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**Louis Grimmelbein**

Attorney

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February 2, 2000

**VIA FEDERAL EXPRESS**

Honorable Debra Renner  
Acting Secretary to the Commission  
Agency Building 3  
Three Empire State Plaza  
Albany, New York 12223-1350

**PUBLIC SERVICE COMMISSION  
RECEIVED**

**FEB 03 2000**

**FILES  
ALBANY, N.Y.**

Re: <sup>6856</sup> MGC Communications, Inc.; Application For Certification as a Common Carrier


Dear Ms. Renner:

Enclosed for filing are an original and four (4) copies of MGC Communications, Inc.'s ("MGC") Application for Certification as a Common Carrier (the "Application"). As specified in the Application, MGC will offer facilities-based local exchange services and intrastate interexchange telecommunications services in the State of New York.

Please date-stamp the enclosed extra copy of this filing and return it to us in the self-enclosed, postage-paid envelope which is provided in this package.

Please call me at (202) 857-6223 if you have any questions. Thank you for your time and attention.

Respectfully submitted,

  
Louis J. Grimmelbein

cc: Rick Heatter, Esq. (by fax w/o encl.)  
Douglas G. Bonner (by hand w/o encl.)

Application Form A

APPLICATION FOR CERTIFICATION AS A COMMON CARRIER

**Instructions:**

Complete this application to the best of your knowledge. Any inaccuracies or deficiencies will be promptly corrected or the application may be returned. The applicant must sign and date the application before mailing an original and three copies to: Honorable Debra Renner, Acting Secretary to the Commission, Three Empire State Plaza, Albany, NY 12223-1350. If this application is granted, the company must comply with all applicable rules and regulations of the Public Service Commission.

**1. Identification of applicant and principal business office:**

MGC Communications, Inc.  
171 Sully's Trail  
Suite 202  
Pittsford, New York 14534  
Tel: (716) 218-6556  
Fax: (716) 218-0165

Officers

Maurice J. Gallagher 3291 N. Buffalo Drive Suite 8 Las Vegas, NV 89129	Chairman of the Board
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Rolla P. Huff 171 Sully's Trail Pittsford, NY 14534	President / CEO
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Kent F. Heyman 171 Sully's Trail Pittsford, NY 14534	Senior Vice President / Secretary
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Linda M. Sunbury  
3301 N. Buffalo Drive  
Las Vegas, NV 89129

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- (iii) emergency or 911 service;
- (iv) InterLATA equal access; and
- (v) access services.

Each of these services will provide dial tone access to the public switched telecommunications network and may be equipped with various features and functions.

MGC submits that approval of this Application will not adversely impact, and in fact will benefit, the public interest of the citizens of New York state. MGC's entry into the New York market will provide consumers with a choice of local exchange carriers. In order to attract customers, MGC will have to offer its services at competitive prices. MGC's proposed telecommunications services will meet the needs of business users in New York for competitively priced, superior quality local exchange and exchange access telecommunications services. Accordingly, Commission approval of this Application will foster competition in the local exchange and exchange access telecommunications markets and will generate significant benefits to New York telecommunications users, including but not limited to: low-priced, high-quality services; innovative telecommunications services and increased consumer choice; efficient use of existing communications resources; and increased diversification and reliability of the supply of communications services in New York.

**4. Include a description of the plant and system to be constructed.**

MGC's network strategy consists of purchasing and deploying switching equipment, collocating interconnection equipment in the central offices ("COs") of the incumbent local exchange carriers ("ILECs") and leasing fiber optic transmission capacity from ILECs and other providers of communications transport services.

In addition to providing basic voice services, MGC's network platform can also be used to support high-speed data services. MGC plans to introduce a portfolio of high speed data services for remote LAN and internet access utilizing new digital subscriber line (DSL) modems.

MGC will be using Lucent's PathStar Access Server. This is an IP based central office, which will provide all telephony network functions. It consists of the main data shelf which acts as the class 5 switch, access shelves which provide the line connections or can function as a next generation DLC or multiple platform XDSL. MGC's intention is to provide DSL with both voice and data over a single subscriber loop. The total architecture will consist of the PathStar, Copper Mountain DSLAMS, and miscellaneous equipment such as the copper cross connect unit from Turnstone that allows remote testing of the line and remote reconfigurations in cases of trouble.

Features available on current TDM switches will be available within this architecture, such as the important E911 functionality.

MGC considers this architecture as the next generation switching platform. If detailed specifications are needed we will gladly provide the same to the Commission.

5. **If applying for authorization to provide local exchange service (residential and/or business dialtone) describe how your company will provide access to public safety/emergency telephone services, access to the statewide relay system and lifeline service. In addition, the applicant must comply with the requirements enumerated on pages 30-31 of the Commission's Order in Case 94-C-0095, issued May 22, 1996. The Commission will entertain waivers of any of these specific requirements only on a case-by-case basis. Please describe briefly how you plan to comply with these requirements. If you do not plan to provide local exchange services, please state so.**

MGC will provide public safety/emergency telephone services, access to the statewide relay system, and lifeline service over its own facilities interconnected with the ILEC through the ILEC central offices. During the initial phase of MGC's operations in New York, MGC's customers will remain on the ILEC network and continue to have "911" and "0-dialed" emergency calls directed to ILEC Public Safety Answering Points (PSAP) via the ILEC network. As facilities are constructed, however, and MGC's customers may be transitioned to service that is delivered over MGC's facilities, customers also may have "911" and "0-dialed" emergency calls via MGC's network which will be interconnected with the public switched telephone network.

6. **Indicate whether your company will have "0-" emergency calls processed by the ILEC or other "0-" certified operator services provider, or intends to file a subsequent petition for "0-" certification of its own.**

MGC will have its "0" emergency calls processed by the ILEC.

- 7 **A statement identifying whether the company has ever acquired a customer by switching it from another company without the customer's authorization? If so, please provide an explanation.**

MGC has never acquired a customer by switching it from another company without the customer's authorization.

8. **A statement identifying whether the company was ever the subject of a complaint and/or investigation for unauthorized switching of a customer's local or long distance service from one carrier to another? If so, please provide an explanation.**

MGC has never been the subject of a complaint and/or investigation for unauthorized switching of a customer's local or long distance service from one carrier to another.

9. **An intraLATA presubscription implementation plan.**

Attached to this Application as Exhibit C is MGC's intraLata presubscription implementation plan.


10. **Federal Social Security Account Number and/or Federal Employer Identification Number.**

MGC's Federal Employer Identification Number is 88-0360042.

\* \* \*

[Signature Page Follows]

This application is correct to the best of my knowledge. Any inaccuracies or deficiencies will be promptly corrected. If this application is granted, MGC will comply with all applicable rules and regulations of the Public Service Commission.

By:   
Name: RICHARD E. HEATTER  
Title: VICE PRESIDENT - LEGAL

February 1, 2000

**Exhibit A**

**Certificate of Incorporation**



**FILED**  
IN THE OFFICE OF THE  
SECRETARY OF STATE OF THE  
STATE OF NEVADA

OCT 16 1995

17935-95

*ARTICLES OF INCORPORATION*

*OF*

*NevTEL, INC.*

The Undersigned natural person acting as the incorporator of a corporation ("the Corporation") under the provisions of Chapter 78 of the Nevada Revised Statutes, adopts the following Articles of Incorporation.

*ARTICLE I*

NAME

The name of the corporation is:

NevTEL, INC.

*ARTICLE II*

PERIOD OF DURATION

The period of duration of the corporation is perpetual.

*ARTICLE III*

PURPOSE

The purpose for which the corporation is organized is to engage in any lawful activity.

*ARTICLE IV*

AUTHORIZED SHARES AND ASSESSMENT OF SHARES

Section 4.01. Authorized Shares. The aggregate number of shares the corporation shall have authority to issue is 25,000 shares of capital stock without par value.

Section 4.02. Assessment of Shares. The capital stock of the corporation, after the amount of the subscription price has been paid, shall not be subject to pay debts of the corporation, and no capital stock issues as fully paid up shall ever be assessable or assessed.

## ARTICLE V

### PRINCIPLE OFFICE AND INITIAL RESIDENT AGENT

Section 5.01. Principle office. The address of the principle office of the corporation is 2972 Meade Avenue, Las Vegas, Nevada 89102.

Section 5.02. Initial Resident Agent. The name of the initial resident agent of the corporation, a resident of Nevada, whose business address is at the above address, is Nield J. Montgomery.

## ARTICLE VI

### DATA RESPECTING DIRECTORS

Section 6.01. Style of Governing Board. The members of the governing board of the corporation shall be styled Directors.

Section 6.02. Initial Board of Directors. The initial Board of Directors shall consist of two (2) members, who need not be residents of the State of Nevada or shareholders of the corporation.

Section 6.03. Name and Addresses. The names and post office addresses of the persons who are to serve as directors until their successors shall have been elected and qualified, follow:

Nield J. Montgomery	9975 Parvin Street Las Vegas, Nevada 89123
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Linda L. Montgomery	9975 Parvin Street Las Vegas, Nevada 89123
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Section 6.04. Increase or Decrease of Directors. The number Directors of the corporation may be increased or decreased from time to time as shall be provided in the Code of By-Laws of the corporation.

## ARTICLE VII

### INDEMNIFICATION OF DIRECTORS AND OFFICERS

No director or officer shall be liable to the Corporation or its shareholders for damages for breach of fiduciary duty as a director or officer except for acts or omissions which involve intentional misconduct, fraud or a knowing violation of law, or the payment of dividends in violation of NRS 78.300. The Corporation shall indemnify any director or officer and for any liability and legal expenses, including attorney fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him arising out of his status or actions as a director or officer if he acted in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and had no reasonable cause to believe his conduct was unlawful. The personal liability of all directors and officers of the Corporation to any person or entity shall be eliminated or limited to the maximum extent allowed by Nevada statutes, and such directors and officers and their heirs, executors and administrators shall be indemnified by the Corporation to the maximum extent by Nevada statutes.

## ARTICLE VIII

### DATA RESPECTING INCORPORATOR

The name and post office address of the incorporator of the corporation is as follows:

Nield J. Montgomery

9975 Parvin Street  
Las Vegas, Nevada 89123

EXECUTED this 16<sup>th</sup> day of October, 1995

  
NIELD J. MONTGOMERY

STATE OF NEVADA )

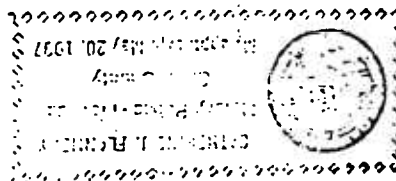
) ss.

COUNTY OF CLARK )

I, the undersigned, a Notary Public duly commissioned to take acknowledgments and administer oaths in the State of Nevada, do hereby certify that on this day, personally appeared before me, Nield J. Montgomery, who, being by me first duly sworn, declared that he is the incorporator referred to in Article VIII of the Articles of Incorporation, and that he signed these Articles of Incorporation and that statements contained therein are true.

WITNESS my hand and seal this 16<sup>th</sup> day of October, 1995.

*Catherine J. Flannery*  
NOTARY PUBLIC



# SECRETARY OF STATE



## CORPORATE CHARTER

I, DEAN HELLER, the duly elected and qualified Nevada Secretary of State, do hereby certify that **NEVTEL, INC.** did on the **SIXTEENTH** day of **OCTOBER, 1995** file in this office the original Articles of Incorporation; that said Articles are now on file and of record in the office of the Nevada Secretary of State, and further, that said Articles contain all the provisions required by the law of said State of Nevada.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of State, at my office, in Carson City, Nevada, this **SIXTEENTH** day of **OCTOBER, 1995**.

Secretary of State

By

Certification Clerk



**FILED**  
IN THE OFFICE OF THE  
SECRETARY OF STATE OF THE  
STATE OF NEVADA

**CERTIFICATE OF AMENDMENT OF ARTICLES OF INCORPORATION**

NOV 26 1996

(After Issuance of Stock)

\_\_\_\_\_  
NevTEL, Inc.  
Name of Corporation

*Dean Heller*  
DEAN HELLER, SECRETARY OF STATE  
We the undersigned \_\_\_\_\_

Nield J. Montgomery

and \_\_\_\_\_  
Linda L. Montgomery

Secretary or Assistant Secretary

of \_\_\_\_\_  
NevTEL, Inc.  
Name of Corporation do hereby certify:

That the Board of Directors of said corporation at a meeting duly convened, held on the 18th day of  
November, 19 96, adopted a resolution to amend the original articles as follows:

1. Article I is hereby amended to read as follows:

**ARTICLE I**

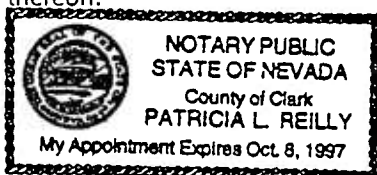
The name of the corporation is:

MGC Communications, Inc.

2. Section 4.01 is hereby amended to read as follows:

Section 4.01. Authorized Shares. The total number of shares which the Corporation is authorized to issue is twenty-five million (25,000,000) common shares; all of such shares having a par value of one tenth of one cent (\$.001) per share.

The number of shares of the corporation outstanding and entitled to vote on an amendment to the Articles of Incorporation is \_\_\_\_\_; that the said change(s) and amendment have been consented to and approved by a majority vote of the stockholders holding at least a majority of each class of stock outstanding and entitled to vote thereon.



*Nield J. Montgomery*  
\_\_\_\_\_  
\*President or Vice President  
*Linda L. Montgomery*  
\_\_\_\_\_  
Secretary or Assistant Secretary

State of Nevada  
County of Clark

On November 18th 1996, personally appeared before me, a Notary Public,  
Nield Montgomery & Linda Montgomery  
Names of Persons appearing and Signing Document who acknowledged that they executed the above

instrument.

*Patricia L. Reilly*  
\_\_\_\_\_  
Signature of Notary

**STATE OF NEVADA**  
**Secretary of State**

I hereby certify that this is a  
true and complete copy of  
the document as filed in this  
office.

NOV 26 '96

*Dean Heller*  
**DEAN HELLER**  
**Secretary of State**

By *C. H. B. S.*

**Exhibit B**

**Certificate of Authority to Transact Business**



N. Y. S. DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS AND STATE RECORDS

ALBANY, NY 12231-0001

## FILING RECEIPT

=====

ENTITY NAME: MGC COMMUNICATIONS, INC.

DOCUMENT TYPE: APPLICATION AUTHORITY (FOR. BUSINESS)

COUNTY: MONR

SERVICE COMPANY: CT CORPORATION SYSTEM

SERVICE CODE: 07

=====

FILED:12/23/1999 DURATION:PERPETUAL CASH#:991223000213 FILM #:991223000197

ADDRESS FOR PROCESS

EXIST DATE

-----  
C/O C T CORPORATION SYSTEM  
111 EIGHTH AVENUE  
NEW YORK, NY 10011-----  
12/23/1999

REGISTERED AGENT

-----  
C T CORPORATION SYSTEM  
111 EIGHTH AVENUE  
NEW YORK, NY 10011

=====				
FILER	FEES	250.00	PAYMENTS	250.00
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MGC COMMUNICATIONS, INC.	FILING	225.00	CASH	0.00
3301 BUFFALO DRIVE	TAX	0.00	CHECK	250.00
LAS VEGAS, NV 89129	CERT	0.00	CHARGE	0.00
	COPIES	0.00	DRAWDOWN	0.00
	HANDLING	25.00	BILLED	0.00
			REFUND	0.00
			-----	

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DOS-1025 (11/89)

## **EXHIBIT C**

### **MGC Communications, Inc. New York IntraLATA Presubscription Implementation Plan**

#### **Introduction**

MGC Communications, Inc. ("MGC") has in place a process that will give end user customers the opportunity to designate a carrier for their intraLATA toll call traffic in those market areas in which MGC is a facilities-based local exchange service provider. IntraLATA toll calls will automatically be directed to the designated carrier without the necessity of dialing an access code.

#### **General Information**

MGC will deploy Two-PIC (presubscribed interexchange carrier) technology in its switches. This technology will enable the customer to separately presubscribe intraLATA service and interLATA service to the same or different carriers. Although a service may be presubscribed, users may reach any carrier by dialing the appropriate access code. All eligible MGC end user telephone line numbers will be presubscribed according to this plan.

Implementation of this plan will be concurrent with the commencement of offering service in the state.

#### **Carrier Information**

Carriers will have the option of offering intraLATA service only or interLATA and intraLATA service. MGC will notify potential carriers sixty days prior to the initial availability of presubscription in specific market areas and provide forms of non-disclosure and participation agreements. Carriers will have the option of participating in any or all of such areas. Carriers will be required to return a completed non-disclosure agreement and participation agreement(s). Participating carriers will be requested to submit Access Service Requests/Translation Questionnaires to the access tandem owner and MGC.

MGC will not participate in billing disputes concerning intraLATA service between alternative competing carriers and their customers.

#### **Network Information**

All originating intraLATA traffic initially will be routed through the incumbent local exchange carrier ("ILEC") access tandem or through direct trunks between the MGC switch and the carrier locations, which may be used when traffic volumes warrant. Carriers must have Feature Group D trunks in place (or ordered) between their points of presence and the ILEC access tandem(s).

MGC will route all originating intraLATA traffic to the designated carrier and will only block traffic at the request of the customer or in compliance with regulatory requirements. Requests from carriers to block traffic or to remove customers from their networks will not be honored. Calls that cannot be completed to a carrier will be routed to an announcement.

### **LATAs Served**

MGC intends to offer services in the LATAs in which New York City, Rochester, and Buffalo are located.

### **Customer Contact Information**

When customers enroll for service with MGC, MGC representatives will provide alternative carriers' names and contact telephone numbers (if provided by the carrier) to customers in random order upon customer request. MGC representatives will not discuss alternative carrier rates or services and will not provide customers with carrier identification codes or access dialing instructions. MGC representatives will not initiate or accept three-way calls from alternative carriers to discuss presubscription.

MGC will not ballot or allocate its customer base. MGC will accept as a bona fide PIC a selection of "No PIC" as a choice, and customers who do not choose a carrier will be designated "No PIC". Such customers will have access code dialing capability to reach participating intraLATA carriers. MGC will provide customers with a confirmation, notifying them of their PIC selection (MGC or an alternative carrier).

### **Presubscription Changes**

Alternative carriers shall submit PIC changes to MGC using the customer account record exchange ("CARE") system via facsimile or other paper medium. MGC will respond with PIC confirmation or rejection information using the CARE format. Details of the process, including the CARE system, will be provided as part of the correspondence with the carriers.

A \$5.00 PIC change charge may be assessed against the customer for each eligible line where a PIC change is made.

In an effort to reduce unauthorized PIC changes, MGC will offer intraLATA PIC freeze service to all customers at no charge. A PIC freeze can only be initiated or removed by the customer requesting it through a MGC representative.

### **Ported Telephone Numbers**

For customers who change their local exchange service provider from an ILEC to MGC and retain their ILEC telephone number, MGC, as part of the CARE process, will provide the

presubscribed interexchange carrier-select with both the retained ILEC telephone number and the assigned MGC telephone number.

**Regulatory Compliance**

MGC will comply with all rules of the New York Public Service Commission and the FCC concerning intraLATA toll dialing parity.