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**Joseph A. Post**  
Assistant General Counsel

The Verizon logo, featuring a large checkmark above the word "verizon" in a bold, lowercase sans-serif font.

January 16, 2007

**BY HAND**

Honorable Jaclyn A. Brillling  
Secretary  
New York Public Service Commission  
Three Empire State Plaza  
Albany, New York 12223

*Re: Case 07-C-\_\_\_\_\_*

Dear Secretary Brillling:

Enclosed please find an original and three (3) copies of the Joint Petition of Global

Tel\*Link Corporation and MCI Communications Services, Inc. for Approval of a Proposed

Asset Transfer.

Respectfully submitted,

*Joseph A. Post*

RECEIVED  
PUBLIC SERVICE  
COMMISSION  
EXECUTIVES-ALBANY  
2007 JAN 16 PM 3:47

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

**Joint Petition of Global Tel\*Link  
Corporation and MCI Communications  
Services, Inc. for Approval of a  
Proposed Asset Transfer**

**Case 07-C-\_\_\_\_\_**

**JOINT PETITION FOR APPROVAL OF A PROPOSED ASSET TRANSFER**

**LANCE J.M. STEINHART  
Lance J.M. Steinhart, PC  
1720 Windward Concourse, Suite 250  
Alpharetta, GA 30005  
(770) 232-9200  
Attorney for Global Tel\*Link Corporation**

**JOSEPH A. POST  
140 West Street – 27<sup>th</sup> Floor  
New York, New York 10007  
(212) 321-8126  
Attorney for MCI Communications Services, Inc.**

**January 16, 2007**

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

Joint Petition of Global Tel\*Link  
Corporation and MCI Communications  
Services, Inc. for Approval of a  
Proposed Asset Transfer

Case 07-C-\_\_\_\_\_

**JOINT PETITION FOR APPROVAL OF A PROPOSED ASSET TRANSFER**

Pursuant to N.Y. Publ. Serv. L. § 99, Global Tel\*Link Corporation (hereinafter "GTL"), and MCI Communications Services, Inc (hereinafter "MCI") (together, the "Petitioners"), by their attorneys, respectfully request that the Commission consent to a proposed transaction in which MCI will sell, and GTL will purchase, certain tangible assets, rights, and other property related to the business of providing managed collect calling services for prison inmates, and of installing and operating payphones in prisons.<sup>1</sup> In support of this Application, GTL and MCI provide the following information:

**I. THE PARTIES**

1. GTL is a privately-held Delaware corporation whose principal offices are located at 2609 Cameron Street, Mobile, Alabama 36607. GTL is an experienced provider of

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<sup>1</sup> The proposed transaction will enable MCI to exit from this line of business, and will enable GTL to replace MCI as a provider of inmate services and of prison payphones to the New York State Department of Corrections. MCI notes that the proposed transaction is not subject to § 99 because state regulation of the payphone business, and in particular state regulation of entry into and exit from that line of business, has been preempted by the FCC pursuant to § 276 of the Telecommunications Act of 1996. (See, e.g., *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 11 FCC Rcd 20541 (rel. September 20, 1996; corrected September 27, 1996); *id.*, Order on Reconsideration, 11 FCC Rcd 21233 (rel. November 8, 1996); *id.*, Second Report and Order, 13 FCC Rcd 1778 (rel. October 9, 1997); *id.*, Third Report and Order and Order on Reconsideration of the Second Report and Order, 14 FCC Rcd 2545 (rel. February 4, 1999).) In joining in this Petition, MCI is not waiving its objections to the Commission's jurisdiction over this transaction.

In any event, this Petition seeks the Commission's consent to the proposed transaction only to the extent that it involves the transfer of relevant "works or system" used in the provision of service in New York. The line of business whose assets are being sold includes operations in a number of states other than New York.

inmate services throughout most of the continental United States. It was granted a Certificate of Public Convenience and Necessity ("CPCN") to resell all forms of telephone service in New York on September 9, 1994 in Case 93-C-0801. GTL currently provides managed inmate services to county jails in more than 50 counties in the State of New York.

2. MCI is a Delaware corporation whose principal offices are located at 22001 Loudoun County Parkway, Ashburn, Virginia. MCI is engaged in the business of providing a wide variety of communications services. In particular, it provides managed telecommunications services to inmates of state and county departments of corrections, and owns and operates prison and public payphones located on prison premises (the "Business"). These services enable inmates to communicate with friends, family members, legal counsel and other approved parties outside the correctional facilities.

3. MCI received CPCNs to operate as an "Other Common Carrier" and a reseller of all kinds of telecommunications services on March 2 and March 17, 1993, in Case 92-C-0803, under the name MFS Intelenet of New York, Inc. At various periods since then, the company has been named WorldCom Technologies, Inc. and MCI WorldCom Communications, Inc. It notified the Commission of its most recent name change to "MCI Communications Services, Inc." in a letter dated July 20, 2005.

## **II. DESIGNATED CONTACTS**

4. The designated contacts for questions concerning this Petition are:

**Lance J.M. Steinhart**  
Lance J.M. Steinhart, PC  
1720 Windward Concourse, Suite 250  
Alpharetta, Georgia 30005  
(770) 232-9200 (Telephone)  
(770) 232-9208 (Facsimile)  
lsteinhart@telecomcounsel.com (E-Mail)  
Attorney for GTL

**Joseph A. Post and Keefe B. Clemons**  
Verizon  
140 West Street, 27<sup>th</sup> Floor  
New York, NY 10007  
(212) 321-8126 (Telephone)  
(212) 962-1687 (Facsimile)  
joseph.a.post@verizon.com (E-Mail)  
Attorneys for MCI

### **III. DESCRIPTION OF TRANSACTION**

5. As of November 7, 2006, GTL and MCI entered into an Asset Purchase Agreement ("Agreement") under which MCI will sell and GTL will acquire certain tangible assets and other property related to the Business. Copies of the Agreement, and of Schedule 1.1 to the Agreement, which lists the items of Tangible Personal Property to be transferred, are provided as Attachment 1 to this Petition. Because Attachment 1 contains competitively sensitive information concerning the Business, it is not included in the public copy of this Petition that is being filed with the Secretary, but rather is being provided to the Commission's Records Access Officer under a claim of trade-secret protection.

6. The proposed transaction will enable MCI to withdraw from the Business and focus more closely on its other lines of business, will enable GTL to expand its existing inmate services business, and will ensure that the Business will continue to be carried out by an experienced and committed provider of inmate services.

7. Following the completion of the transaction, GTL will provide service pursuant to its tariff, which is currently in effect. The transaction will ensure continuity of service to the prison system and its inmates. Since the Business involves only the provision and operation of payphones, and of managed calling services originating from payphones, the transfer of the Business will not entail any change in any end user's local exchange service or presubscribed toll service, and the parties who make and receive calls through the Business's managed calling services form an ever-changing group as the prison population changes. Accordingly, no notification of customers making use of the managed telecommunications services is necessary or practical. Personnel of the State Department of Corrections are being notified of the transaction and of the assignment or novation of contracts entailed in the transaction.

8. The proposed transaction will not entail any transfer of certifications or changes in the ownership or corporate structure of either Petitioner. Following the transaction, MCI intends to file tariff amendments withdrawing any tariff provisions related to the Business.

#### **IV. PUBLIC INTEREST ANALYSIS**

9. Approval of the transaction is in the public interest because it will advance economic efficiency by enabling MCI to focus more closely on its core lines of business, while allowing GTL to expand its own business and achieve further economies of scale. Moreover, it will ensure that the Business continues to be carried on by an experienced and highly qualified provider of inmate services.

#### **V. ADDITIONAL INFORMATION AND WAIVER REQUESTS**

10. 16 NYCRR § 17.2 requires § 99 petitions to include certified copies of the Certificates of Incorporation (including amendments) "of every corporation directly interested in

presenting the petition.” Although we believe that the provisions of such certificates are not relevant to the Commission’s review of this transaction, copies of the relevant documents are provided as Attachments 2 (MCI) and 3 (GTL) to this Petition. We will provide certified copies of these documents promptly through a supplemental filing.

11. Various Commission rules require the production, in § 99 proceedings, of a variety of financial information concerning the transferred assets and the parties.<sup>2</sup> The Petitioners respectfully request that these requirements be waived. The primary purpose of the requirements — presumably, to ensure the reasonableness and prudence of asset transfers out of a regulated company’s rate base, and that the transactions are properly reflected in the transferring company’s books of account — are not implicated in transactions such as this, which are between (a) non-dominant service providers, (b) that are not subject to rate of return regulation, and (c) whose accounting practices and finances are regulated lightly, if at all, by the Commission. Finally, this is an arms’-length, non-affiliate transaction, so that neither party has any arguable incentive to enter into the transaction other than at a market-based fair value.

12. Petitioners respectfully submit that there is no need for a hearing in this proceeding, and that holding such a hearing would unreasonably delay the transaction. Accordingly, the Commission should issue its written consent to the transaction based on the Petition, the attached materials, and any additional information requested by Staff and provided by the Petitioners.

13. Pursuant to the Commission’s regulations, Petitioners are willing to discuss with Staff any additional information that may be required for the Commission’s review of this transaction.

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<sup>2</sup> See, e.g., 16 NYCRR §§ 31.1, 18.1 (formerly 3.1), and 31.1(f)-(l).

**VI. EXPEDITED TREATMENT REQUESTED**

14. Applicants hereby respectfully request that this Petition be considered on an expedited basis, and if possible voted on at the Commission's February 14, 2007 Public Session. Rapid approval will ensure that the transaction will close on a timely basis and will ensure that the public-interest benefits of the transaction, as previously discussed, will accrue at the earliest possible date.

**WHEREFORE**, Petitioners respectfully request that the Commission issue its written consent to the proposed transaction — to the extent that it involves the transfer of MCI's works or system used in the provision of relevant service in New York — as soon as possible.

**Respectfully submitted,**

**Global Tel\*Link Corporation**

By: Lance J.M. Steinhart/jr

Lance J.M. Steinhart

Lance J.M. Steinhart, PC

1720 Windward Concourse, Suite 250

Alpharetta, GA 30005

(770) 232-9200 (Telephone)

(770) 232-9208 (Facsimile)

lsteinhart@telecomcounsel.com (E-Mail)

Its Attorney

**MCI Communications Services, Inc.**

By: Joseph A. Post

Joseph A. Post

Verizon

140 West Street, 27<sup>th</sup> Floor

New York, NY 10007

(212) 321-8126 (Telephone)

(212) 962-1687 (Facsimile)

joseph.a.post@verizon.com (E-Mail)

Its Attorney



STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

Joint Petition of Global Tel\*Link  
Corporation and MCI Communications  
Services, Inc. for Approval of a  
Proposed Asset Transfer

Case 07-C-\_\_\_\_\_

VERIFICATION

STATE OF ALABAMA                     )  
  )  
COUNTY OF MOBILE                 )

DAVID B. SILVERMAN, being duly sworn, deposes and says:

I am an officer — specifically, Senior Vice-President and General Counsel — of Global Tel\*Link Corporation ("GTL"), one of the Petitioners in this proceeding. I have read the foregoing Joint Petition and know its contents. To the best of my knowledge, based on information provided to me, the foregoing Petition is true. To the extent that the Petition includes statements about GTL's co-Petitioner, MCI Communications Services, Inc. ("MCI"), I rely on information provided and representations made by MCI to GTL.

  
DAVID B. SILVERMAN

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day January, 2007.

  
Notary Public

BEVERLY F. SHUMOCK  
Notary Public  
Alabama  
State At Large  
My Commission Expires October 25, 2009

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

Joint Petition of Global Tel\*Link  
Corporation and MCI Communications  
Services, Inc. for Approval of a Proposed  
Asset Transfer

Case 07-C-\_\_\_\_\_

VERIFICATION

STATE OF NEW JERSEY     )  
                                      )  
COUNTY OF SOMERSET    )


ss.:

**RANDAL S. MILCH, being duly sworn, deposes and says:**

I am an officer — specifically, Secretary — of MCI Communications Services, Inc. ("MCI"), one of the Petitioners in this proceeding. I have read the foregoing Joint Petition and know its contents. To the best of my knowledge, based on information provided to me by employees of and counsel for MCI and its affiliates, the foregoing Petition is true. To the extent that the Petition includes statements about MCI's co-Petitioner Global Tel\*Link Corporation ("GTL"), I rely on information provided and representations made by GTL to MCI.

  
RANDAL S. MILCH

Sworn to before me this  
16th day of January, 2007

  
Notary Public  
SUSAN ROSENFELD  
A Notary Public Of New Jersey  
My Commission Expires November 30, 2007

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

**Joint Petition of Global Tel\*Link  
Corporation and MCI Communications  
Services, Inc. for Approval of a  
Proposed Asset Transfer**

**Case 07-C-\_\_\_\_\_**

**ATTACHMENT 1  
[REDACTED]**

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

**Joint Petition of Global Tel\*Link  
Corporation and MCI Communications  
Services, Inc. for Approval of a  
Proposed Asset Transfer**

**Case 07-C-\_\_\_\_\_**

**ATTACHMENT 2**

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 12:47 PM 06/01/2005  
FILED 12:40 PM 06/01/2005  
SRV 050455317 - 2283958 FILE

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE  
OF  
INCORPORATION  
OF  
MCI WORLDCOM COMMUNICATIONS, INC.

MCI WorldCom Communications, Inc. (the "Corporation") organized and existing under and by virtue of the General Corporation Law of the State of Delaware does hereby certify:

FIRST: That resolutions were duly adopted setting forth a proposed amendment (the "Amendment") of the Corporation's Certificate of Incorporation by unanimous written consent in lieu of a meeting of the Board of Directors of the Corporation declaring the Amendment to be advisable and calling a meeting of the stockholders of the Corporation for consideration thereof. The resolution setting forth the proposed amendment is as follows:

RESOLVED, that the Certificate of Incorporation of the Corporation be amended by changing Article 1 so that, as amended, said Article shall be and read as follows:

1. The name of the Corporation is MCI Communications Services, Inc.

SECOND: That thereafter, in accordance with Section 228 of the General Corporation Law of the State of Delaware, the stockholder of the Corporation approved the Amendment by written consent of the stockholder in lieu of a meeting of the stockholders of the Corporation.

THIRD: That the Amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

FOURTH: That the capital of said corporation shall not be reduced under or by reason of said amendment.

FIFTH: That the Amendment is to become effective on June 1, 2005 at 1:00pm EST.

In WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be signed this 1<sup>st</sup> day of June, 2005.

By: Jennifer McGarey  
Jennifer McGarey  
Secretary

**CERTIFICATE OF AMENDMENT OF CERTIFICATE OF INCORPORATION**  
**OF**  
**WORLDCOM TECHNOLOGIES, INC.**

WorldCom Technologies, Inc. (hereinafter referred to as the "corporation"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, does hereby certify:

1. The name of the corporation is WorldCom Technologies, Inc.
2. The certificate of incorporation of the corporation is hereby amended by striking out the Article 1 thereof and by substituting in lieu of said Article the following new Article:

**NAME**

The name of this corporation is MCI WORLDCOM Communications, Inc.

3. The amendment of the certificate of incorporation herein certified has been duly adopted in accordance with the provisions of Section 228 and 242 of the General Corporation Law of the State of Delaware.

Executed on this the 7th day of May, 1999.

  
Bernard J. Ebberts, President

**CERTIFICATE OF AMENDMENT OF CERTIFICATE OF INCORPORATION  
OF**

**MFS INTELENET, INC.**


MFS Intelenet, Inc. (hereinafter called the "Corporation"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, does hereby certify:

I. The certificate of incorporation of the Corporation is hereby amended by striking out Article 1 thereof and by substituting in the lieu of said Article the following new Article:

"I. The name of the corporation is WorldCom Technologies, Inc."

II. The amendment of the certificate of incorporation herein certified has been duly adopted in accordance with the provisions of Sections 228 and 242 of the General Corporation Law of the State of Delaware.

Executed on the 18th day of June 1997.

  
Scott D. Sullivan, Secretary

STATE OF DELAWARE  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
FILED 11:00 AM 06/23/1997  
971206857 - 2283958

CERTIFICATE OF AMENDMENT  
OF  
CERTIFICATE OF INCORPORATION  
OF  
MFS SERVICES, INC.

I.

The Certificate of Incorporation of MFS Services, Inc., a Delaware corporation, is amended by deleting Section I and substituting the following language:

"1. The name of the corporation is MFS Intelenet, Inc."

II.

The undersigned officers certify that the amendment above had been duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

Dated this 24th day of July, 1992.

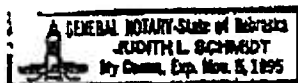
  
President

ATTEST:

  
Assistant Secretary

STATE OF NEBRASKA)  
COUNTY OF DOUGLAS) SS.

The foregoing instrument was acknowledged before me this 24th day of July, 1992 by Larry K. Long, President, and Kenneth D. Gaskins, Assistant Secretary, of MFS Services, Inc., a Delaware corporation on behalf of the corporation.



  
Notary Public

2050.KDG



CERTIFICATE OF INCORPORATION


OF

MFS SERVICES, INC.

1. The name of the corporation is: MFS Services, Inc.
2. The address of its registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.
3. The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.
4. The total number of shares of common stock which the corporation shall have authority to issue is One Thousand (1,000) and the par value of each of such shares is One Hundred Dollars (\$100.00) amounting in the aggregate to One Hundred Thousand Dollars (\$100,000.00).
5. The board of directors is authorized to make, alter or repeal the by-laws of the corporation. Election of directors need not be by written ballot.
6. The name and mailing address of the incorporator is:

Kenneth D. Gaskins  
1000 Kiewit Plaza  
Omaha, Nebraska 68131

I, THE UNDERSIGNED, being the incorporator hereinbefore named, for the purpose of forming a corporation pursuant to the General Corporation Law of Delaware, do make this certificate, hereby declaring and certifying that this is my act and deed and the facts herein stated are true, and accordingly have hereunto set my hand this 3rd day of January, 1992.

  
Kenneth D. Gaskins

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

**Joint Petition of Global Tel\*Link  
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**Case 07-C-\_\_\_\_\_**

**ATTACHMENT 3**

# Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS ON FILE OF "GLOBAL TEL\*LINK CORPORATION" AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

CERTIFICATE OF INCORPORATION, FILED THE THIRTIETH DAY OF APRIL, A.D. 1992, AT 9 O'CLOCK A.M.

CERTIFICATE OF AGREEMENT OF MERGER, FILED THE SIXTH DAY OF MAY, A.D. 1992, AT 9 O'CLOCK A.M.

CERTIFICATE OF AMENDMENT, FILED THE FIRST DAY OF APRIL, A.D. 1993, AT 12 O'CLOCK P.M.

CERTIFICATE OF MERGER, FILED THE FIRST DAY OF APRIL, A.D. 1993, AT 12:01 O'CLOCK P.M.

RESTATED CERTIFICATE, FILED THE FIRST DAY OF APRIL, A.D. 1993, AT 12:01 O'CLOCK P.M.

CERTIFICATE OF CHANGE OF REGISTERED AGENT, FILED THE SECOND DAY OF JULY, A.D. 1999, AT 9 O'CLOCK A.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE AFORESAID CORPORATION.



*Harriet Smith Windsor*  
Harriet Smith Windsor, Secretary of State

2296268 8100H

AUTHENTICATION: 3437965

040774808

DATE: 10-27-04

CERTIFICATE OF INCORPORATION

OF

GLOBAL TEL\*LINK CORPORATION

The undersigned, Robert A. Fergusson, desiring to incorporate or organize a Delaware corporation to conduct or promote the business or businesses hereinafter set forth, does hereby execute, acknowledge, file and record this Certificate of Incorporation under and pursuant to the General Corporation Law of the State of Delaware, as now or hereafter amended (hereinafter the "Act").

ARTICLE I

The name of the corporation is Global Tel\*Link Corporation (hereinafter the "Corporation").

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is 1013 Centre Road in the City of Wilmington, County of New Castle 19805. The name of the Corporation's registered agent at such address is Corporation Service Company.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Act.

ARTICLE IV

(A) Classes of Stock and Number of Shares. The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares of all classes of stock which the Corporation shall have authority to issue is 20,975,000 shares, of which 18,000,000 shares shall be Common Stock and 2,975,000 shares shall be Preferred Stock. All of the shares of both classes of stock shall have a par value of \$.01 a share, and shall be issued for such consideration not less than par value as is determined from time to time by the Board of Directors.

(B) Common Stock.

1. Par Value, Fully Paid and Partly Paid Shares. The shares of Common Stock shall be fully paid and nonassessable, except that the Board of Directors, in its discretion, may issue to call for the remainder of the consideration to be paid

therefor as provided in the Act. Only the amount of the consideration actually received by the Corporation for any of the shares of its Common Stock which shall be issued as partly paid, or such part thereof as shall be specified in dollars by the Board of Directors, shall be capital; and the holders of shares of Common Stock issued as partly paid shall not be liable personally to the Corporation, its officers, directors or stockholders, or to its creditors, for the unpaid balance of the consideration to be paid on said shares (except to surrender the stock certificate or certificates issued to represent said shares upon the call of said shares for the remainder of the consideration to be paid thereon). In the event all or any of said shares are called, as aforesaid, upon the surrender of the certificate or certificates representing said shares, duly endorsed, at the office of the Corporation, the Corporation shall issue to the holder or holders thereof a new certificate or certificates for the number of said shares that have been fully paid. Except as otherwise expressly provided by law, the rights and obligations of the holders of shares of Common Stock which are fully paid but uncertificated and the rights and obligations of the holders of shares of Common Stock which have been fully paid and are certificated shall be identical.

2. Voting Rights. Each stockholder shall be entitled to one vote for each share of Common Stock held by such stockholder, and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by the Act.

3. Dividend Rights. Subject to the prior rights of holders of other securities of the Corporation at the time outstanding having prior rights as to dividends, and the limitations on the payment of dividends on partly paid shares provided in the Act, the holders of Common Stock shall be entitled to receive and shall be paid, when and as declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors, provided, however, that no dividends (other than dividends payable in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock) shall be declared or payable on the Common Stock until at least 66 2/3% of the total number of shares of Series B Preferred Stock outstanding immediately after the "Second Closing" (as defined below) have been redeemed and/or converted to Common Stock.

As used herein, "First Closing" means the consummation of the Corporation's initial sale of up to 977,505 shares of Series

B Preferred Stock for a total consideration of up to \$1,236,250.57 (before deducting any discounts, fees, commissions, or other expenses paid or incurred by the Corporation in connection with the issuance and sale of said shares) pursuant to that certain stock purchase agreement (hereinafter the "Series B Preferred Stock Purchase Agreement") to be entered into by and between the Corporation and the initial purchasers of the Series B Preferred Stock; and "Second Closing" means the consummation of the Corporation's sale of the balance of the shares sold pursuant to the Series B Preferred Stock Purchase Agreement (if any such shares are sold after the First Closing).

4. Liquidation Rights. Upon the liquidation, dissolution, or winding up of the affairs of the Corporation, the assets of the Corporation shall be distributed as provided in subsection (C) 3 of this Article.

(C) Preferred Stock.

1. Designation, Powers, Preferences, Rights, Qualifications, Limitations and Restrictions. 975,000 shares of Preferred Stock are hereby designated Series A Preferred Stock (the "Series A Preferred Stock") and 2,000,000 shares of Preferred Stock are hereby designated Series B Convertible Preferred Stock (the "Series B Preferred Stock").

The powers, preferences, rights, qualifications, limitations and restrictions relating to the Series A Preferred Stock and the Series B Preferred Stock are as follows:

2. Dividend Provisions.

(a) The holders of shares of Series A Preferred Stock shall not be entitled to receive or be paid any dividends on said shares.

(b) The holders of shares of Series B Preferred Stock shall be entitled to receive and shall be paid dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend on the Common Stock (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock), at the annual rate of 7.5% of the "Adjusted Net Price Per Share" (as defined below). Such dividends shall be payable as of the end of each calendar quarter beginning with the quarter next following that in which the First Closing occurs. Such dividends shall accrue on each share from the date of original issuance, and shall accrue from day to day, whether or not earned or

declared. Such dividends shall be cumulative so that if such dividends in respect of any previous or current quarterly dividend period, at the annual rate specified above, shall not have been paid or declared and a sum sufficient for the payment thereof set apart, the deficiency shall first be fully paid before any dividend or other distribution shall be paid on the Common Stock and before any redemption of the Series A Preferred Stock. Any accumulation of dividends on the Series B Preferred Stock shall not bear interest. Cumulative dividends with respect to a share of Series B Preferred Stock which are accrued, payable and/or in arrears shall, upon conversion of such share to Common Stock and unless declared, be paid to the extent assets are legally available therefor, and any amounts for which assets are not legally available shall be paid promptly as assets become legally available therefor. Any partial payment will be made pro rata among the holders of Series B Preferred Stock, in proportion to the amount of such stock held by each of them.

The term "Adjusted Net Price Per Share" shall mean, as to each share of Series B Preferred Stock, \$1.17647 (the "Initial Net Price Per Share"), as adjusted, if any such adjustments are required, (i) in accordance with the resolution or resolutions of the Board of Directors authorizing the issuance of said shares and Section 1.5 of the Series B Preferred Stock Purchase Agreement and (ii) for any stock dividends, combinations or splits in respect to such shares (regardless of the net consideration for each such share actually received by the Corporation after deducting any discounts, fees, commissions, or other expenses allowed, paid or incurred by the Corporation in connection with the issuance and sale thereof). If no adjustments are required pursuant to subsection (i) above the Adjusted Net Price Per Share shall be the Initial Net Price Per Share as adjusted for any stock dividends, combinations or splits in respect to such shares.

### 3. Liquidation Preference.

In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, either voluntary or involuntary -

(a) The holders of Series B Preferred Stock shall be entitled to receive and shall be paid, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Series A Preferred Stock or Common Stock by reason of their ownership thereof, an amount per share equal to the sum of (i) 1.2 times the "Adjusted Gross Price Per Share" (as defined below) for each outstanding share of Series B Preferred Stock held by each of them, and (ii) an amount equal to accrued but unpaid dividends on such share. If upon the occurrence of such

event, the assets and funds thus distributed among the holders of the Series B Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series B Preferred Stock in proportion to the amount of such stock held by each of them.

(b) After the distributions described in subsection (a) above have been made, the holders of the Series A Preferred Stock shall be entitled to receive and shall be paid, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to \$1.00 (as adjusted for any combinations or splits with respect to such shares) for each outstanding share of Series A Preferred Stock held by them. If upon the occurrence of such event, the assets and funds thus distributed to the holders of the Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock in proportion to the amount of such stock held by each of them.

(c) After the distributions described in subsections (a) and (b) above have been paid, the remaining assets of the Corporation available for distribution to stockholders shall be distributed among the holders of Common Stock pro rata based on the number of shares of Common Stock held by each of them.

(d) A consolidation or merger of the Corporation with or into any other corporation or corporations, or a sale, conveyance or disposition of all or substantially all of the assets of the Corporation or the effectuation by the Corporation of a transaction or series of related transactions in which more than 50% of the voting power of the Corporation is disposed of, shall not be deemed to be a liquidation, dissolution or winding up of the affairs of the Corporation within the meaning of this Section 3, but shall instead be treated pursuant to Section 6 of this Article IV.

#### 4. Redemption.

(a) Optional Redemption of Series B Preferred Stock. On or at any time after 60 months from the last day of the calendar month in which the First Closing occurs, the Corporation may at any time it may lawfully do so, at the option of the Board of Directors, redeem in whole or in part the Series B Preferred Stock by paying in cash therefor a sum per share equal to (i) 1.3



times the Adjusted Gross Price Per Share, and (ii) an amount equal to accrued but unpaid dividends on such share to the Redemption Date (as defined below) (such total amount is hereinafter referred to as the "Series B Redemption Price").

The term "Adjusted Gross Price Per Share" shall mean, as to each share of Series B Preferred Stock, \$1.2647, as adjusted, if any such adjustments are required, (i) in accordance with the resolution or resolutions of the Board of Directors authorizing the issuance of said shares and Section 1.5 of the Series B Preferred Stock Purchase Agreement and (ii) for any stock dividends, combinations or splits in respect to such shares (regardless of the net consideration for each such share actually received by the Corporation after deducting any discounts, commissions, or other expenses allowed, paid or incurred by the Corporation in connection with the issuance and sale thereof). If no adjustments are required pursuant to subsection (i) above, the Adjusted Gross Price Per Share shall be \$1.2647 as adjusted for any stock dividends, combinations or splits in respect to such shares.

(b) Mandatory Redemption of Series B Preferred Stock. On or at any time after 60 months from the last day of the calendar month in which the First Closing occurs, within thirty (30) days after the receipt by the Corporation of the written request of the holders of not less than a majority of the then outstanding Series B Preferred Stock (a "Mandatory Redemption Request"), the Corporation shall redeem the percentage of the Series B Preferred Stock specified in such request (or, if less, the maximum amount it may lawfully redeem) by paying in cash therefor a sum per share equal to the Series B Redemption Price.

(i) In the event of any redemption of only a part of the then outstanding Series B Preferred Stock, the Corporation shall effect such redemption pro rata according to the number of shares held by each holder thereof.

(ii) Subject to the rights of the holders of shares of any class of securities of the Corporation which may hereafter come into existence, at least 15 but no more than 30 days prior to the date fixed for any redemption of Series B Preferred Stock (the "Redemption Date"), written notice shall be mailed, first-class postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on which notice is given) of the Series B Preferred Stock to be redeemed, at the address last shown on the records of the Corporation for such holder or given by the holder to the Corporation for the purpose of notice, or if no such address appears or is given, at the place where the principal executive

office of the Corporation is located, notifying such holder of the redemption to be effected, specifying the number of shares to be redeemed from such holder, the Redemption Date, the Series B Redemption Price, the place at which payment may be obtained and the date on which such holder's Conversion Rights (as hereinafter defined) as to such shares terminate and calling upon such holder to surrender to the Corporation, in the manner and at the place designated, his certificate or certificates representing the shares to be redeemed (the "Redemption Notice"). Except as provided in subsection 4(b)(iii) below, on or after the Redemption Date, each holder of Series B Preferred Stock to be redeemed shall surrender to the Corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon the Series B Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be cancelled. In the event less than all of the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(iii) From and after the Redemption Date, unless there shall have been a default in payment of the Series B Redemption Price, all dividends on the Series B Preferred Stock designated for redemption in the Redemption Notice shall cease to accrue, all rights of the holders of such shares as holders of Series B Preferred Stock (except the right to receive the Series B Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the Corporation legally available for redemption of shares of Series B Preferred Stock on any Redemption Date are insufficient to redeem the total number of shares of Series B Preferred Stock to be redeemed on such date, those funds which are legally available will be used to redeem the maximum possible number of such shares ratably among the holders of such shares to be redeemed. The shares of Series B Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares of Series B Preferred Stock, such funds will immediately be used to redeem the balance of the shares which the Corporation has become obligated to redeem on any Redemption Date but which it has not redeemed.

(iv) Subject to the provisions of subsection 4(b)(v) below, three days prior to the Redemption Date the Corporation

shall deposit the Series B Redemption Price of all outstanding shares of Series B Preferred Stock designated for redemption in the Redemption Notice, and not yet redeemed or converted, with a bank or trust company having aggregate capital and surplus in excess of \$50,000,000 as a trust fund for the benefit of the respective holders of the shares designated for redemption and not yet redeemed. Simultaneously, the Corporation shall deposit irrevocable instructions and authority to such bank or trust company to publish the notice of redemption thereof (or to complete such publication if theretofore commenced) and to pay, on and after the date fixed for redemption or prior thereto, the Series B Redemption Price to the holders of the Series B Preferred Stock designated for redemption in the Redemption Notice, upon surrender of their certificates. Any moneys deposited by the Corporation pursuant to this subsection 4(b)(iv) for the redemption of shares which are thereafter converted into shares of Common Stock pursuant to Section 5 hereof no later than the close of business on the Redemption Date shall be returned to the Corporation forthwith upon such conversion. The balance of any moneys deposited by the Corporation pursuant to this subsection 4(b)(iv) remaining unclaimed at the expiration of two years following the Redemption Date shall thereafter be returned to the Corporation, provided that the stockholder to which such monies would be payable hereunder shall be entitled, upon proof of his ownership of the Series B Preferred Stock and posting or payment of any bond requested by the Corporation, to receive such monies but without interest from the Redemption Date.

(v) Notwithstanding the provisions of subsections 4(b)(ii) and (iv) above, if the Board of Directors, in its sole discretion, determines with the advice of counsel that the Corporation has insufficient funds to redeem all of the Series B Preferred Stock to be redeemed at the time a Mandatory Redemption Request is made, taking into consideration available cash and cash equivalents and the Corporation's then available borrowing power, the Board of Directors may authorize the Corporation to redeem the Series B Preferred Stock to be redeemed over a period of not more than 4 years, redeeming not less than twenty (20%) thereof immediately following the receipt of the Mandatory Redemption Request and twenty (20%) percent thereof at the end of each of the 12-month periods thereafter until one hundred (100%) percent thereof is redeemed. If, pursuant to its authority under this subsection 4(b)(v), the Board of Directors authorizes the Corporation to redeem said shares over a period of less than 4 years, the percentage of the shares to be redeemed at the end of each 12-month period of the redemption period shall be increased uniformly so that all of the shares to be redeemed during the redemption period will be redeemed by the end of the redemption period. Notwithstanding the first two sentences of this

subsection 4(b)(v), under no circumstances shall less than twenty-five (25%) percent of the annual "Net Cash Flow" of the Corporation for each fiscal year (determined as hereinafter provided), beginning with the fiscal year of the Corporation ending immediately prior to the receipt of any Mandatory Redemption Request, be applied to the redemption of said shares of Series B Preferred Stock pursuant to a Mandatory Redemption Request; and provided, further, that, if at any time or from time to time during the redemption period, additional funds of the Corporation are legally available for the redemption of said shares of Series B Preferred Stock, such funds will immediately be used to redeem the balance of the shares which the Corporation has become obligated to redeem on any Redemption Date but which it has not redeemed.

The term "Net Cash Flow" shall mean in respect to any fiscal year of the Corporation the sum of (i) the Corporation's net income (loss) for the year, plus (ii) the sum of the Corporation's depreciation and amortization for such year, less (iii) the sum of all capital expenditures made by the Corporation during such year, all as determined for book purposes and in accordance with generally accepted accounting principles consistently applied.

Upon the decision of the Board of Directors that the Corporation has insufficient funds to redeem all of the Series B Preferred Stock to be redeemed at the time a Mandatory Redemption Request is made, the Corporation shall promptly prepare and furnish to each holder of Series B Preferred Stock a certificate setting forth in detail the basis and the facts upon which the decision by the Board of Directors was made, together with a description of the alternative redemption period authorized by the Board of Directors.

(c) Mandatory Redemption of Series A Preferred Stock.

Subject to the provisions of subsection (C) 2(b) of this Article IV, within 90 days after the end of each fiscal year of the Corporation, commencing with the fiscal year beginning October 1, 1992 and ending September 30, 1993, the Corporation shall redeem in whole or in part the Series A Preferred Stock by paying in cash to the holders thereof \$1.00 per share (as adjusted for any combinations or split with respect to such shares) (hereinafter referred to as the "Series A Redemption Price"). The number of shares to be redeemed at the end of each fiscal year shall be as is determined by dividing an amount equal to twenty five (25%) percent of the annual Net Cash Flow of the Corporation for such fiscal year in excess of Five Hundred Thousand (\$500,000) Dollars, by the Series A Redemption Price, and rounding the result thus obtained to the nearest whole share.

If all of the shares of the Series A Preferred Stock are not redeemed on or before December 31, 1996, the Corporation shall, on that date, fully redeem the remaining shares of the Series A Preferred Stock to the extent it may lawfully do so. To the extent assets are not legally available to fully redeem said shares on or before December 31, 1996, any amounts for which assets are not legally available shall be paid promptly as assets become legally available therefor. Any partial payment will be made pro rata among the holders of Series A Preferred Stock, in proportion to the amount of such stock held by each of them.

5. Conversion. The holders of the Series B Preferred Stock (but not the Series A Preferred Stock) shall have the right to convert their shares of Series B Preferred Stock into Common Stock of the Corporation as follows (the "Conversion Rights"):

(a) Right to Convert.

(i) Subject to subsection 5(c) below, each share of Series B Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share and prior to the close of business on any Redemption Date as may have been fixed in any Redemption Notice with respect to such share, at the office of the Corporation or any transfer agent for the Series B Preferred Stock, into fully paid and nonassessable shares of Common Stock at the Conversion Rate in effect on the Redemption Date fixed in such Redemption Notice. The Conversion Rate in effect on any Redemption Date shall be determined by dividing the Adjusted Gross Price Per Share by the Conversion Price Per Share of Series B Preferred Stock then in effect (the "Conversion Price"). The result thus obtained shall be the number of shares of Common Stock into which one share of Series B Preferred Stock can be converted on the Redemption Date. Initially, the Conversion Price shall be equal to the Adjusted Gross Price Per Share, but shall be subject to adjustment from time to time as provided in subsection 5(c) below.

(ii) In the event of a call for redemption of any shares of Series B Preferred Stock pursuant to Section 4 hereof, the Conversion Rights shall terminate as to the shares designated for redemption at the close of business on the Redemption Date, unless default is made in payment of the Redemption Price.

(iii) Each share of Series B Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Rate at the time in effect for such Series B Preferred Stock immediately upon the earlier of (A) the consummation of the Corporation's initial sale of its Common Stock in a bona fide, firm commitment underwriting pursuant to a registration statement under the Securities Act of 1933, as amended, the

public offering price of which is not less per share than 3 times the Adjusted Gross Price Per Share of the Series B Preferred Stock and \$5,000,000 in the aggregate or (B) the date upon which the Corporation obtains the consent of the holders of a majority of the then outstanding shares of Series B Preferred Stock.

(b) Mechanics of Conversion. Before any holder of Series B Preferred Stock shall be entitled to convert the same into shares of Common Stock, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Series B Preferred Stock, and shall give written notice by mail, postage prepaid, to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series B Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series B Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with an underwritten offer of securities registered pursuant to the Securities Act of 1933, the conversion may, at the option of any holder tendering Series B Preferred Stock for conversion, be conditioned upon the closing with the underwriter of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock issuable upon such conversion of the Series B Preferred Stock shall not be deemed to have converted such Series B Preferred Stock until immediately prior to the closing of such sale of securities.

(c) Conversion Price Adjustments of Series B Preferred Stock. The Conversion Price of the Series B Preferred Stock shall be adjusted from time to time as follows:

(i) (A) If, at any time after the date of the First Closing under the Series B Preferred Stock Purchase Agreement (the "Purchase Date"), the Corporation shall, in connection with any Financing (as defined below), issue any Additional Stock (as defined below) for a consideration per share less than the Conversion Price for the Series B Preferred Stock in effect immediately prior to each such issuance, the Conversion Price shall thereafter be reduced to the consideration per share of such Additional Stock, except as otherwise provided in this

subsection 5(c)(i).

(B) If, at any time after the Purchase Date, the Corporation shall issue any Additional Stock for a consideration per share less than the Conversion Price for the Series B Preferred Stock in effect immediately prior to each such issuance in a transaction or series of related transactions that do not constitute a Financing, the Conversion Price shall thereafter (except as otherwise provided in this subsection 5(c)(i)) be reduced to:

The Conversion Price determined by dividing (X) an amount equal to the sum of (a) the product derived by multiplying such Conversion Price in effect immediately prior to such issue or sale times the number of shares of "Common Stock Deemed Outstanding" (as hereinafter defined) immediately prior to such issue or sale, plus (b) the consideration, if any, received or deemed to be received by the Corporation upon such issue or sale, by (Y) the number of shares of Common Stock Deemed Outstanding immediately after such issue or sale.

The number of shares of "Common Stock Deemed Outstanding" shall equal the sum of the number of shares of Common Stock then outstanding plus the number of shares of Common Stock then obtainable pursuant to (aa) vested options to purchase or rights to subscribe for Common Stock, (bb) securities by their terms convertible into or exchangeable for Common Stock and (cc) vested options to purchase or rights to subscribe for such convertible or exchangeable securities.

(C) No adjustment of the Conversion Price for the Series B Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to 3 years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of 3 years from the date of the event giving rise to the adjustment being carried forward. Except to the limited extent provided for in subsections (F) 3 and (F) 4 of this Section no adjustment of such Conversion Price pursuant to this subsection 5(c)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(D) In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any

underwriting or otherwise in connection with the issuance and sale thereof.

(E) In the case of the issuance of Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined by the Board of Directors irrespective of any accounting treatment.

(F) In the case of the issuance of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this subsection 5(c)(i) and subsection 5(c)(ii):

1. The aggregate maximum number of shares of Common Stock deliverable upon exercise of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in subsections 5(c)(i)(D) and (c)(i)(E)), if any, received by the Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights for the Common Stock covered thereby.

2. The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in subsections 5(c)(i)(D) and (c)(i)(E)).

3. In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, other than a change resulting from the antidilution provisions thereof, the Conversion Price of the Series B Preferred Stock, to the extent in any way affected by or computed



using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

4. Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price of the Series B Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities which remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

5. The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to subsections 5(c)(i)(F) 1 and 2 shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either subsection 5(c)(i)(F) 3 or 4.

(ii) "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to subsection 5(c)(i)(F)) by the Corporation after the Purchase Date other than

(A) Common Stock issued pursuant to a transaction described in subsection 5(c)(iii) hereof,

(B) Up to 350,000 shares of Common Stock issued or issuable to employees or directors (if in transactions with primarily non-financing purposes) of the Corporation directly or pursuant to a stock option plan or restricted stock plan approved by the stockholders and Board of Directors of the Corporation,

(C) Warrants to purchase up to 192,500 shares of Common Stock (and the shares of Common Stock issuable upon the exercise thereof) issuable to Larry J. Harless,

(D) Warrants to purchase up to 90,100 shares of Common Stock (and the shares of Common Stock issuable upon the exercise thereof) issuable to Hakman Capital Corporation, or

(E) Warrants to purchase up to an additional 20,000 shares of Common Stock (and the shares of Common Stock issuable upon the exercise thereof) issuable to Hakman Capital

Corporation in connection with establishment of a vendor lease financing program, or

(F) Common Stock issuable upon conversion of shares of Series B Preferred Stock.

(iii) In the event the Corporation should at any time or from time to time after the Purchase Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend, distribution, split or subdivision if no record date is fixed), the Conversion Price of the Series B Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of Series B Preferred Stock shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in subsection 5(c)(i)(F).

(iv) If the number of shares of Common Stock outstanding at any time after the Purchase Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price for the Series B Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of Series B Preferred Stock shall be decreased in proportion to such decrease in outstanding shares.

(v) "Financing" means any issuance of Common Stock (or deemed issuance of Common Stock pursuant to subsection 5(c)(i)(F)) by the Corporation in a transaction or series of related transactions (A) with gross proceeds to the Corporation equal to or greater than \$100,000 or (B) which involve the issuance (or deemed issuance pursuant to subsection 5(c)(i)(F)) of more than 200,000 shares of Common Stock (as adjusted for any stock dividends, combinations or splits).

(d) Other Distributions. In the event the Corporation shall declare a distribution payable in securities of other

persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in subsection 5(c)(iii), then, in each such case for the purpose of this subsection 5(d), the holders of the Series B Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Series B Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(e) Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 5 or Section 6), provision shall be made so that the holders of the Series B Preferred Stock shall thereafter be entitled to receive upon conversion of the Series B Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 5 with respect to the rights of the holders of the Series B Preferred Stock after the recapitalization to the end that the provisions of this Section 5 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of the Series B Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(f) No Impairment. The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed under this Section 5 by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 5 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Series B Preferred Stock against impairment.

(g) No Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares shall be issued upon conversion of the Series B Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of Series B Preferred Stock pursuant to this Section 5, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series B Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series B Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of Series B Preferred Stock.

(h) Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Series B Preferred Stock, at least 20 days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(i) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the Series B Preferred Stock such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series B Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series B Preferred Stock, in addition to such other remedies as shall be available to the holder of such Series B Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes.

(j) Notices. Any notice required by the provisions of this

Section 5 to be given to the holders of shares of Series B Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation.

6. Merger, Consolidation.

(a) At any time, in the event of:

(i) any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation) which will result in the Corporation's stockholders immediately prior to such transaction not holding (by virtue of such shares or securities issued solely with respect thereto) at least 50% of the voting power of the surviving or continuing entity, or

(ii) a sale of all or substantially all of the assets of the Corporation, unless the Corporation's stockholders immediately prior to such sale will, as a result of such sale, hold (by virtue of securities issued as consideration for the Corporation's sale) at least 50% of the voting power of the purchasing entity,

then, holders of the Series B Preferred Stock shall receive for each share of such stock in cash or in securities received from the acquiring corporation, or in a combination thereof, at the closing of any such transaction, an amount equal to (i) 1.2 times the Adjusted Gross Price Per Share for each outstanding share of Series B Preferred Stock held by each of them, and (ii) an amount equal to accrued but unpaid dividends on such share. Such payments shall be made with respect to the Series B Preferred Stock (A) by redemption of such shares in the manner provided in subsection 4 (b) hereof (provided that in such event the moment immediately prior to the closing of such transaction shall, for purposes of this subparagraph, be deemed to be the "Redemption Date", only twenty (20) days' prior notice of the date fixed for redemption need be given and the consent of the holders of the Series B Preferred Stock shall be deemed to have been given) or (B) by purchase of such shares of Series B Preferred Stock at the same price by the surviving corporation, entity or person. In the event the proceeds of the transaction are not sufficient to make full payment of the aforesaid preferential amounts to the holders of the Series B Preferred Stock in accordance herewith, then the entire amount payable in respect of the proposed transaction shall be distributed among the holders of the Series B Preferred Stock in proportion to the amount of such stock owned by each such holder.

(b) Any securities to be delivered to the holders of the

Series B Preferred Stock pursuant to subsection 6(a) above shall be valued as follows:

(i) Securities not subject to investment letter or other similar restrictions on free marketability covered by (ii) below:

(A) If traded on a securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the 30-day period ending three (3) days prior to the closing;

(B) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever are applicable) over the 30-day period ending three (3) days prior to the closing; and

(C) If there is no active public market, the value shall be deemed to be the fair value thereof as determined by the Board of Directors irrespective of any accounting treatment, provided, however, that such securities shall be equitably allocated among and distributed to the holders of all classes of stock of the Corporation entitled to receive them.

(ii) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (i) (A), (B) or (C) to reflect the approximate fair value thereof as determined by the Board of Directors of the Corporation.

(c) In the event the requirements of subsection 6(a) are not complied with, the Corporation shall forthwith either:

(i) cause such closing to be postponed until such time as the requirements of this Section 6 have been complied with, or

(ii) cancel such transaction, in which event the rights, preferences and privileges of the holders of the Series B Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in subsection 6(d) hereof.

(d) The Corporation shall give each holder of record of Series B Preferred Stock written notice of such impending transaction not later than twenty (20) days prior to the stockholders' meeting called to approve such transaction, or twenty (20) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in

writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 6, and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than twenty (20) days after the Corporation has given the first notice provided for herein or sooner than ten (10) days after the Corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of a majority of Series B Preferred Stock that are entitled to such notice rights or similar notice rights.

(e) The provisions of this Section 6 are in addition to the protective provisions of Section 8 hereof.

#### 7. Voting Rights.

(a) Voting Other than for Directors. Except as otherwise provided herein with respect to the election of directors, the holder of each share of Series B Preferred Stock shall have the right to one vote for each share of Common Stock into which such Series B Preferred Stock could then be converted (with any fractional share determined on an aggregate conversion basis being rounded to the nearest whole share), and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled to notice of any stockholders' meeting in accordance with the By-laws of the Corporation, and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote, except that, notwithstanding any provision hereof, the holders of Series B Preferred Stock, individually or as a class, shall not be entitled to vote for the election or removal of directors other than as provided in subsection (b) below.

(b) Voting for Directors. Subject to the rights of holders of Series B Preferred Stock pursuant to the Voting Agreement entered into in connection with the Series B Preferred Stock Purchase Agreement, until 50% of the total number of shares of Series B Preferred Stock outstanding immediately after the Second Closing have been redeemed and/or converted to shares of Common Stock, the holders of the Series B Preferred Stock, voting together as a separate class, shall have the right to elect two (2) members of the Corporation's Board of Directors. Thereafter, until 75% of the total number of shares of Series B Preferred Stock outstanding immediately after the Second Closing have been redeemed and/or converted to shares of Common Stock, the holders of the Series B Preferred Stock, voting together as a class,

shall have the right to elect one (1) member of the Corporation's Board of Directors. Thereafter, the holders of the Common Stock shall elect all of the directors, and, in the interim, shall elect all of the directors other than those members of the Board of Directors that the holders of the Series B Preferred Stock, voting together as a separate class, shall have the right to elect as aforesaid.

In the case of any vacancy in the office of a director elected by a specific group of stockholders, a successor shall be elected to hold office for the unexpired term of such director by the affirmative vote of a majority of the shares of such specified group given at a special meeting of such stockholders duly called or by an action by written consent for that purpose.

(c) No Series A Preferred Stock Voting Rights. The holders of shares of Series A Preferred Stock shall have no voting rights, individually or as a class, in respect to the shares of Series A Preferred Stock held by them.

8. Protective Provisions. Subject to the rights of series of Preferred Stock which may from time to time come into existence,

(a) until at least 80% of the total number of shares of Series B Preferred Stock outstanding immediately after the Second Closing have been redeemed and/or converted to shares of Common Stock, the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series B Preferred Stock:

(i) sell, convey, or otherwise dispose of or encumber all or substantially all of its property or business or merge into or consolidate with any other corporation (other than a wholly owned subsidiary corporation); or

(ii) effect any transaction or series of related transactions in which more than 50% of the voting power of the Corporation is disposed of if the proceeds to all stockholders amount to less than Eight Million (\$8,000,000) Dollars if the change of control occurs on or before December 31, 1992; Ten Million (\$10,000,000) Dollars if the change occurs on or before December 31, 1993; Twelve Million (\$12,000,000) Dollars if the change occurs on or before December 31, 1994; Fourteen Million (\$14,000,000) Dollars if the change occurs on or before December 31, 1995; and Sixteen Million (\$16,000,000) Dollars thereafter; and provided that in addition thereto the majority of the holders of the Series B Preferred Stock then outstanding must approve of



the new stockholders who will control the Corporation thereafter;  
or

(b) so long as shares of Series B Preferred Stock are outstanding, the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series B Preferred Stock:

(i) alter or change the rights, preferences or privileges of the shares of Series B Preferred Stock so as to affect adversely said shares; or

(ii) increase the authorized number of shares of Series B Preferred Stock; or

(iii) create any new class or series of stock or any other securities convertible into equity securities of the Corporation (aa) having a preference over, or being on a parity with, the Series B Preferred Stock with respect to voting, dividends, redemption or upon liquidation, or (bb) having rights similar to any of the rights of the Series B Preferred Stock under this Section 8; or

(iv) do any act or thing which would result in taxation of the holders of shares of Series B Preferred Stock under Section 305 of the Internal Revenue Code of 1986, as amended (or any comparable provision of Internal Revenue Code as hereafter from time to time amended); or

(v) amend Article IV(C)(4) or (5) hereof; or

(vi) increase the number of directors constituting the Board of Directors to more than seven (7).

9. Status of Converted or Redeemed Stock. In the event any shares of Preferred Stock shall be redeemed or converted pursuant to Section 4 or Section 5 hereof, the shares so converted or redeemed shall be cancelled and shall not be re-sold by the Corporation. The Certificate of Incorporation of the Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

#### ARTICLE V

The name and mailing address of the incorporator is Robert A. Fergusson, 2609 Cameron Street, Mobile, Alabama 36607.

#### ARTICLE VI

The powers of the incorporator are to terminate upon the filing of this Certificate of Incorporation.

The names and mailing addresses of the persons who are to serve as directors until the first annual meeting of stockholders or until their successors are elected and qualify, are as follows:

<u>NAME</u>	<u>ADDRESS</u>
G. Daniel Wiley	2609 Cameron Street Mobile, Alabama 36607
Robert A. Fergusson	2609 Cameron Street Mobile, Alabama 36607
John A. Batson	2609 Cameron Street Mobile, Alabama 36607

After the First Closing, the holders of a majority of the shares of Series B Preferred Stock, voting together as a class, shall be entitled to elect the number of additional directors provided in Section 7(b) of Article IV. Until  $66 \frac{2}{3}\%$  of the total number of shares of Series B Preferred Stock outstanding immediately after the Second Closing have been redeemed and/or converted to shares of Common Stock, the number of directors constituting the Board of Directors shall be five (5), unless the holders of at least a majority of the then outstanding shares of Series B Preferred Stock voting together as a separate class (by vote or written consent, as provided by law) shall consent to a lesser or greater number of directors.

#### ARTICLE VII

Whenever a compromise or arrangement is proposed between the Corporation and its creditors or any class of them and/or between the Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for the Corporation under Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for the Corporation under Section 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority

in number representing three fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of the Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of the Corporation, as the case may be, and also on the Corporation.

#### ARTICLE VIII

A director of the Corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Act or (iv) for any transaction from which the director derived any improper personal benefit. If the Act is hereafter amended to authorize, with the approval of a corporation's stockholders, further reductions in the liability of the Corporation's directors, then a director of the Corporation shall not be liable for any such breach to the fullest extent permitted by the Act as so amended. Any repeal or modification of the foregoing provisions by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

IN WITNESS WHEREOF, the undersigned has executed this Certificate on April 29, 1992.

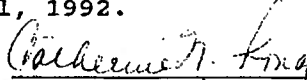
  
Incorporator

STATE OF ALABAMA

COUNTY OF MOBILE

Before me, the undersigned Notary Public in and for said County in said State, being authorized by the law of said State to take acknowledgements of deeds, personally appeared Robert A. Fergusson, the person signing the foregoing Certificate of Incorporation as the Incorporator, who is known to me, and acknowledged to me that said instrument is his act and deed or the act and deed of the Corporation, and that the facts stated therein are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office on this the 29th day of April, 1992.

  
\_\_\_\_\_  
Notary Public  
My Commission Expires: 8/31/93

AGREEMENT AND ARTICLES OF MERGER

THIS AGREEMENT AND ARTICLES OF MERGER (hereinafter referred to as "this Agreement" or, alternatively, as "this Agreement and Plan of Merger"), is made as of the 1st day of May, 1992 by and between GLOBAL TEL\*LINK CORPORATION, a Delaware corporation ("Global Tel\*Link"), and GLOBAL TELCOIN, INC., an Alabama corporation ("Global Telcoin"), said corporations being hereinafter sometimes referred to as the "constituent corporations".

THE PARTIES HEREBY AGREE AS FOLLOWS:

Plan of Merger

1. Terms and Conditions of Merger. The constituent corporations shall merge into a single corporation, which shall be Global Tel\*Link, pursuant to the General Corporation Law of the State of Delaware and the Alabama Business Corporation Act. When the merger becomes effective, the separate corporate existence of Global Telcoin shall cease, and Global Tel\*Link, as the surviving corporation, shall possess all the rights, privileges, powers and franchises as well of a public as of a private nature, and shall be subject to all of the restrictions, disabilities, and duties of each of the constituent corporations; and all and singular, the rights, privileges, powers and franchises of each of the constituent corporations, and all property, real, personal and mixed, and all debts due to each of the constituent corporations of whatever account, as well for stock subscriptions as all other things in action or belonging to each of the constituent corporations shall be vested in Global Tel\*Link as the corporation surviving such merger; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of Global Tel\*Link as they were of the several and respective constituent corporations, and the title to any real estate vested by deed or otherwise, under the laws of the State of Delaware or any other state, in either of the constituent corporations, shall not revert or be in any way impaired by reason of the merger; but all the rights of creditors and all liens upon any property of each of the constituent corporations shall be preserved unimpaired, and all debts, liabilities and duties of the respective constituent corporations shall thenceforth attach to Global Tel\*Link as the surviving corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

2. Mode of Carrying Merger into Effect.

No shares of the stock of Global Tel\*Link have been issued. This Agreement and Plan of Merger was adopted by Global Tel\*Link, as the constituent corporation surviving the proposed merger, by action of its Board of Directors taken May 1, 1992, pursuant to Section 252, of the Delaware

Code. The Secretary or Assistant Secretary of Global Tel\*Link, by resolution of the Board of Directors duly adopted at said meeting, was authorized to certify (and has certified) on this Agreement that this Agreement has been adopted pursuant to said section and that, as the date of such certificate, no shares of the stock of the corporation have been issued, and that the facts stated in such certificate remain true immediately prior to its filing, in accordance with Section 103, Chapter 1, Title 8 of the Delaware Code.

Pursuant to Sections 10-2A-140 and 10-2A-146, Code of Alabama 1975, the Board of Directors of Global Telcoin has, by resolution, duly adopted by such Board, May 1, 1992, approved this Agreement and Plan of Merger, and, by resolution, directed that this Agreement and Plan of Merger be submitted to a vote at a special meeting of shareholders of Global Telcoin called for such purpose. A waiver of notice of such meeting and the purpose thereof was signed by each of the shareholders of the corporation. At such meeting, which was held May 1, 1992 immediately following said meeting of the Board of Directors, a vote of the shareholders was taken on this Agreement and Plan of Merger, and the same was unanimously approved by all of the shareholders.

The Merger shall be effectuated by filing this Agreement and Plan of Merger with the Secretary of State of Delaware and with the Secretary of State of Alabama, and payment of the appropriate fees to each.

3. No Amendment of the Certification of Incorporation of the Surviving Corporation. No amendment or changes in the Certificate of Incorporation of Global Tel\*Link, the surviving corporation, shall be effected by the merger, and the Certificate of Incorporation of Global Tel\*Link shall be its Certificate of Incorporation.

4. Manner of Converting the Shares of Each of the Constituent Corporations. The authorized and outstanding shares of Global Telcoin consist of Two Thousand (2,000) shares of its common stock. No other shares of any class are authorized or issued.

The names of the stockholders of Global Telcoin and the number of shares of its common stock held by each are as follows:

<u>Name of Stockholder</u>	<u>Number of Shares Held</u>
G. Daniel Wiley	1,700
John A. Batson	200
Robert A. Fergusson	100
Total shares outstanding	<u>2,000</u>

The shares of the common stock of Global Telcoin held by G. Daniel Wiley shall be converted in exchange for 1,652,500 shares of the common stock of Global Tel\*Link, the shares of the common stock of Global Telcoin held by John A. Batson shall be converted in exchange for 385,000 shares of the common stock of Global Tel\*Link, and the shares of the common stock of Global Telcoin held by Robert A. Fergusson shall be converted in exchange for 192,500 shares of the common stock of Global Tel\*Link, following which all of the shares of common stock of Global Telcoin shall be cancelled.

The shares of common stock of Global Telcoin are to be converted solely into shares of the surviving corporation as aforesaid, and no cash, property or rights or securities of any other corporation shall be received in exchange for, or upon conversion of the such shares, in addition to or in lieu of shares or securities of the surviving corporation.

Immediately following such exchange and conversion, the names of the stockholders of Global Tel\*Link and the number of shares of its common stock held by each shall be as follows:

<u>Name of Stockholder</u>	<u>Number of Shares Held</u>
G. Daniel Wiley	1,652,500
John A. Batson	385,000
Robert A. Fergusson	192,500

5. Other Provisions

(a) Global Tel\*Link, as the surviving corporation, shall be governed by the laws of Delaware, but shall comply, to the extent it is not then in compliance therewith, with the provisions of the Alabama Business Corporation Act with respect to foreign corporations if it is to transact business in Alabama, and, in any case, agrees as follows:

(i) It may be served with process in Alabama in any proceeding for the enforcement of any obligation of Global Telcoin and in any proceeding for the enforcement of the rights of a dissenting shareholder of Global Telcoin against the surviving corporation;

(ii) It irrevocably appoints the Secretary of State of Alabama as its agent to accept service of process in any such proceeding; and

(iii) It will promptly pay to any dissenting shareholders of Global Telcoin the amount, if any, to which they shall be entitled under the provisions of the Alabama Business Corporation Act with respect to the rights of dissenting shareholders.

(b) The plan of merger is as set forth above.

(c) The number of shares outstanding of Global Telcoin is 2,000, all of which are shares of common stock. No other class of stock is authorized or outstanding.

None of the shares of Global Tel\*Link has been issued.

(d) The number of shares of Global Telcoin that voted for the plan is 2,000. None of its shares voted against the plan.

(e) Global Telcoin is the only constituent corporation incorporated under the laws of the State of Alabama. The Articles of Incorporation of Global Telcoin were filed in Mobile County, Alabama November 14, 1988.

IN WITNESS WHEREOF, this Agreement and Plan of Merger has been executed in the County of Mobile, State of Alabama, by the respective constituent corporations by its President and attested by its Secretary, and verified by one of the officers of each corporation signing the same, on this, the 1st day of May, 1992.

GLOBAL TEL\*LINK CORPORATION, a  
Delaware corporation.

ATTEST:

By:

As Its Secretary

By:

As Its President

GLOBAL TELCOIN, INC., an Alabama  
corporation

ATTEST:

By:

As Its Secretary

By:

As its President



STATE OF ALABAMA

COUNTY OF MOBILE

I, the undersigned Notary Public in and for said State and County hereby certify that G. Daniel Wiley and John A. Batson, whose names as President and Secretary, respectively, of Global Tel\*Link Corporation, a Delaware corporation, are signed to the foregoing instrument and who are known to me, acknowledged before me on this date that, being informed of the contents of said instrument, they as such officers and with full authority executed the same voluntarily for and on behalf of the said corporation, on the day the same bears date.

Given under my hand and seal on this the 1st day of May, 1992.

  
Notary Public  
My Commission Expires: 5-2-96

STATE OF ALABAMA

COUNTY OF MOBILE

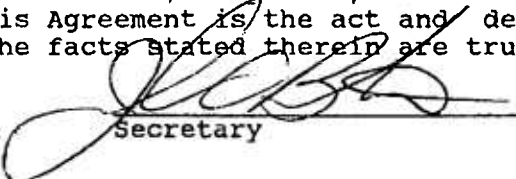
I, the undersigned Notary Public in and for said State and County hereby certify that Robert A. Fergusson and John A. Batson, whose names as President and Secretary, respectively, of Global Telcoin Inc., an Alabama corporation, are signed to the foregoing instrument and who are known to me, acknowledged before me on this date that, being informed of the contents of said instrument, they as such officers and with full authority executed the same voluntarily for and on behalf of the said corporation, on the day the same bears date.

Given under my hand and seal on this the 1st day of May, 1992.

  
Notary Public  
My Commission Expires: 5-2-96

ACKNOWLEDGEMENT AND  
CERTIFICATE OF SECRETARY OF GLOBAL TEL\*LINK

This is to certify that I am the Secretary of Global Tel\*Link Corporation, a Delaware corporation, and that I am one of the officers of the Corporation signing this Agreement, that I have been duly authorized by resolution of the Board of Directors to certify on this Agreement that this Agreement has been adopted pursuant to subsection (f) of Section 251, Chapter 1, Title 8 of the Delaware Code and that, as of the date hereof, no shares of the stock of the Corporation have been issued, that the facts stated in this Certificate remain true immediately prior to its filing, in accordance with Section 103, Chapter 1, Title 8 of the Delaware Code; and that this Agreement is the act and deed of said corporation, and that the facts stated therein are true.

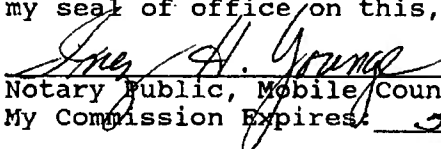
  
Secretary

STATE OF ALABAMA )

COUNTY OF MOBILE )

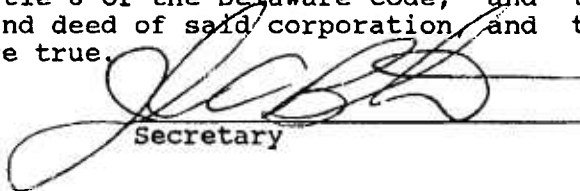
Before me, the undersigned Notary Public in and for said County in said State, being duly authorized by the law of said State to take acknowledgements of deeds, personally appeared John A. Batson, one of the persons signing the foregoing Agreement and Acknowledgement and Certificate on behalf of said corporation, and who being by me first duly sworn deposes and says that the facts stated therein are true.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office on this, the 1st day of May 1992.

  
Notary Public, Mobile County, Alabama  
My Commission Expires: 5-2-96

ACKNOWLEDGEMENT AND  
CERTIFICATE OF SECRETARY OF GLOBAL TELCOIN, INC.

This is to certify that I am the Secretary of Global Telcoin, Inc., an Alabama corporation, and that I am one of the officers of the Corporation signing this Agreement, that I have been duly authorized by resolution of the Board of Directors to certify on this Agreement that this Agreement has been adopted pursuant to subsection (c) of Section 251, Chapter 1, Title 8 of the Delaware Code and that the facts stated in this Certificate remain true immediately prior to its filing, in accordance with Section 103, Chapter 1, Title 8 of the Delaware Code; and that this Agreement is the act and deed of said corporation, and that the facts stated therein are true.

  
Secretary

STATE OF ALABAMA )

COUNTY OF MOBILE )

Before me, the undersigned Notary Public in and for said County in said State, being duly authorized by the law of said State to take acknowledgements of deeds, personally appeared John A. Batson, one of the persons signing the foregoing Agreement and Acknowledgement and Certificate on behalf of said corporation, and who being by me first duly sworn deposes and says that the facts stated therein are true.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office, on this, the 1st day of May 1992.

  
Notary Public, Mobile County, Alabama  
My Commission Expires: 5-2-96

**CERTIFICATE OF AMENDMENT OF THE  
CERTIFICATE OF INCORPORATION  
OF GLOBAL TEL-LINK CORPORATION**

Robert A. Fergusson and G. Dan Wiley certify that:

1. They are the President and Secretary, respectively, of Global Tel-Link Corporation, a Delaware corporation.
2. Article IV(C)5(h) of the Certificate of Incorporation of this Corporation is amended in its entirety to read as follows:

"(h) Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Series B Preferred Stock, at the earlier of (i) the date on which notice is mailed to any other Corporation securityholder in its capacity as such, or (ii) the time required by applicable law, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right."

3. Article IV(C)6(a) of the Certificate of Incorporation of this Corporation is amended in its entirety to read as follows:

"(a) At any time, in the event of:

(i) any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation) which will result in the Corporation's stockholders immediately prior to such transaction not holding (by virtue of such shares or securities issued solely with respect thereto) at least 50% of the voting power of the surviving or continuing entity, or

(ii) a sale of all or substantially all of the assets of the Corporation, unless the Corporation's stockholders immediately prior to such sale will, as a result of such sale, hold (by virtue of securities issued as consideration for the Corporation's sale) at least 50% of the voting power of the purchasing entity,

then, holders of the Series B Preferred Stock shall receive for each share of such stock in cash or in securities received from the acquiring corporation, or in a combination thereof, at the closing of any such transaction, an amount equal to at least (i) 1.2 times the Adjusted Gross Price Per Share for each outstanding share of Series B Preferred Stock held by each of them, and (ii) an amount equal to accrued but unpaid dividends on such share. Such payments shall be made with respect to the Series B Preferred Stock (A) by redemption of such shares in the manner provided in subsection 4(b) hereof (provided that in such event the moment immediately prior to the closing of such transaction shall, for purposes of this subparagraph, be deemed to be the "Redemption Date", only twenty (20) days' prior notice of the date fixed for redemption need be given and the consent of the holders of the Series B Preferred Stock shall be deemed to have been given) or (B) by purchase of such shares of Series B Preferred Stock at the same price by the surviving corporation, entity or person. In the event the proceeds of the transaction are not sufficient to make full payment of the aforesaid preferential amounts to the holders of the Series B Preferred Stock in accordance herewith, then the entire amount payable in respect of the proposed transaction shall be distributed among the holders of the Series B Preferred Stock in proportion to the amount of such stock owned by each such holder."

4. Article IV(C)6(d) of the Certificate of Incorporation of this Corporation is amended in its entirety to read as follows:

"(d) The Corporation shall give each holder of record of Series B Preferred Stock written notice of such impending transaction not later than twenty (20) days prior to the stockholders' meeting called to approve such transaction (or, in the event that written consent is solicited in lieu of a meeting, at the time such consent is solicited), and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 6, and the Corporation shall thereafter give such holders prompt notice of any material changes."

5. The foregoing Certificate of Amendment of the Certificate of Incorporation has been duly approved by the Board of Directors in accordance with Section 242 of the Delaware General Corporation Law.

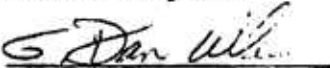
6. The foregoing Certificate of Amendment of the Certificate of Incorporation has been duly approved by the written consent of the stockholders in accordance with Sections 228 and 242 of the Delaware General Corporation Law the (the "DGCL"). The total number of outstanding shares of Common Stock and Series B Preferred Stock of the Corporation entitled to act by written consent upon the Certificate of Amendment was 3,512,400 and 855,000, respectively. The number of shares consenting to the Certificate of Amendment equaled or exceeded consent required. The percentage consent required was more than 50% of the outstanding Series B Preferred Stock, voting separately, and more than 50% of the outstanding Common Stock and Series B Preferred Stock, voting together.

We hereby further declare and certify under penalty of perjury under the laws of the State of Delaware that the facts set forth in the foregoing Certificate are true and correct of our own knowledge and that this Certificate is our act and deed.

Executed at Mobile, Alabama, effective this 7<sup>th</sup> day of APRIL, 1993.

  
Robert A. Fergusson

Attested:

  
G. Dan Wiley

**CERTIFICATE OF MERGER****MERGING****SCHLUMBERGER ACQUISITION CORP.****WITH AND INTO****GLOBAL TEL\*LINK CORPORATION**

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**Pursuant to Section 251 of the  
General Corporation Law of the State of  
Delaware**

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Pursuant to Section 251(c) of the General Corporation Law of the State of Delaware (the "GCL"), Global Tel\*Link Corporation, a Delaware corporation (the "Company"), and Schlumberger Acquisition Corp., a Delaware corporation ("Schlumberger Acquisition"), do hereby certify as follows:

FIRST: Schlumberger Acquisition was incorporated on March 11, 1993 pursuant to the GCL, and the Company was incorporated on April 30, 1992 pursuant to the GCL;

SECOND: The Agreement and Plan of Reorganization, dated as of March 22, 1993 (the "Agreement"), among Schlumberger Technologies, Inc., a Delaware corporation, Schlumberger Acquisition and the Company, setting forth the terms and conditions of the merger, has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with Section 251 (c) of the GCL;

THIRD: The name of the surviving corporation is Global Tel\*Link Corporation.

FOURTH: Pursuant to the Agreement, the Certificate of Incorporation of the Company, as in effect immediately prior to the effective time of the merger, shall be amended on the date of the merger to read in full as attached hereto as Exhibit A; and from and after the effective time of the merger, the Certificate of Incorporation of the Company, as so amended, shall continue as the Certificate of Incorporation of the surviving corporation, until amended as provided by law;

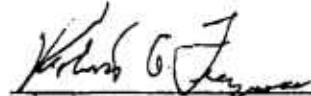
FIFTH: An executed copy of the Agreement is on file at the principal place of business of the surviving corporation, 2609 Cameron Street, Mobile, Alabama 36607;

SIXTH: A copy of the Agreement will be furnished by the surviving corporation, on request and without cost, to any stockholder of either constituent corporation; and

SEVENTH: The merger shall become effective upon the filing of this Certificate of Merger with the Secretary of State of the State of Delaware.

We hereby declare and certify under penalty of perjury under the laws of the State of Delaware that the facts set forth in the foregoing Certificate are true and correct of our own knowledge and that this Certificate is our act and deed.

Executed at Mobile, Alabama, effective this 1<sup>st</sup> day of April, 1993.



Robert A. Fergusson,  
President of Global  
Tel\*Link Corporation, a  
Delaware corporation and  
the surviving corporation

Attested: 

G. Dan Wiley,  
Secretary of Global  
Tel\*Link Corporation, a  
Delaware corporation and  
the surviving corporation




CERTIFICATE OF ADOPTION  
OF  
THE RESTATED CERTIFICATE OF INCORPORATION  
OF  
GLOBAL TEL\*LINK

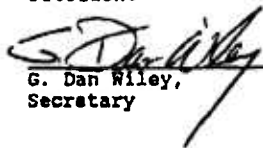
The undersigned officers of Global Tel\*Link Corporation  
certify that:

1. The date of incorporation of Global Tel\*Link Corporation  
is May 4, 1992.

2. Pursuant to Sections 228, 242 and 245 of the Delaware  
Corporation Law, the Restated Certificate of Incorporation of  
Global Tel\*Link Corporation attached hereto amends and restates the  
Certificate of Incorporation filed with the Secretary of State of  
the State of Delaware on May 4, 1993, as amended to date.

Executed in Mobile, Alabama on April 1, 1993.

  
Robert A. Ferguson,  
President

  
G. Dan Wiley,  
Secretary

## RESTATED CERTIFICATE OF INCORPORATION

OF

## GLOBAL TEL-LINK CORPORATION

**ONE.** The name of this corporation is Global Tel-Link Corporation.

**TWO.** The address of the corporation's registered office in the State of Delaware is The Corporation Trust Company, 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of its registered agent at such office is The Corporation Trust Company.

**THREE.** The purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

**FOUR.** This corporation is authorized to issue one class of shares to be designated "Common Stock". The total number of shares of Common Stock this corporation shall have authority to issue is 1,000, with par value of \$0.01 per share.

**FIVE.** The corporation is to have perpetual existence.

**SIX.** In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, alter, amend or repeal the Bylaws of the corporation.

**SEVEN.** The number of directors which constitute the whole Board of Directors of the corporation shall be as specified in the Bylaws of the corporation.

**EIGHT.** Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the corporation.

**NINE.** Advance notice of new business and stockholder nominations for the election of directors shall be given in the manner and to the extent provided in the Bylaws of the corporation. Elections of directors need not be by written ballot unless the Bylaws of the corporation shall so provide.

**TEN.** The corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

STATE OF DELAWARE  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
FILED 12:01 PM 04/01/1993  
930915330 - 2296268


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OF  
THE RESTATED CERTIFICATE OF INCORPORATION  
OF  
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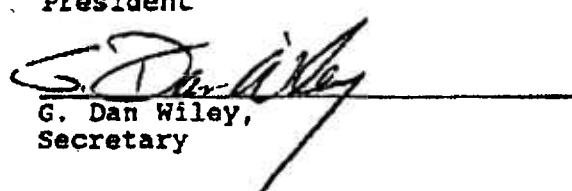
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