

Indenture; (2) liens and encumbrances junior to the lien of this Indenture; (3) taxes for the then current year or which are not yet delinquent; (4) taxes or liens created by assessments of governmental bodies, payment of which is due in installments over a period of years and no payment of which is being contested and assessments payment of which is being contested in good faith by the Company; (5) any right which any municipality or other governmental body or agency may have by virtue of any franchise, contract or statute to purchase any property of the Company upon payment of reasonable compensation therefor or to terminate any franchise or other rights or to regulate the property and business of the Company; (6) undetermined liens and charges incidental to construction; (7) liens and encumbrances which have been adequately protected against by the deposit of cash as below provided; (8) any liens neither assumed by the Company nor on which it customarily pays interest, existing upon real estate or rights in or relating to real estate acquired by the Company for towers, poles, wires, cables, conductors, conduits, lines, stations, substations, subscribers' station equipment, private branch exchanges, switchboards, central office plant and equipment and other right-of-way purposes; (9) the lien, if any, of judgments not exceeding, at any one time, \$25,000 in total amount rendered against the Company as a result of claims for personal injuries, death, or damages to properties in connection with the conduct of the business of the Company where the validity or amount thereof is being contested in good faith through appropriate appellate proceedings; (10) easements or reservations in any property of the Company created at or before the acquisition thereof by the Company for the purposes of roads, electric light and power and water transmission and distribution lines and other like purposes and which do not impair the use of such property in the operation of the business of the Company.

Whenever the Company shall acquire additional property subject to any lien or encumbrances prior to the lien of this Indenture, securing any bonds or other obligations capable of being discharged by the payment of money (other than refundable liens and per-

mitted liens), the Company may deposit with the Trustee cash and/or a principal amount of such bonds or other obligations sufficient for the discharge of such lien, with authority to apply the same, so far as necessary, to the discharge of such lien or encumbrance. In case the validity or amount of any such lien or encumbrance is disputed by the Company, the terms of such deposit may be such as to authorize the Trustee to apply such cash and/or obligations to the discharge of such lien or encumbrance only when found valid by a court of competent jurisdiction or when so directed by the Company prior to such adjudication. Any cash and/or obligations so deposited remaining after the discharge of such lien or encumbrance shall be returned to the Company upon receipt by the Trustee of an application of the Company so requesting and an opinion of counsel stating that such lien or encumbrance has been discharged. The Company may make a deposit as aforesaid to cover less than all of the bonds or other obligations secured by any such lien or encumbrance, and in such event such lien or encumbrance shall be deemed to be a "permitted lien" only to the extent of the proportion thereof provided for by such deposit. The amount deposited with and held by the Trustee under this provision at any one time shall not exceed five hundred thousand dollars (\$500,000);

(u) the term "prior lien debt" shall mean bonds (but not Bonds issued hereunder), notes or other evidences of indebtedness secured by a mortgage, lien or other encumbrance prior to the lien hereof (other than permitted liens, as defined in (1) of this § 1.01) on public utility property acquired by the Company subsequent to September 1, 1946 and shall include refundable debt as defined in (v) of this § 1.01; and the term "prior liens" shall mean mortgages, liens or other encumbrances securing such prior lien debt;

(v) the term "refundable debt" shall mean prior lien debt which shall have been established as refundable by compliance with § 3.03; and the term "refundable lien" shall mean mortgages, liens or other encumbrances securing refundable debt;

(w) the term "net earnings certificate" shall mean a certificate of the Company (signed by the President or a Vice President and the Treasurer or an Assistant Treasurer) setting forth:

(1) the net earnings of the Company for a period of twelve (12) consecutive calendar months within the fifteen (15) calendar months immediately preceding the date of the application to the Trustee in connection with which such a certificate is being furnished, which shall be computed by deducting from the total operating revenues of the Company for such period the total operating expenses, including taxes (other than income taxes payable by the Company or other taxes payable by the Company based on or measured by or in respect of undistributed net earnings or income), rentals and insurance for such period (but not including charges or provisions for maintenance and depreciation) and adding to such difference outside income for said period; provided, however, that the total amount of such outside income so added shall not exceed ten per centum (10%) of the net earnings so computed, including the outside income so added. As used in this paragraph (1) the term "outside income" shall mean net non-operating income of the Company, excluding, however, profits and losses from sales of property, for said twelve (12) months' period;

(2) the amount actually expended and/or charged on the books of the Company for maintenance and depreciation for said twelve (12) months' period or the amount required to be charged and/or expended during said period in satisfaction of the maintenance and depreciation fund herein mentioned, whichever amount is greater;

(3) the annual interest charges upon (a) all outstanding Bonds; (b) all outstanding prior lien debt; and (c) Bonds, if any, applied for in the pending application, hereinafter collectively referred to as the "Company's bonded debt";

(4) that the amount of the net earnings of the Company set forth in (1) above, after deduction of the annual charges and/or expenditures set forth in (2) above, have been at least equal to two and one-half (2½) times the aggregate amount of the annual interest charges upon the Company's bonded debt, set forth in (3) above;

(5) the statements as to compliance with the conditions or covenants required to be made pursuant to § 5.14 hereof.

In the foregoing computations there shall not be included annual interest charges on Bonds and/or prior lien debt to be retired with the proceeds from the sale of the Bonds then being applied for.

If any system which has previously been operated in the conduct of the business by others than the Company has been acquired by the Company within fifteen (15) calendar months prior to the date of the application to the Trustee as aforesaid, such acquired system shall be treated as having been owned by the Company for the twelve (12) consecutive calendar months used in calculating net earnings, or the whole of any lesser period of operation thereof within said twelve (12) months if the property shall not have been in operation for such twelve (12) months' period;

(x) the term "not theretofore funded" as applied to any net amount of additional property certified to the Trustee pursuant to § 3.03, or to any principal amount of Bonds and/or refundable debt, the retirement or provision for the retirement of which shall have been evidenced to the Trustee pursuant to § 3.04, shall mean any such net amount of additional property or principal amount of Bonds or refundable debt which shall not at the time have been used and required as the basis for (1) the authentication and delivery of additional Bonds pursuant to § 3.03 or § 3.04, as the case may be, or (2) the withdrawal of cash in lieu thereof pursuant to § 3.06, or (3) the establishment of prior lien debt as refundable debt pursuant to § 3.03, or (4) a credit on the basis of the withdrawal of cash under § 5.18 hereof, or (5) the withdrawal of cash representing the proceeds of the disposition of property pursuant to § 6.10 or § 7.02, and the amount thereof so used for any of said purposes shall be deemed to be "funded"; and

(y) the term "outstanding" as applied

(1) to Bonds issued hereunder, shall mean as of any particular time all Bonds theretofore authenticated and delivered by the Trustee hereunder, except (a) Bonds theretofore cancelled or