30,000 shares of TeleCorp Series E Preferred Stock, (F) 15,450,000 shares of TeleCorp Series F Preferred Stock, (G) 100,000 shares of TeleCorp Series G Preferred Stock, (H) 200,000 shares of TeleCorp Series H Preferred Stock, (I) 300,000 shares of TeleCorp Series I Preferred Stock, and (J) 3,355,000 undesignated shares.

(b) As of October 7, 2001, 2001: (i) 180,960,930.01 shares of TeleCorp Common Stock were issued and outstanding, which consisted of: (A) 179,779,632 shares of TeleCorp Class A Voting Common Stock, (B) no shares of TeleCorp Class B Non-Voting Common Stock, (C) 283,813 shares of TeleCorp Class C Common Stock, (D) 851,429 shares of TeleCorp Class D Common Stock, (E) 5,245.70 shares of TeleCorp Class E Common Stock, (F) 37,717.31 shares of TeleCorp Class F Common Stock, and (G) 3,093 shares of TeleCorp Voting Preference Common Stock; (ii) 15,433,244.82 shares of TeleCorp Preferred Stock were issued and outstanding, which consisted of: (A) 97,472.84 shares of TeleCorp Series A Preferred Stock, (B) 90,666.33 shares of TeleCorp Series B Preferred Stock, (C) 210,608 shares of TeleCorp Series C Preferred Stock, (D) 49,916.98 shares of TeleCorp Series D Preferred Stock, (E) 25,428.57 shares of TeleCorp Series E Preferred Stock, (F) 14,912,778 shares of TeleCorp

Series F Preferred Stock, (G) 46,374.10 shares of TeleCorp Series G Preferred Stock, (H) no shares of TeleCorp Series H Preferred Stock, and (I) no shares of TeleCorp Series I Preferred Stock; (iii) 281,525 shares of TeleCorp Common Stock were held in treasury of TeleCorp or any of its Subsidiaries; (iv) no shares of TeleCorp Capital Stock were held by any Subsidiary of TeleCorp; (v) 361,744 shares of TeleCorp Class A Voting Stock and 649.76 shares of TeleCorp Series E Preferred Stock were reserved for issuance pursuant to the TeleCorp PCS, Inc. 2000 Employee, Director and Consultant Stock Plan and TeleCorp PCS, Inc. 1998 Restricted Stock Plan, as amended; and (vi) there were outstanding employee and non-employee options in the amount set forth in Section 2.3(b) of the TeleCorp Disclosure Schedule (the "TeleCorp Options"), with the exercise price, vesting schedule and name of each holder of such options and the amount of options held by each such holder specified in Section 2.3(b) of the TeleCorp Disclosure Schedule, and 22,703,376 shares of TeleCorp Class A Common Stock were reserved for issuance in respect thereof. None of the outstanding shares of TeleCorp Capital Stock are subject to, nor were they issued in violation of, any purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right.

(c) Except as set forth above, no shares of voting or non-voting capital stock or other securities or equity interests of TeleCorp were or are issued, reserved for issuance or outstanding. All outstanding shares of TeleCorp Capital Stock are, and all shares which may be issued upon the exercise of TeleCorp Options will be, when issued, duly authorized, validly issued (including under the Securities Act), fully paid and non-assessable and not subject to any kind of preemptive (or similar) rights. There are no bonds, debentures, notes or other indebtedness of TeleCorp with voting rights (or convertible into, or exchangeable for, securities with voting rights) on any matters on which stockholders of TeleCorp may vote.

(d) All of the outstanding shares of capital stock or other security or equity interests of each of TeleCorp's Subsidiaries have been duly authorized, validly issued, fully paid and non-assessable, are not subject to, and were not issued in violation of any preemptive (or similar) rights, and are owned, of record and beneficially, by TeleCorp or one of its direct or indirect Subsidiaries, free and clear of any and all Liens whatsoever. There are no restrictions of any kind which prevent the payment of dividends, where applicable, by any of TeleCorp's Subsidiaries, and neither TeleCorp nor any of its Subsidiaries is subject to any obligation or requirement to provide funds for or to make any investment (in the form of a loan or capital contribution) to or in any Person.

(e) Section 2.3(e) of the TeleCorp Disclosure Schedule sets forth a true, complete and correct list of all securities, options, warrants, calls, rights, commitments, agreements, arrangements or undertakings of any kind (contingent or otherwise) to which TeleCorp or any of its Subsidiaries is a party or by which any of them is bound obligating TeleCorp or any of its Subsidiaries to issue, deliver or sell, or cause to be issued, delivered or sold, additional shares of capital stock or other voting securities of TeleCorp or of any of its Subsidiaries, whether upon conversion, exchange or otherwise, or obligating TeleCorp or any of its Subsidiaries to issue, grant, extend or enter into any such security, option, warrant, call, right, commitment, agreement, arrangement or undertaking (other than the TeleCorp Options) and specifying the material terms of each such security, option, warrant, call, right, commitment, agreement, arrangement or undertaking including the applicable exercise price or purchase price and the name of the person or entity to whom each such security, option, warrant, call, right,

commitment, agreement, arrangement or undertaking was issued and other than as set forth in Section 2.3(b) or 2.3(e) of the TeleCorp Disclosure Schedule, there are no such securities, options, warrants, calls, rights, commitments, agreements, arrangements or undertakings outstanding. There are no outstanding contractual obligations of TeleCorp or any of its Subsidiaries to repurchase, redeem or otherwise acquire any shares of capital stock (or options to acquire any such shares) or other security or equity interest of TeleCorp or its Subsidiaries. There are not outstanding any stock-appreciation rights, security-based performance units, "phantom" stock or other security rights or other agreements, arrangements or commitments of any character (contingent or otherwise) pursuant to which any Person is or may be entitled to receive any payment or other value based on the revenues, earnings or financial performance, stock price performance or other attribute of TeleCorp or any of its Subsidiaries or assets or calculated in accordance therewith (other than ordinary course payments or commissions to sales representatives of TeleCorp based upon revenues generated by them without augmentation as a result of the transactions contemplated hereby) or to cause TeleCorp or any of its Subsidiaries to file a registration statement under the Securities Act of 1933, as amended (the "Securities Act"), or which otherwise relate to the registration of any securities of TeleCorp or its Subsidiaries.

(f) Except for the Voting Agreements and the Stockholders Agreement, dated November 13, 2000 by and among TeleCorp, AWS and the other parties specified therein (the "Stockholders Agreement"), and such other agreements to which AWS is a party, there are no voting trusts, proxies or other agreements, commitments or understandings of any character to which TeleCorp or any of its Subsidiaries or, to the knowledge of TeleCorp, any of the stockholders of TeleCorp, is a party or by which any of them is bound with respect to the issuance, holding, acquisition, voting or disposition of any shares of capital stock or other security or equity interest of TeleCorp or any of its Subsidiaries.

2.4 Authority; Enforceability. TeleCorp has all necessary corporate power and authority to execute and deliver this Agreement, Amendment No. 1 to the Stockholders Agreement (the "Stockholders Agreement Amendment"), and the Transfer Agreement (collectively, the "Related Agreements") and to perform its obligations hereunder and thereunder and, assuming the requisite stockholder approval is received, to consummate the transactions contemplated hereby and thereby. The execution and delivery by TeleCorp of this Agreement and each Related Agreement to which it is a party, the performance of its obligations hereunder and thereunder, and the consummation by TeleCorp of the transactions contemplated hereby and thereby, have been duly and validly authorized by all corporate action and no other corporate proceedings on the part of TeleCorp are necessary to authorize this Agreement or any Related Agreement or to consummate the transactions so contemplated, other than the Required Stockholder Approval. Each of this Agreement and each Related Agreement has been duly and validly executed and delivered by TeleCorp and, assuming the due authorization, execution and delivery thereof by all other parties to each such agreement, constitutes a legal, valid and binding obligation of TeleCorp in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and similar laws relating to or affecting creditors generally or by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or law).

2.5 Board Recommendation; Required Vote. A majority of the Disinterested Directors have, and the full Board of Directors of TeleCorp has, at a meeting duly called and

held (i) approved and declared advisable this Agreement and approved each Related Agreement, (ii) determined that the transactions contemplated hereby and thereby are advisable, fair to and in the best interests of the holders of TeleCorp Capital Stock, (iii) resolved to recommend adoption of this Agreement, the Merger, and the other transactions contemplated hereby and thereby to the stockholders of TeleCorp and (iv) directed that this Agreement be submitted to the stockholders of TeleCorp for their approval and authorization (the recommendations referred to in this sentence, the “Directors’ Recommendation”). The affirmative vote of a majority of the voting power of all outstanding shares of TeleCorp Class A Voting Common Stock, TeleCorp Class C Common Stock, TeleCorp Class D Common Stock, TeleCorp Class E Common Stock, TeleCorp Class F Common Stock, and TeleCorp Voting Preference Common Stock, TeleCorp Series A Convertible Preferred Stock, TeleCorp Series B Preferred Stock, TeleCorp Series C Preferred Stock, TeleCorp Series D Preferred Stock, TeleCorp Series E Preferred Stock, and TeleCorp Series F Preferred Stock, voting together as one class in accordance with TeleCorp’s Certificate of Incorporation, are the only votes of the holders of any class or series of capital stock of TeleCorp necessary to approve and authorize this Agreement, the Merger and the Related Agreements and the other transactions contemplated hereby and thereby in their capacity as stockholders of TeleCorp (such vote, the “Required Stockholder Approval”). As of the date hereof, the Persons who are signatories to the Voting Agreements in the aggregate possess sufficient voting power to cause the Required Stockholder Approval to be given without the vote of any other stockholder of TeleCorp. The Stockholders Agreement Amendment was and is effective to amend the Stockholders Agreement in the manner and to the extent provided for in the Stockholders Agreement Amendment.

## 2.6 No Conflict; Required Filings and Consents.

(a) The execution and delivery by TeleCorp of this Agreement and the Related Agreements do not, and the performance of this Agreement and the Related Agreements will not, (i) conflict with or violate the Certificate of Incorporation or By-laws or other equivalent organizational or constitutive documents of TeleCorp or any of its Subsidiaries, (ii) conflict with or violate any Law, Regulation or Order in each case applicable to TeleCorp or any of its Subsidiaries or by which any of their respective properties is bound or affected, or (iii) result in any breach or violation of or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or impair TeleCorp’s or any of its Subsidiaries’ rights or alter the rights or obligations of any third party under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of a Lien on any of the properties or assets of TeleCorp or any of its Subsidiaries pursuant to, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which TeleCorp or any of its Subsidiaries is a party or by which TeleCorp or any of its Subsidiaries or its or any of their respective properties is bound or affected, except in the case of clauses (ii) or (iii) above, for any such conflicts, breaches, violations, defaults or other occurrences that would not (x) individually or in the aggregate, reasonably be expected to have a TeleCorp Material Adverse Effect, (y) prevent or materially impair or delay the consummation of the transactions contemplated by this Agreement and the Related Agreements or (z) individually, or in the aggregate, reasonably be expected to have a material adverse effect on the value of TeleCorp’s Capital Stock.

(b) The execution and delivery by TeleCorp of this Agreement and the Related Agreements do not, and the performance of this Agreement and the Related Agreements, will not, require TeleCorp or any of its Subsidiaries to obtain any approval of any Person or approval of, observe any waiting period imposed by, or make any filing with or notification to or seek any approval or authorization from any Governmental Authority, domestic or foreign, except for (i) compliance with applicable requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), the pre-merger notification requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), the Communications Act of 1934, as amended, including, without limitation, as amended by the Telecommunications Act of 1996 (the "Communications Act") and any rules, regulations or policies promulgated by the Federal Communications Commission (the "FCC"), state public utility, telecommunications or public service laws, (ii) the filing of the Certificate of Merger in accordance with the DGCL and/or (iii) where the failure to obtain such approvals, or to make such filings or notifications, would not, individually or in the aggregate, reasonably be expected to have a TeleCorp Material Adverse Effect. The approval or authorization required to be obtained from the FCC pursuant to the Communications Act and/or the rules and regulations of the FCC, are referred to herein as the "Required TeleCorp Governmental Approvals").

2.7 Material Agreements. (a) Each agreement, contract or commitment that is of a type which is required, pursuant to Items 404 or 601 of Regulation S-K promulgated by the Securities and Exchange Commission (the "SEC"), to be disclosed or included as an exhibit to a TeleCorp SEC Report filed on or after December 31, 2000 has been so disclosed or so included in TeleCorp's Annual Report on Form 10-K for the fiscal year ended December 31, 2000, or one of its Quarterly Reports on Form 10-Q for the quarters ended March 31, 2001 or June 30, 2001 (any such agreement required to be so disclosed or included, together with any agreements actually disclosed or included, the "TeleCorp SEC Agreements"). Except as entered into after the date hereof without violation of this Agreement, Section 2.7(a) of the TeleCorp Disclosure Schedule sets forth a true and correct list of (i) all uncompleted contracts, arrangements, agreements or understandings with vendors or otherwise for the purchase of equipment or services involving the payment of \$3 million or more in any 12 month period or \$8 million in the aggregate; and (ii) all contracts, arrangements, agreements or understandings to purchase or acquire any rights under any FCC License or other service licenses or permits; and (iii) all contracts, arrangements, agreements or understandings to purchase, acquire, dispose or transfer any tower or wireless system or part thereof or cell site or any other local service or access system (including any shares of capital stock of any Subsidiary holding any such interest) or material business enterprise or operation. The TeleCorp SEC Agreements, together with the agreements required to be disclosed in Section 2.7(a) of the TeleCorp Disclosure Schedule are referred to herein as the "TeleCorp Material Contracts". TeleCorp has previously made available to AWS true and complete copies of each of the foregoing agreements.

(b) Neither TeleCorp nor any of its Subsidiaries has breached or violated any provision of, or committed or failed to perform any act which with or without notice, lapse of time or both would constitute a default under any of the provisions of, or received in writing any claim or threat that it has breached or is in default under, any of the terms or conditions of any TeleCorp Material Contract in such a manner as would permit any other party to cancel or terminate the same or would permit any other party to collect material damages from TeleCorp or any of its Subsidiaries under any TeleCorp Material Contract. Each TeleCorp Material

Contract (i) is in full force and effect, (ii) is a valid and binding obligation of TeleCorp or such Subsidiary, subject to bankruptcy, insolvency, reorganization, moratorium and similar laws relating to or affecting creditors generally or by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or law) and, to the knowledge of TeleCorp, of each other party thereto, and (iii) is enforceable against TeleCorp or such Subsidiary in accordance with its terms, and, to the knowledge of TeleCorp, enforceable against each other party thereto, and such TeleCorp Material Contracts will continue to be valid, binding and enforceable in accordance with their respective terms and in full force and effect immediately following the consummation of the transactions contemplated hereby with no alteration or acceleration or increase in fees or liabilities. Neither TeleCorp nor any of its Subsidiaries is or is alleged to be and, to the knowledge of TeleCorp, no other party is or is alleged to be in default under, or in breach or violation of, any TeleCorp Material Contract, and no event has occurred which (whether with or without notice or lapse of time or both) would constitute such a default, breach or violation. No party to a TeleCorp Material Contract has terminated or notified TeleCorp in writing of an intent to materially reduce or terminate the amount of business with TeleCorp and its Subsidiaries in the future, except as would not individually or in the aggregate, reasonably be expected to have a TeleCorp Material Adverse Effect.

(c) There is no agreement, contract or understanding binding upon TeleCorp or any of its Subsidiaries or any of their respective properties which has had or could reasonably be expected to have the effect of prohibiting or impairing any business or operations of AWS or any of its Affiliates (other than TeleCorp or its Subsidiaries) or any business practice of AWS or any of its Affiliates (other than TeleCorp or its Subsidiaries) as currently conducted. Without limiting the generality of the foregoing, the exclusivity terms of each of the General Agreement for Purchase of Personal Communications Systems and Services, dated as of May 1, 1998, among Lucent Technologies Inc. and TeleCorp PCS, Inc., and the Acquisition Agreement, dated as of December 30, 1998 among Ericsson Inc., Tritel Finance, Inc. and Tritel Communications, Inc. do not apply to or limit or bind TeleCorp or its Subsidiaries beyond December 30, 2005 and May 1, 2003, respectively, and shall not be or purport to be applicable to, be enforceable against, limit or bind AWS or any of Subsidiaries (other than the Surviving Corporation) at any time.

(d) Section 2.7(d) of the TeleCorp Disclosure Schedule contains a true and accurate list of (i) all contracts, arrangements, agreements or understandings that are of the type that are required to be disclosed or described pursuant to Item 404 of Regulation S-K, other than those that are filed as an exhibit to a TeleCorp SEC Report filed prior to the date hereof, and (ii) all agreements or understandings, whether written or oral, giving any Person the right to require TeleCorp to register shares of capital stock or to participate in any such registration.

2.8 Compliance. Each of TeleCorp and its Subsidiaries is in compliance in all respects with, and is not in default or violation of, (i) its Certificate of Incorporation and By-laws or other equivalent organizational documents, or (ii) any note, bond, mortgage, indenture, contract, permit, franchise or other instruments or obligations to which any of them are a party or by which any of them or any of their respective assets or properties are bound or affected, except, in the case of clause (ii), any such failures of compliance, defaults and violations which would not, individually or in the aggregate, reasonably be expected to have a TeleCorp Material Adverse Effect.

## 2.9 SEC Filings; Financial Statements.

(a) TeleCorp has timely and accurately filed all forms, reports, schedules, statements and documents required to be filed by it with the SEC since October 13, 1999 (the "TeleCorp SEC Reports") pursuant to the federal securities Laws and the SEC regulations promulgated thereunder. Each of TeleCorp's Subsidiaries that are obligated to file with the SEC has timely and accurately filed all forms, reports, schedules, statements and documents required to be filed by it with the SEC since October 13, 1999 (the "TeleCorp Subsidiary SEC Reports") pursuant to the federal securities laws and the SEC regulations promulgated thereunder. The TeleCorp SEC Reports and TeleCorp Subsidiary SEC Reports were (i) prepared in accordance, and complied as of their respective filing dates in all material respects, with the requirements of the Exchange Act and the Securities Act and the rules and regulations promulgated thereunder, and (ii) did not at the time they were filed (or if amended or superseded by a filing prior to the date hereof, then on the date of such filing) contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(b) Each of the audited and unaudited consolidated financial statements (including, in each case, any related notes and schedules thereto) contained in the TeleCorp SEC Reports (i) complied in all material respects with applicable accounting requirements and the regulations of the SEC with respect thereto, (ii) were prepared in accordance with generally accepted accounting principles ("GAAP") (except, in the case of unaudited statements, to the extent otherwise permitted by Form 10-Q) applied on a consistent basis throughout the periods involved (except as may be expressly described in the notes thereto) and (iii) fairly and accurately present in all material respects the consolidated financial position of TeleCorp and its Subsidiaries as at the respective dates thereof and the consolidated results of its operations and cash flows for the periods indicated, subject in the case of interim financial statements to normal year-end adjustments.

## 2.10 Licenses and Authorizations.

(a) TeleCorp and its Subsidiaries hold all licenses, permits, certificates, franchises, ordinances, registrations, or other rights, applications and authorizations granted or issued by any Governmental Authority, including, without limitation, the FCC or any state authority asserting jurisdiction over TeleCorp, its Subsidiaries and their respective properties and assets, that are required for the conduct of their businesses as currently being conducted (each, as amended to date, the "TeleCorp Authorizations"), other than such licenses, permits, certificates, franchises, ordinances, registrations, or other rights, applications and authorizations the absence of which would not, individually or in the aggregate, be reasonably likely to have a TeleCorp Material Adverse Effect or prevent or materially impair or delay the ability of TeleCorp to consummate the transactions contemplated hereby. TeleCorp has made available to AWS a true, complete and correct list of the TeleCorp Authorizations issued by the FCC.

(b) TeleCorp has previously made available to AWS a true, complete and correct list of (i) each application of TeleCorp or any of its Subsidiaries pending before the FCC (the "TeleCorp FCC Applications"); and (ii) each FCC permit and FCC license which is not a TeleCorp Authorization but in which TeleCorp, any of its Subsidiaries or any of its Affiliates,

directly or indirectly, holds an interest, including as a stakeholder in the licensee (collectively, the “Indirect TeleCorp Authorizations”). The TeleCorp Authorizations, the TeleCorp FCC Applications, and the Indirect TeleCorp Authorizations are the only licenses, permits, certificates, franchises, ordinances, registrations, or other rights, applications and authorizations that are required for the conduct of the business and operations of TeleCorp and its Subsidiaries as currently conducted, other than such licenses, permits, certificates, franchises, ordinances, registrations, or other rights, applications and authorizations the absence of which would not, individually or in the aggregate, be considered reasonably likely to have a TeleCorp Material Adverse Effect or prevent or materially delay or impair the ability of TeleCorp to consummate the transactions contemplated hereby.

(c) Except as disclosed in Section 2.10(c) of the TeleCorp Disclosure Schedule:

(i) The TeleCorp Authorizations and the Indirect TeleCorp Authorizations are in full force and effect and have not been pledged or otherwise encumbered (except for such pledges and encumbrances securing the TeleCorp Licensee’s indebtedness to the FCC and/or the United States Department of Treasury (“USDT”), as the case may be), assigned, suspended or modified in any material respect (except as a result of FCC rule changes applicable to the industry generally), canceled or revoked, and TeleCorp and each of its Subsidiaries have each operated in compliance with all terms thereof or any renewals thereof applicable to them, other than where the failure to so comply would not, individually or in the aggregate, be considered reasonably likely to have a TeleCorp Material Adverse Effect.

(ii) To the knowledge of TeleCorp, no event has occurred with respect to any of the TeleCorp Authorizations which permits, or after notice or lapse of time or both would permit, revocation or termination thereof or would result in any other material impairment of the rights of the holder of any such TeleCorp Authorizations.

(iii) To the knowledge of TeleCorp, there is not pending any application, petition, objection or other pleading with the FCC, any state authority or any similar entity having jurisdiction or authority over the operations of TeleCorp or any of its Subsidiaries which questions the validity or contests any TeleCorp Authorization or which could reasonably be expected, if accepted or granted, to result in the revocation, cancellation, suspension or any material adverse modification of any TeleCorp Authorization.

(d) Except as disclosed in Section 2.10(c) of the TeleCorp Disclosure Schedule:

(i) Each wholly-owned Subsidiary of TeleCorp set forth in Section 2.10(d) of the TeleCorp Disclosure Schedule hereto (a “TeleCorp Licensee”) holds the FCC licenses (each an “FCC License” and collectively, the “FCC Licenses”) set forth below its name on such same schedule. Such TeleCorp Licensee has good and marketable title, free and clear of any Liens, to such FCC Licenses, except for such liens securing the TeleCorp

Licensee's indebtedness to the FCC and/or USDT, as the case may be, not in excess of \$140 million in the aggregate.

(ii) No person or entity other than the applicable TeleCorp Licensee and the FCC has any right, claim or interest in or to any of the FCC Licenses.

(iii) The FCC Licenses have been validly issued in the name of such TeleCorp Licensee, are in full force and effect, have been granted by Final Order and TeleCorp has no reason to believe that such licenses will not remain in full force and effect until the respective expiration dates set forth on the FCC Licenses.

(iv) Except for proceedings affecting the PCS or wireless communications services industry generally, there is not pending, nor to the knowledge of TeleCorp, threatened against TeleCorp or any TeleCorp Licensee or against any of the TeleCorp Licenses, nor is TeleCorp aware of any basis for, any application, action, petition, objection or other pleading, or any proceeding with the FCC or any other Governmental Authority which questions or contests the validity of, or seeks the revocation, forfeiture, non-renewal or suspension of, any of the FCC Licenses, which seeks the imposition of any modification or amendment with respect thereto, or which would adversely affect the ability of AWS to employ any of the FCC Licenses (other than those licenses set forth in Section 2.25(b) of the TeleCorp Disclosure Schedule) in its business after the Closing Date or seeks the payment of a fine, sanction, penalty, damages or contribution in connection with the use of any of the FCC Licenses.

(v) Each of the FCC Licenses is unimpaired by any acts or omissions of TeleCorp or any TeleCorp Licensee.

(vi) All material documents required to be filed or fees to be paid at any time by TeleCorp or the applicable TeleCorp Licensee with the FCC with respect to any of the FCC Licenses have been filed or payments made or the time period for such filing or payment has not lapsed. All such documents filed since the date that each of the FCC Licenses was issued or transferred to the applicable TeleCorp Licensee are true and correct in all material respects.

(vii) None of the FCC Licenses is subject to any conditions other than those generally applicable to the industry at large, those imposed by FCC Law generally upon a specific class of FCC licenses or licensees, and those appearing on the face of the applicable FCC License.

(viii) TeleCorp and each TeleCorp Licensee complies in all material respects with all pertinent aspects of FCC Law, including without limitation (1) the rules, regulations and policies pertaining to eligibility to hold broadband PCS licenses in general, and the applicable FCC Licenses in particular, including where applicable, Section 24.709 of the FCC's rules, (2) the rules, regulations and policies governing the CMRS spectrum cap and restricting foreign ownership of radio licenses, (3) the Regulations and policies relating to wireless E911 (as set forth in Section 20.18 of the

FCC's CMRS rules), and (4) the rules, regulations and policies relating to implementation of Communications Assistance for Law Enforcement Act.

(ix) TeleCorp and each TeleCorp Licensee is in compliance with all terms and conditions of, and all of its obligations under, the applicable FCC Licenses. Without limiting the foregoing, TeleCorp or the applicable TeleCorp Licensee, where applicable, has made all installment payments due in connection with the applicable FCC Licenses to the FCC and/or the USDT, as the case may be, on a timely basis and has not been assessed any unpaid late payment fees or any unpaid additional interest charges for failing to make installment payments to the FCC or USDT.

(x) No person or entity other than TeleCorp or the applicable TeleCorp Licensee is authorized to use the spectrum described in Section 2.10(d) of the TeleCorp Disclosure Schedule.

(e) Except for the approvals contemplated by Section 2.6, no permit, consent, approval, authorization, qualification or registration of, or declaration to or filing with, any Governmental Authority is required to be made or obtained by TeleCorp or any of its Subsidiaries in connection with the transfer or deemed transfer of the FCC Licenses and Authorizations as a result of the consummation of the transactions contemplated hereby and such transactions will not result in a breach of such approvals, except where the failure to obtain or make such permit, consent, approval, authorization, qualification, registration, declaration or filing would not be considered reasonably likely to have a TeleCorp Material Adverse Effect or prevent or materially impair or delay the ability of TeleCorp to consummate the transactions contemplated hereby.

2.11 No Violation of Law. Except as disclosed in Section 2.11 of the TeleCorp Disclosure Schedule, the business of TeleCorp and its Subsidiaries is not currently conducted nor has such business ever been conducted in violation of any Laws, except for possible violations none of which, individually or in the aggregate, could have a TeleCorp Material Adverse Effect. Except as disclosed in TeleCorp SEC Reports filed prior to the date of this Agreement, and, with respect to the FCC, as disclosed in Section 2.11 of the TeleCorp Disclosure Schedule, no investigation, review or proceeding by any Governmental Authority (including, without limitation, any stock exchange or other self-regulatory body) with respect to TeleCorp or its Subsidiaries in relation to any alleged violation of law or regulation is pending or, to TeleCorp's knowledge, threatened, nor has any Governmental Authority (including, without limitation, any stock exchange or other self-regulatory body) indicated an intention to conduct the same, except for such investigations which, if they resulted in adverse findings, would not reasonably be expected to have, individually or in the aggregate, a TeleCorp Material Adverse Effect. Except as set forth in the TeleCorp SEC Reports, neither TeleCorp nor any of its Subsidiaries is subject to any cease and desist or other order, judgment, injunction or decree issued by, or is a party to any written agreement, consent agreement or memorandum of understanding with, or is a party to any commitment letter or similar undertaking to, or is subject to any order or directive by, or has adopted any board resolutions at the request of, any Governmental Authority that materially restricts the conduct of its business or which would reasonably be expected to have a TeleCorp Material Adverse Effect, nor has TeleCorp or any of its Subsidiaries been advised that any Governmental Authority is considering issuing or requesting any of the foregoing.

## 2.12 Absence of Certain Changes or Events.

(a) Since December 31, 2000, except as expressly disclosed in the TeleCorp SEC Reports filed prior to the date hereof (other than in the "risk factors" or similar section of any such TeleCorp SEC Report), (i) TeleCorp and its Subsidiaries have conducted their businesses only in the ordinary course of business consistent with past practice (the "Ordinary Course of Business") and, (ii) there has not been any change, event, development, damage or circumstance affecting TeleCorp or any of its Subsidiaries which, individually or in the aggregate, has had, or could reasonably be expected to have, a TeleCorp Material Adverse Effect.

(b) Since December 31, 2000, (i) there has not been any material change by TeleCorp in its accounting methods, principles or practices, any revaluation by TeleCorp of any of its assets, including writing down the value of inventory or writing off notes or accounts receivable other than in the Ordinary Course of Business, and (ii) there has not been any condition, event or occurrence which could reasonably be expected to prevent, hinder or materially delay the ability of TeleCorp to consummate the transactions contemplated by this Agreement or the Related Agreements.

2.13 Absence of Liabilities. TeleCorp and its Subsidiaries do not have any liabilities or obligations of any nature (whether absolute, accrued, fixed, contingent or otherwise) other than (i) liabilities or obligations (1) which are accrued or reserved against in the consolidated financial statements of TeleCorp and its Subsidiaries included in TeleCorp's Annual Report on Form 10-K for the fiscal year ended December 31, 2000 or reflected in the notes thereto or (2) which were incurred after December 31, 2000 in the Ordinary Course of Business, (ii) liabilities or obligations which have been discharged or paid in full prior to the date hereof in the Ordinary Course of Business, (iii) liabilities and obligations which are of a nature not required to be reflected in the consolidated financial statements of TeleCorp and its Subsidiaries prepared in accordance with GAAP.

2.14 Absence of Litigation. Except as disclosed in the TeleCorp SEC Reports filed prior to the date of this Agreement, there is no Litigation pending or, to the knowledge of TeleCorp, threatened against TeleCorp or any of its Subsidiaries, or any properties or rights of TeleCorp or any of its Subsidiaries, before or subject to any Court or Governmental Authority which, individually or in the aggregate, has had, or would reasonably be expected to have, a TeleCorp Material Adverse Effect.

## 2.15 Employee Benefit Plans.

(a) TeleCorp has delivered to AWS true, complete and correct copies of all employee benefit plans (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")) and all bonus, stock or other security options, stock or other security purchase, stock or other security appreciation right, incentive, deferred compensation, retirement or supplemental retirement, severance, golden parachute, vacation, cafeteria, dependent care, medical care, employee assistance program, education or tuition assistance programs, plant closing or similar benefit plans, retiree health or life benefit plans, insurance and other similar fringe or employee benefit plans, programs or arrangements, and any

executive employment or executive compensation or severance agreements, or a written summary of the material terms of any of the foregoing agreements if not in writing, which have ever been sponsored, maintained, contributed to or entered into by TeleCorp or any of its Subsidiaries, or any trade or business (whether or not incorporated) which is a member of a controlled group or which is under common control with TeleCorp, or any Subsidiary of TeleCorp, within the meaning of Section 414 of the Code or Section 4001 of ERISA (a "TeleCorp ERISA Affiliate") for the benefit of, or relating to, any present or former employee, officer, director or consultant of such entity, whether or not such plan is terminated (together, the "TeleCorp Employee Plans").

(b) TeleCorp has delivered to AWS with respect to each TeleCorp Employee Plan true, complete and correct copies of each of the following, if applicable: (i) the most recent summary plan description and any subsequent summary of material modifications, (ii) any related trust, insurance policy or other funding vehicle or contract providing for benefits, (iii) the two most recently filed Form 5500 series Annual Reports with all schedules, (iv) the most recent determination letter from the IRS, (v) the most recent annual financial report and (vi) the most recent annual actuarial report. Subject to the requirements of ERISA, there are no restrictions on the ability of the sponsor of each TeleCorp Employee Plan to amend or terminate any TeleCorp Employee Plan and each TeleCorp Employee Plan may with the consent of TeleCorp (or applicable Subsidiary or TeleCorp ERISA Affiliate) be assumed by AWS or the Surviving Corporation, as the case may be.

(c) Except as specifically provided in the foregoing documents delivered to AWS, there are no amendments to any TeleCorp Employee Plan that have been adopted or approved nor has TeleCorp or any of its Subsidiaries undertaken or committed to make any such amendments or to adopt or approve any new TeleCorp Employee Plan.

(d) (i) None of TeleCorp and its Subsidiaries nor, to the knowledge of TeleCorp, any other person, including any fiduciary, has engaged in any "prohibited transaction" (as defined in Section 4975 of the Code or Section 406 of ERISA), which could subject TeleCorp, any of its ERISA Affiliates or any person that TeleCorp or any of its ERISA Affiliates has an obligation to indemnify, to any material tax or penalty imposed under Section 4975 of the Code or Section 502 of ERISA; (ii) there are no claims pending (other than routine claims for benefits) or threatened against any TeleCorp Employee Plan or against the assets of any TeleCorp Employee Plan, nor are there any current or threatened Liens on the assets of any TeleCorp Employee Plan; (iii) each TeleCorp Employee Plan conforms to, and in its operation and administration is in all material respects in compliance with the terms thereof and the requirements prescribed by any and all statutes (including ERISA and the Code), orders, or governmental rules and regulations currently in effect with respect thereto (including, without limitation, all applicable requirements for notification, reporting and disclosure to participants or the Department of Labor, the IRS or Secretary of the Treasury), and TeleCorp, each of its Subsidiaries and each TeleCorp ERISA Affiliate have performed all obligations required to be performed by them under, are not in default under or violation of, and have no knowledge of any default or in violation by any other party with respect to, any TeleCorp Employee Plan; (iv) each TeleCorp Employee Plan intended to qualify under Section 401(a) of the Code and each corresponding trust intended to be exempt under Section 501 of the Code is so qualified or exempt, has received or is the subject of a favorable determination or opinion letter from the IRS