

APPLICATION FORM FOR AUTHORITY TO
PROVIDE ALTERNATIVE LOCAL
EXCHANGE SERVICE WITHIN THE STATE
OF FLORIDA

ORIGINAL

1. This is an application for (check one):

Original authority (new company)

000583-IX

Approval of transfer (to another certificated company)

Example, a certificated company purchases an existing company and desires to retain the original certificate authority.

Approval of assignment of existing certificate
(to a non-certificated company)

Example, a non-certificated company purchases an existing company and desires to retain the certificate of authority rather than apply for a new certificate.

Approval for transfer of control (to another certificated company)

Example, a company purchases 51% of a certificated company. The Commission must approve the new controlling entity.

2. Name of applicant:

Net2000 Communications Services, Inc.

(hereafter "**Applicant**" or "**Net2000**")

3. Name under which the applicant will do business (d/b/a):

Same

4. Official mailing address (including street name & number, post office box, city, state and zip code):

**2180 Fox Mill Rd.
Herndon, VA 20171**

5. Florida address (including street name & number, post office box, city, state and zip code):

Applicant does not have a Florida address.

DOCUMENT NUMBER-DATE

05962 MAY 15 8

FPSC-RECORDS/REPORTING

6. Structure of organization Check Appropriate box(es)
- Individual
 - Foreign Corporation
 - General Partnership
 - Joint Venture
 - Corporation
 - Foreign Partnership
 - Limited Partnership
 - Foreign Limited Liability Company

7. If applicant is an individual, partnership, or joint venture, please give name, title and address of each legal entity.

N/A.

8. If incorporated in Florida, provide proof of authority to operate in Florida:

N/A.

9. If foreign corporation, provide proof of authority to operate in Florida:

- (a) **The Florida Secretary of State corporate registration number:**

F98000001053

Applicant is authorized to transact business in Florida as a foreign corporation. A copy of Applicant's proof of authority is appended as Exhibit A. Appended as Exhibit B is a copy of Applicant's Articles of Incorporation.

10. If using a fictitious name-d/b/a, provide proof of compliance with fictitious name statute (Chapter 865.09, FS) to operate in Florida:

N/A.

11. If a limited liability partnership, provide proof of registration to operate in Florida:

N/A.

12. If a partnership, provide name, title and address of all partners and a copy of the partnership agreement.

N/A.

13. If a foreign limited partnership, provide proof of compliance with the foreign limited partnership statute (Chapter 620.169, FC), if applicable.

N/A.

14. Provide **F.E.I. Number** (if applicable): **54-1672883**

15. Indicate if any of the officers, directors, or any of the ten largest stockholders have previously been:

(a) adjudged bankrupt, mentally incompetent, or found guilty of any felony or of any crime, or whether such actions may result from pending proceedings. If so, please explain.

None of the officers, directors, or any of the ten largest stockholders have previously been adjudged bankrupt, mentally incompetent, or found guilty of any felony or of any crime.

(b) an officer or director, partner or stockholder in any other Florida certificated telephone company. If yes, give name of company and relationship. If no longer associated with company, give reason why not.

None of the officers, directors, or any of the ten largest stockholders have previously been an officer or director, partner or stockholder in any other Florida certificated telephone company.

16. Who will serve as liaison to the Commission with regard to the following?

(a) The application:

**Anthony Hansel
Counsel
Net2000 Communications Service, Inc.
2180 Fox Mill Rd., Herndon, VA 20171
Telephone: (703) 654-2000
Facsimile: (703) 654-2049
thansel@net2000.com**

(b) Official point of contact for the ongoing operations of the company and complaints/inquiries from customers:

**Anthony Hansel
Counsel
Net2000 Communications Service, Inc.
2180 Fox Mill Rd., Herndon, VA 20171
Telephone: (703) 654-2000
Facsimile: (703) 654-2049
thansel@net2000.com**

17. List the states in which the applicant:

(a) has operated as an alternative local exchange company.

Net2000 is a rapidly growing, innovative provider of state-of-the-art broadband telecommunications services. As a competitive telecommunications provider, Net2000 offers cutting-edge, responsive solutions to customers located throughout the Mid-Atlantic and Northeastern regions. Currently, Net2000 has sales offices in Washington, DC, Maryland, Virginia, New York, New Jersey, Massachusetts, and Rhode Island.

(b) has applications pending to be certificated as an alternative local exchange company.

Local exchange applications are pending in California, Georgia, Maine, and Texas.

(c) is certificated to operate as an alternative local exchange company.

Net2000 is authorized to provide resale and facilities-based local exchange services in: Connecticut, Delaware, the District of Columbia, Illinois, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, Virginia, and West Virginia.

(d) has been denied authority to operate as an alternative local exchange company and the circumstances involved.

Not Applicable

(e) has had regulatory penalties imposed for violations of telecommunications statutes and the circumstances involved.

Net2000's subsidiary, Net2000 Communications of Virginia, LLC, formerly known as Ntel Communications, LLC ("Ntel"), was authorized to provide local exchange services in Maryland on July 22, 1998. Due to an administrative oversight Ntel did not file all necessary tax forms for the tax year 1998. Rather, Ntel made the appropriate tax filings under the name of its parent company, Net2000 Communications Services, Inc. Unfortunately, Ntel never received the appropriate notification of the delinquency from the State Department of Assessments and Taxation, which subsequently notified the Maryland Public Utilities Commission. As a result, Ntel's certification was revoked. The matter was quickly resolved with the relevant taxing authorities, who verbally admitted to failing to provide proper notification. Subsequently, Net2000 reinstated its authority to provide local exchange services throughout the state of Maryland by expanding its existing interexchange authority to add local exchange authority.

(f) has been involved in civil court proceedings with an interexchange carrier, local exchange company or other telecommunications entity, and the circumstances involved.

Net2000, along with several other competitive local exchange carriers, filed a multi-party lawsuit in the US District Court for the Eastern District of Virginia against AT&T alleging that it owes Net2000 past-due access charges.

18. Submit the following:

A. Financial capability

The application should contain the applicant's audited financial statements for the most recent 3 years. If the applicant does not have audited financial statements, it shall so be stated.

The unaudited financial statements should be signed by the applicant's chief executive officer and chief financial officer affirming that the financial statements are true and correct and should include:

1. the balance sheet
2. income statement; and
3. statement of retained earnings.

NOTE: *this documentation may include, but is not limited to, financial statements, a projected profit and loss statement, credit references, credit bureau reports, and descriptions of business relationships with financial institutions.*

Further, the following (which includes supporting documentation) should be provided:

1. written explanation that the applicant has sufficient financial capability to provide the requested service in the geographic area proposed to be served.
2. written explanation that the applicant has sufficient financial capability to maintain the requested service.
3. written explanation that the applicant has sufficient financial capability to meet its lease or ownership obligations.

See Exhibit C. Attached is a copy of the audited financial statements from Net2000's recently issued Form S-1 filing with the Securities & Exchange Commission, submitted in conjunction with the company's initial public offering. Also included are financial statements for the period ending March 31, 2000.

B. Managerial capability: give resumes of employees/officers of the company that would indicate sufficient management experiences of each.

Please see Exhibit D appended hereto.

C. Technical capability: give resumes of employees/officers of the company that would indicate sufficient technical experiences or indicate what company has been contracted to conduct technical maintenance.

Please see Exhibit D appended hereto.

**** APPLICANT ACKNOWLEDGMENT STATEMENT ****

1. **REGULATORY ASSESSMENT FEE:** I understand that all telephone companies must pay a regulatory assessment fee in the amount of .15 of one percent of gross operating revenue derived from intrastate business. Regardless of the gross operating revenue of a company, a minimum annual assessment fee of \$50 is required.
2. **GROSS RECEIPTS TAX:** I understand that all telephone companies must pay a gross receipts tax of two and one-half percent on all intra and interstate business.
3. **SALES TAX:** I understand that a seven percent sales tax must be paid on intra and interstate revenues.
4. **APPLICATION FEE:** I understand that a non-refundable application fee of \$250.00 must be submitted with the application.

UTILITY OFFICIAL:

Signature	<u><i>Lee Weiner</i></u>	Date	<u>5/11/00</u>
Title	<u>Senior Vice President & General Counsel</u>	Telephone No.	<u>703-654-2000</u>
Address:	<u>Net2000 Communications, Inc.</u>	Fax No.	<u>703-654-2049</u>
	<u>2180 Fox Mill Road</u>		
	<u>Herndon, Virginia 20171</u>		

ATTACHMENTS:

- A - CERTIFICATE SALE, TRANSFER, OR ASSIGNMENT STATEMENT
- B - INTRASTATE NETWORK
- C - AFFIDAVIT

AFFIDAVIT

By my signature below, I, the undersigned officer, attest to the accuracy of the information contained in this application and attached documents and that the applicant has the technical expertise, managerial ability, and financial capability to provide alternative local exchange company service in the State of Florida. I have read the foregoing and declare that, to the best of my knowledge and belief, the information is true and correct. I attest that I have the authority to sign on behalf of my company and agree to comply, now and in the future, with all applicable Commission rules and orders.

Further, I am aware that, pursuant to Chapter 837.06, Florida Statutes, "Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 and s. 775.083."

UTILITY OFFICIAL:

Signature

[Handwritten Signature]

Date

5/11/00

Senior Vice President & General Counsel

Title

703-654-2000

Telephone No.

Address: Net2000 Communications, Inc.

703-654-2049

Fax No.

2180 Fox Mill Road

Herndon, Virginia 21071

EXHIBIT A

PROOF OF AUTHORITY TO OPERATE IN FLORIDA

APPLICATION BY FOREIGN CORPORATION TO FILE AMENDMENT TO
APPLICATION FOR AUTHORIZATION TO TRANSACT BUSINESS IN
FLORIDA

FILED
98 NOV 12 PM 12:43
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

SECTION I (1-3 must be completed)

1. Net2000 Group, Inc.
Name of corporation as it appears within the records of the Department of State.
2. Incorporated under laws of: Delaware
3. Date authorized to do business in Florida: February 24, 1998

SECTION II (4-7 complete only the applicable changes)

4. If the amendment changes the name of the corporation, when was the change effected under the laws of its jurisdiction of incorporation?

November 2, 1998

5. Name of corporation after the amendment, adding suffix "corporation," "company," "incorporated," or appropriate abbreviation, if not contained in new name of the corporation:

Net2000 Communications Services, Inc.

6. If the amendment changes the period of duration, indicate new period of duration.

No Change

7. If the amendment changes the jurisdiction of incorporation, indicate new jurisdiction.

Mark A Mendes
Signature
Name and Title
COO & Secretary
Date
October 30, 1998

State of Florida



Department of State

I certify from the records of this office that NET2000 GROUP, INC., is a corporation organized under the laws of Delaware, authorized to transact business in the State of Florida, qualified on February 24, 1998.

The document number of this corporation is F98000001053.

I further certify that said corporation has paid all fees and penalties due this office through December 31, 1998, and its status is active.

I further certify that said corporation has not filed a Certificate of Withdrawal.

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capitol, this the
Twenty-eighth day of October, 1998



CR2EO22 (2-95)

Sandra B. Northam

Sandra B. Northam
Secretary of State



FLORIDA DEPARTMENT OF STATE
Sandra B. Mortham
Secretary of State

February 24, 1998

CSC

Qualification documents for NET2000 GROUP, INC. were filed on February 24, 1998 and assigned document number F98000001053. Please refer to this number whenever corresponding with this office.

Your corporation is now qualified and authorized to transact business in Florida as of the file date.

A corporation annual report will be due this office between January 1 and May 1 of the year following the calendar year of the file date. A Federal Employer Identification (FEI) number will be required before this report can be filed. If you do not already have an FEI number, please apply NOW with the Internal Revenue by calling 1-800-829-3676 and requesting form SS-4.

Please be aware if the corporate address changes, it is the responsibility of the corporation to notify this office.

Should you have any questions regarding this matter, please telephone (850) 487-6091, the Foreign Qualification/Tax Lien Section.

Michael Mays
Document Specialist
Division of Corporations

Letter Number: 298A00010398

Account number: 072100000032

Account charged: 70.00

APPLICATION BY FOREIGN CORPORATION FOR AUTHORIZATION TO TRANSACT BUSINESS IN FLORIDA

IN COMPLIANCE WITH SECTION 607.1503, FLORIDA STATUTES, THE FOLLOWING IS SUBMITTED TO REGISTER A FOREIGN CORPORATION TO TRANSACT BUSINESS IN THE STATE OF FLORIDA:

1. Net2000 Group, Inc. (Name of corporation: must include the word "INCORPORATED", "COMPANY", "CORPORATION" or words or abbreviations of like import in language as will clearly indicate that it is a corporation instead of a natural person or partnership if not so contained in the name at present.)

2. Delaware (State or country under the law of which it is incorporated) 3. 54-1672883 (FEI number, if applicable)

4. 9/30/97 (Date of Incorporation) 5. Perpetual (Duration: Year corp. will cease to exist or "perpetual")

6. N/A (Date first transacted business in Florida. (See sections 607.1501, 607.1502, and 817.155, F.S.))

7. 8614 Westwood Center Drive, Suite 700 Vienna, Virginia 22182 (Current mailing address)

8. Telecommunications Service Provider (Purpose(s) of corporation authorized in home state or country to be carried out in the state of Florida)

9. Name and street address of Florida registered agent: (P.O. Box or Mail Drop Box NOT acceptable) Name: Corporation Service Company Office Address: 1201 Hays Street Tallahassee, Florida, 32301 (Zip Code)

10. Registered agent's acceptance: Having been named as registered agent and to accept service of process for the above stated corporation at the place designated in this application, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relative to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.

By: [Signature] Corporation Service Company (Registered agent's signature)

11. Attached is a certificate of existence duly authenticated, not more than 90 days prior to delivery of this application to the Department of State, by the Secretary of State or other official having custody of corporate records in the jurisdiction under the law of which it is incorporated.

FILED SECRETARY OF STATE DIVISION OF CORPORATIONS 98 FEB 21 PM 12:56

12. Names and addresses of officers and/or directors: (Street address ONLY- P.O. Box NOT acceptable)

A. DIRECTORS (Street address only- P.O. Box NOT acceptable)

Chairman: _____

Address: _____

Vice Chairman: _____

Address: _____

Director: Clyde Heintzelman

Address: 6800 Virginia Manor Road

Beltsville, MD 20705

Director: Eric Geis

Address: 12393 Rue Cheaumont

San Diego, CA 92131

B. OFFICERS (Street address only- P.O. Box NOT acceptable)

President: Clayton Thomas

Address: 811 Water Place

Alexandria, VA 22317

Vice President: Bruce Bednarski

Address: 3507 Ridgemoor Drive

Laurel, MD 20724

Secretary: _____

Address: _____

Treasurer: _____

Address: _____

NOTE: If necessary, you may attach an addendum to the application listing additional officers and/or directors.

13. _____

(Signature of Chairman, Vice Chairman, or any officer listed in number 12 of the application.)

14. Clayton Thomas, Jr., President

(Typed or printed name and capacity of person signing application)

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS
98 FEB 24 PM 12:50

State of Delaware
Office of the Secretary of State

PAGE 1

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "NET2000 GROUP, INC." IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE NINTH DAY OF JANUARY, A.D. 1998.

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS
98 FEB 24 PM 12:50



Handwritten signature of Edward J. Freel in cursive.

Edward J. Freel, Secretary of State

AUTHENTICATION:

DATE: 8858581

01-00-98

2801600 8300

071107100

State of Florida



Department of State

I certify from the records of this office that NET2000 COMMUNICATIONS SERVICES, INC., is a corporation organized under the laws of Delaware, authorized to transact business in the State of Florida, qualified on February 24, 1998.

The document number of this corporation is F98000001053.

I further certify that said corporation has paid all fees due this office through December 31, 1999, that its most recent annual report was filed on June 9, 1999, and its status is active.

I further certify that said corporation has not filed a Certificate of Withdrawal.

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capitol, this the
First day of November, 1999



CR2EO22 (1-99)

Katherine Harris

Katherine Harris
Secretary of State

EXHIBIT B

ARTICLES OF INCORPORATION

State of Delaware
Office of the Secretary of State

PAGE 1

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS ON FILE OF "NET2000 COMMUNICATIONS SERVICES, INC." AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

CERTIFICATE OF INCORPORATION, FILED THE FIRST DAY OF OCTOBER, A.D. 1997, AT 4:30 O'CLOCK P.M.

CERTIFICATE OF MERGER, FILED THE TWENTY-THIRD DAY OF OCTOBER, A.D. 1997, AT 1 O'CLOCK P.M.

CERTIFICATE OF DESIGNATION, FILED THE THIRTIETH DAY OF OCTOBER, A.D. 1997, AT 4:30 O'CLOCK P.M.

RESTATED CERTIFICATE, FILED THE NINETEENTH DAY OF MAY, A.D. 1998, AT 2:30 O'CLOCK P.M.

CERTIFICATE OF AMENDMENT, CHANGING ITS NAME FROM "NET2000 GROUP, INC." TO "NET2000 COMMUNICATIONS SERVICES, INC.", FILED THE SECOND DAY OF NOVEMBER, A.D. 1998, AT 4:30 O'CLOCK P.M.



A handwritten signature in cursive script, reading "Edward J. Freel".

Edward J. Freel, Secretary of State

2801600 8100H

001006259

AUTHENTICATION: 0181962

DATE: 01-05-00

CERTIFICATE OF INCORPORATION
OF NET2000 GROUP, INC.

THE UNDERSIGNED, Christian E. Plaza, whose mailing address is c/o Piper & Marbury LLP, 1200 Nineteenth Street, N.W., Washington, D.C. 20036, being at least 18 years of age, acting as incorporator, does hereby form a corporation under and by virtue of the General Corporation Law of Delaware.

FIRST: The name of the corporation (which is hereinafter called the "Corporation") is:

Net2000 Group, Inc.

SECOND: The registered office of the Corporation in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle, Delaware 19801. The name of its registered agent in the State of Delaware at such address is The Corporation Trust Company.

THIRD: The nature of the business 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 and to possess and exercise all of the powers and privileges granted under such law and the other laws of the State of Delaware.

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is 7,000,000 in the designated classes as follows:

<u>Class</u>	<u>Number of Shares</u>
Common Stock, \$.01 par value per share	5,000,000
Preferred Stock, \$.01 par value per share ("Preferred Stock")	2,000,000

A. Common Stock

(1) The voting, dividend and liquidation rights of holders of shares of Common Stock are subject to, and qualified by, the rights of the holders of the Preferred Stock of any series as may be designated by the Board of Directors.

(2) Subject to the voting rights of holders of shares of the Preferred Stock, the holders of the Common Stock are entitled to one vote for each share held at all meetings of stockholders (and written actions in lieu of meetings). There shall be no cumulative voting and

at any meeting held for the purpose of electing directors, the presence in person or by proxy of the holders or a majority of the shares of Common Stock then outstanding shall constitute a quorum of the Common Stock for the purpose of electing directors by holders of Common Stock.

(3) Dividends may be declared and paid on the Common Stock from funds lawfully available therefor as, if and when determined by the Board of Directors and subject to any preferential dividend rights of any then outstanding Preferred Stock.

(4) Upon voluntary or involuntary liquidation, sale, merger, consolidation, dissolution or winding up of the Corporation, holders of shares of Common Stock will be entitled to receive all assets of the Corporation available for distribution to its stockholders, subject to any preferential rights of any then outstanding Preferred Stock.

(5) The Common Stock is nonredeemable.

B. Preferred Stock

The powers, designation, numbers, preferences, privileges, restrictions and rights granted to or imposed on any class or series of any Preferred Stock shall be as set forth in the resolution or resolutions providing for the issuance of such Preferred Stock as adopted by the Board of Directors.

FIFTH: Except as otherwise provided in this Certificate of Incorporation or a certificate of designation relating to the rights of the holders of any class or series of Preferred Stock, voting separately by class or series, to elect additional directors under specified circumstances, the number of directors of the Corporation shall be as fixed from time to time by or pursuant to the By-laws of the Corporation (the "By-Laws"). No director of the Corporation need be a Stockholder.

SIXTH: The Corporation is to have perpetual existence.

SEVENTH: In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized:

- (a) To make, alter or repeal By-Laws of the Corporation.
- (b) To authorize and cause to be executed mortgages and liens upon the real and personal property of the Corporation.
- (c) To set apart out of any of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and to abolish any such reserve in the manner in which it was created.

(d) To designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. The By-Laws may provide, that, in the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors, or in the By-Laws of the Corporation, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to amending the Certificate of Incorporation, adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets, recommending to the stockholders a dissolution of the Corporation or a revocation of a dissolution, or amending the By-Laws of the Corporation; and, unless the resolution or By-Laws expressly so provide, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock.

(e) When and as authorized by the stockholders in accordance with statute, to sell, lease, exchange or otherwise dispose of all or substantially all of the property and assets of the Corporation, including its good will and its corporate franchises, upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property including shares of stock in, and/or other securities of, any other corporation or corporations, as its Board of Directors shall deem expedient and for the best interests of the Corporation.

(f) To fix, determine and vary from time to time the amount to be maintained as surplus and the amount or amounts to be set apart as working capital.

(g) To authorize the payment of compensation to the directors for services to the Corporation, including fees for attendance at meetings of the Board of Directors, of the Executive Committee, and of other committees, and to determine the amount of such compensation and fees.

(h) To authorize the issuance from time to time of shares of its stock of any class whether now or hereafter authorized, or securities convertible into shares of its stock of any class or classes, whether now or hereafter authorized, for such consideration as may be deemed advisable by the Board of Directors and without any action by the stockholders.

EIGHTH: Meetings of stockholders may be held within or without the State of Delaware, as the By-Laws may provide. The books of the Corporation may be kept (subject to any provisions 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 By-Laws of the Corporation. Elections of directors need not be by written ballot unless the By-Laws of the Corporation shall so provide.

NINTH: 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 Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit. If the Delaware General Corporation Law is amended after approval of this article to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

Any repeal or modification of the foregoing paragraph 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.

TENTH: The corporation shall, to the fullest extent permitted by Section 145 of the General Corporation Law of Delaware, as amended from time to time, indemnify each person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was, or has agreed to become, a director or officer of the corporation, or is or was serving, or has agreed to serve, at the request of the corporation, as a director, officer or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or on his behalf in connection with such action, suit or proceeding and any appeal therefrom.

Indemnification may include payment by the corporation of expenses in defending an action or proceeding in advance of the final disposition of such action or proceeding upon receipt of an undertaking by the person indemnified to repay such payment if it is ultimately determined that such person is not entitled to indemnification under this TENTH Article, which undertaking may be accepted without reference to the financial ability of such person to make such repayment.

The corporation shall not indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person unless the initiation thereof was approved by the Board of Directors of the corporation.

The indemnification rights provided in this TENTH Article (i) shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any law, agreement or vote of stockholders or disinterested directors or otherwise, and (ii) shall inure to the benefit of the heirs, executors and administrators of such persons. The corporation may, to the extent authorized from time to time by its Board of Directors, grant indemnification rights to other employees or agents of the corporation or other persons serving the corporation and such rights may be equivalent to, or greater or less than, those set forth in this TENTH Article.

ELEVENTH: 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 the Certificate of Incorporation, and all rights conferred upon stockholders herein are granted subject to this reservation.

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, under penalties of perjury, that this is my act and deed and the facts herein stated are true, and accordingly heretofore set my hand this 30th day of September, 1997.


Christian E. Plaza

**CERTIFICATE OF MERGER
MERCING
NET2000 GROUP, INC. (A VIRGINIA CORPORATION)
INTO
NET2000 GROUP, INC. (A DELAWARE CORPORATION)**

**Pursuant to Section 252(c) of the
General Corporation Law of the State of Delaware**

The undersigned corporation DOES HEREBY CERTIFY:

FIRST: That Net2000 Group, Inc., a corporation organized and existing under the laws of the State of Virginia (the "*Merging Corporation*"), and Net2000 Group, Inc., a corporation organized and existing under the laws of the State of Delaware (the "*Surviving Corporation*"), agree that the Merging Corporation shall be merged with and into the Surviving Corporation.

SECOND: That the terms and conditions of the merger (the "*Merger*") and the mode of carrying the same into effect are as set forth in that certain Agreement and Plan of Merger (the "*Merger Agreement*"), which was approved, adopted, certified, executed and acknowledged by both the Merging Corporation and the Surviving Corporation in accordance with, and pursuant to, the provisions of Section 252(c) of the State of Delaware General Corporation Law.

THIRD: That the name of the surviving corporation of the Merger is Net2000 Group, a Delaware corporation, which shall continue to be named "Net2000 Group, Inc." after the date on which the Merger becomes effective.

FOURTH: That the certificate of incorporation of the Surviving Corporation shall be the certificate of incorporation of the corporation surviving the Merger.

FIFTH: That the executed Merger Agreement is on file at the principal place of business of the Surviving Corporation, and the address of such principal place of business is 8614 Westwood Center Drive, Suite 700, Vienna, Virginia, 22182.


SIXTH: That a copy of the Merger Agreement will be furnished by the Surviving Corporation, on request and at no cost, to any stockholder of the Merging Corporation or the Surviving Corporation.

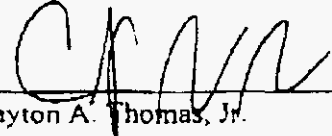
SEVENTH: The total number of shares of stock that the Merging Corporation has authority to issue is five thousand (5000) shares of common stock, par value one dollar (\$1.00) per share.

IN WITNESS WHEREOF, Net2000 Group, Inc., a Delaware corporation, the surviving corporation to the Merger, has caused this Certificate of Merger to be signed in its corporate name and on its behalf by its president and attested by the corporate secretary all as of the 16th day of October, 1997.

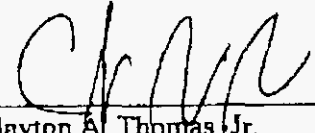
ATTEST:

NET2000 GROUP, INC.
A DELAWARE CORPORATION (THE SURVIVING CORPORATION)

By: 
Bruce W. Bednarski
Secretary

By: 
Clayton A. Thomas, Jr.
President

THE UNDERSIGNED, President of Net2000 Group, Inc., a Delaware Corporation, who executed on behalf of said corporation the foregoing Certificate of Merger, of which this certificate is made a part, hereby acknowledges, in the name and on behalf of said corporation, the foregoing Certificate of Merger to be the corporate act of said corporation and further certifies that, to the best of his knowledge, information and belief, the matters and facts set forth therein with respect to the approval thereof are true in all material respects, under the penalties of perjury.


Clayton A. Thomas, Jr.
President

**CERTIFICATE OF DESIGNATION
OF THE
NUMBER, VOTING POWERS, PREFERENCES AND RIGHTS
AND QUALIFICATIONS, LIMITATIONS AND RESTRICTIONS
OF THE
SERIES A CONVERTIBLE PREFERRED STOCK
OF
NET2000 GROUP, INC.**

**Pursuant to Section 151(g) of the
Delaware General Corporation Law**

The undersigned being duly elected President of Net2000 Group, Inc., a Delaware corporation (the "Corporation"), does hereby certify that:

A. The name of the corporation is Net2000 Group, Inc.

B. The Certificate of Incorporation of the Corporation (the "Certificate of Incorporation") authorizes the issuance of 2,000,000 shares of Preferred Stock of par value \$.01 and expressly vests in the Board of Directors of the Corporation (the "Board") the authority to issue any and all shares of Preferred Stock in one or more classes or series and further authorizes the Board, by resolution or resolutions, to establish the powers, designations, numbers, preferences, rights and restrictions of each class or series to be issued.

C. The Board, pursuant to authority expressly vested in it in the Certificate of Incorporation, and in accordance with Section 141(f) of the General Corporation Law of the State of Delaware, has adopted the following resolution creating a Series A Convertible Preferred Stock of the Corporation:

RESOLVED, that the Board does hereby authorize the issuance of 1,043,796 shares of Series A Convertible Preferred Stock (the "Series A Preferred Stock"), with the preferences, privileges, restrictions and rights granted or imposed thereon as follows:

1. Dividends.

(a) The holders of shares of Series A Preferred Stock shall be entitled to receive, out of funds legally available therefor, when and if declared by the Board of Directors:

(i) annual dividends at the rate per annum of \$0.274 per share of the Series A Preferred Stock as adjusted for stock splits, stock dividends, recapitalizations, reclassifications and similar events which affect the number of outstanding shares of the Series A Preferred Stock

(an such event, an "Adjustment"); such dividends will accrue if not declared by the Board of Directors; provided however, that if a Qualifying Event (as defined in Section 1(c)) has been consummated prior to the third anniversary of the Original Issue Date (as defined below), no such dividends, whether accrued or unaccrued, will be payable, and upon the occurrence of the Qualifying Event, dividends pursuant to this Section 1(a)(i) will cease to accrue;

(ii) if a dividend or other distribution is declared or distributed on the Common Stock of the Corporation below, dividends or distributions in an amount at least equal to the amount that would have been paid on the Common Stock into which the Series A Preferred Stock is then convertible if all such Common Stock had been issued upon conversion and had been outstanding on the record date for such dividend or distribution on Common Stock (or, if no record is taken, the date as of which the record holders entitled to such dividend or distribution are determined) and therefor entitled to such dividends or distributions; provided that any such dividends payable under this clause (ii) shall offset any dividends accruing thereafter pursuant to clause (i); and

(iii) such other dividends or distributions when and as declared by the Board of Directors of the Corporation, acting in its sole discretion.

(b) The holders of the Series A Preferred Stock shall be entitled to be paid, in full, the dividends and distributions declared or accrued (regardless of whether payable) or payable in accordance with clauses (i) and (ii) above, prior to the payment of any dividends or distributions (including without limitation, in connection with any obligation, retirement, purchase or other acquisition but excluding repurchases or redemptions of the Common Stock made from employees or consultants (other than Clayton A. Thomas, Jr., Bruce W. Bednarski, Peter B. Callowhill and Corlyn A. Marsan) in connection the termination of their employment or consulting services, as the case may be) in respect of Common Stock of the Corporation, or in respect of Preferred Stock of the Corporation whose right to payment of dividends or distributions is junior to the Series A Preferred Stock, unless the holders of a majority of the shares of Series A Preferred Stock agree otherwise in writing.

(c) A "Qualifying Event" shall mean (a) a Qualified Public Offering (as defined in Section 5(a) hereof) or (b) an Acquisition Event (as defined in Section 2(c) hereof).

2. Liquidation, Dissolution or Winding Up.

(a) (i) In the event of any liquidation, dissolution or winding up of the Corporation, the holders of shares of Series A Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, whether from capital, surplus or earnings, before any payment shall be made to the holders of any stock ranking on liquidation junior to the Series A Preferred Stock, an amount equal to the \$3.425 per share (subject to Adjustment), plus all accrued and unpaid dividends thereon. The Series A Preferred Stock shall be senior with respect to liquidation to the Common Stock and such other series or classes of Preferred Stock as are not, by their terms, expressly made either senior to, or on a

parity with, the Series A Preferred Stock. If upon any liquidation, dissolution or winding up of the Corporation, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of Series A Preferred Stock the full preferential amounts to which they shall be entitled, the holders of Series A Preferred Stock and any class or series of stock ranking on liquidation on a parity with the Series A Preferred Stock shall share ratably in any distribution of assets, in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(ii) In the event of any liquidation, dissolution or winding up of the Corporation in which the assets of the Corporation available for distribution to its stockholders shall not exceed an amount which would be sufficient to pay to each holder of Series A Preferred Stock, on an as-if-converted and fully-diluted basis, an amount equal to at least all accrued and unpaid dividends plus \$10.275 per share (subject to Adjustment), then in addition to the payment of the preferential amounts to the holders of the Series A Preferred Stock, the remainder of the assets of the Corporation available for distribution to its stockholders shall be distributed on a pro rata basis to the holders of Common Stock and the holders of the Series A Preferred Stock, with the amount distributable computed on the basis of the number of shares of Common Stock which would be held by such holders if immediately prior to the liquidation, dissolution or winding up of the Corporation all of the outstanding shares of the Series A Preferred Stock had been converted into shares of Common Stock;

(iii) In the event of any liquidation, dissolution or winding up of the Corporation in which the assets of the Corporation available for distribution to its stockholders exceed an amount which is sufficient to pay to the holders of Common Stock and Series A Preferred Stock, on an as-if-converted and fully-diluted basis, an amount per share greater than all accrued and unpaid dividends per share on the outstanding shares of Series A Preferred Stock plus \$10.275 without taking into account any rights of the Series A Preferred to preferential payment (subject to Adjustment), then the assets of the Corporation available for distribution to its stockholders shall be distributed on a pro rata basis to the holders of the Common Stock and the holders of the Series A Preferred Stock (without taking into account any rights of the Series A Preferred Stock to preferential payment), with the amount distributable computed on the basis of the number of shares of Common Stock which would be held by such holders if, immediately prior to the liquidation, dissolution or winding up of the Corporation, all of the outstanding shares of the Series A Preferred Stock have been converted into shares of Common Stock.

(b) Written notice of such liquidation, dissolution or winding up, stating a payment date, the amount of the liquidation payments and the place where said liquidation payment shall be payable, shall be delivered in person, mailed by certified or registered mail, return receipt requested, or sent by telecopier or telex not less than 20 days prior to the payment date stated therein, to the holders of record of Series A Preferred Stock, such notice to be addressed to each such holder at its address as shown by the records of the Corporation.

(c) Unless the holders of two-thirds of the then outstanding shares of Series A Preferred Stock elect otherwise, the merger, reorganization or consolidation of the Corporation into or with another corporation, or the sale of all or substantially all of the assets of the Corporation, or other similar transaction or series of related transactions, in which more than 50% of the voting power of the Corporation is disposed of or in which the stockholders of the Corporation immediately prior to such merger, reorganization or consolidation, own less than 50% of the Corporation's voting power immediately after such merger, reorganization or consolidation, or the sale of all or substantially all the assets of the Corporation (any such event an "Acquisition Event"), shall be deemed to be a liquidation, dissolution or winding up of the Corporation for purposes of this Section 2.

3. Voting.

(a) Except as provided in Sections 3(b) and (c) below and elsewhere in this Certificate of Designation, each holder of outstanding shares of Series A Preferred Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which the shares of Series A Preferred Stock held by such holder are convertible (as adjusted from time to time pursuant to Section 4 hereof), at each meeting of the stockholders of the Corporation (and written actions of stockholders in lieu of meetings) with respect to any and all matters presented to the stockholders of the Corporation for their action or consideration. Except as provided by law, by the provisions of Sections 3(b) and (c) below or by the provisions establishing any other series of Preferred Stock, holders of Series A Preferred Stock and of any other outstanding series of Preferred Stock shall vote together with the holders of Common Stock as a single class.

(b) The holders of a majority of the shares of the Series A Preferred Stock, voting together as a separate class, shall be entitled to (i) elect one director to the Corporation's Board of Directors (the "Preferred Director"), (ii) to remove the Preferred Director, and (iii) to fill any vacancy occurring on the Board of Directors as a result of the death, resignation or removal of the Preferred Director. Any and all director positions in excess of the one director elected by the holders of the Series A Preferred Stock pursuant to this Section 3(b) shall be elected by the holders of the Common Stock and the Preferred Stock voting as a single class. The Corporation shall not expand the number of Directors without the written consent or affirmative vote of the holders of a majority of the then outstanding shares of Series A Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class.

(c) The Corporation shall not, without the written consent or affirmative vote of a majority of the holders of the then outstanding shares of Series A Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) together as a class:

(i) prior to December 31, 2000, engage in an Acquisition Event, unless the value of the Corporation based on such transaction is equal to or exceeds \$30,000,000 and the proceeds received by the Corporation are in cash or securities publicly traded on a recognized United States securities exchange;

(ii) authorize, create or issue any shares of stock, or securities exchangeable for, convertible into or evidencing the right to purchase any shares of stock, having rights, preferences or privileges (including without limitation, redemption rights or rights of anti-dilution protection) superior to or on a parity with that of the Series A Preferred Stock, including, without limitation, authorization or issuance of additional shares of Series A Preferred Stock;

(iii) amend, alter, or repeal the Corporation's Bylaws (including, without limitation, Article 2 thereof), Certificate of Incorporation, or this Certificate of Designation so as to materially affect the preferences, special rights or other powers of the Series A Preferred Stock;

(iv) declare or pay any dividend on the Common Stock unless such dividend is paid in the form of shares of the Common Stock; or

(v) repurchase or redeem any shares of the Common Stock or of the Series A Preferred Stock, including, without limitation, repurchases made from Clayton A. Thomas, Jr., Bruce W. Bednarski, Peter B. Callowhill and Corlyn A. Marsan, but other than repurchases made from other employees or consultants in connection with their termination of employment or consulting services, as the case may be, or in accordance with the terms of the Corporation's Right of First Refusal as set forth in the Investor Rights Agreement between the Corporation and the holders of the Series A Preferred Stock, dated October 30, 1997.

4. Optional Conversion. The holders of the Series A Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) **Right to Convert.** Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$3.425 (the "Original Purchase Price") by the Conversion Price (as defined below) in effect at the time of conversion. The conversion price at which shares of Common Stock shall be deliverable upon conversion of Series A Preferred Stock without the payment of additional consideration by the holder thereof (the "Conversion Price") shall initially be \$3.425. Such initial Conversion Price, and the rate at which shares of Series A Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

In the event of a notice of redemption of any shares of Series A Preferred Stock pursuant to Section 6 hereof, the Conversion Rights of the shares designated for redemption shall terminate at the close of business on the fifth full day preceding the date fixed for redemption, unless the redemption price is not paid when due, in which case the Conversion Rights for such shares shall continue until such price is paid in full. In the event of a liquidation of the Corporation, the Conversion Rights shall terminate at the close of business on the first full day preceding the date fixed for the payment of any amounts distributable on liquidation to the holders of Series A Preferred Stock.

(b) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series A Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then effective Conversion Price.

(c) Mechanics of Conversion.

(i) In order for a holder of Series A Preferred Stock to convert shares of Series A Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Series A Preferred Stock at the office of the transfer agent for the Series A Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares of the Series A Preferred Stock represented by such certificate or certificates. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his or its attorney duly authorized in writing. The date of receipt of such certificates and notice by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) shall be the conversion date ("Conversion Date"). The Corporation shall, as soon as practicable after the Conversion Date, issue and deliver at such office to such holder of Series A Preferred Stock, or to his or its nominees, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled, together with cash in lieu of any fraction of a share.

(ii) The Corporation shall at all times when the Series A Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of the Series A Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series A Preferred Stock. Before taking any action which would cause an adjustment reducing the Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Series A Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Conversion Price.

(iii) Upon any such conversion, no adjustment to the Conversion Price shall be made for any accrued and unpaid dividends on the Series A Preferred Stock surrendered for conversion provided that all accrued and unpaid dividends shall remain payable pursuant to the terms of Section I above.

(iv) All shares of Series A Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall

immediately cease and terminate on the Conversion Date, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor and payment of any accrued and unpaid dividends on the shares of Series A Preferred Stock exchanged. Any shares of Series A Preferred Stock so converted shall be retired and canceled and shall not be reissued, and the Corporation may from time to time take such appropriate action as may be necessary to reduce the authorized Series A Preferred Stock accordingly.

(d) Adjustments to Conversion Price for Diluting Issues:

(i) Special Definitions. For purposes of this Subsection 4(d), the following definitions shall apply:

(A) "Option" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities, excluding options granted to employees or consultants of the Corporation pursuant to an option plan or other arrangements adopted by the Board of Directors, to acquire up to a maximum of 335,766 shares of Common Stock, as outstanding on the date hereof (subject to appropriate adjustment for any stock dividend, stock split, combination or other similar recapitalization affecting such shares).

(B) "Original Issue Date" shall mean the date on which a share of Series A Preferred Stock was first issued.

(C) "Convertible Securities" shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock.

(D) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Subsection 4(d)(iii) below, deemed to be issued) by the Corporation after the Original Issue Date, other than shares of Common Stock issued or issuable:

(I) upon conversion of shares of Series A Preferred Stock outstanding on the Original Issue Date;

(II) as a dividend or distribution on Series A Preferred Stock;

(III) by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock excluded from the definition of Additional Shares of Common Stock by the foregoing clauses (I) and (II) or this clause (III); or

(IV) upon the exercise of the options excluded from the definition of "Option" in Subsection 4(d)(i)(A).

(ii) No Adjustment of Conversion Price. No adjustment in the number of shares of Common Stock into which the Series A Preferred Stock is convertible shall be made, by

adjustment in the applicable Conversion Price thereof: (a) unless the consideration per share (determined pursuant to Subsection 4(d)(v)) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the applicable Conversion Price in effect on the date of, and immediately prior to, the issue of such Additional Shares, or (b) if prior to such issuance, the Corporation receives written notice from the holders of at least two-thirds (2/3) of the then outstanding shares of Series A Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance of Additional Shares of Common Stock.

(iii) Issue of Securities Deemed Issue of Additional Shares of Common Stock.

(A) Options and Convertible Securities. If the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share (determined pursuant to Subsection 4(d)(v) hereof) of such Additional Shares of Common Stock would be less than the applicable Conversion Price in effect on the date of and immediately prior to such issue, or such record date, as the case may be, and provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(I) no further adjustment in the Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(II) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the consideration payable to the Corporation, or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

(III) no readjustment pursuant to clause (II) above shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (i) the Conversion Price on the original adjustment date, or (ii) the Conversion Price

that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date; and

(IV) upon the expiration or termination of any unexercised Option, the Conversion Price shall not be readjusted, but the Additional Shares of Common Stock deemed issued as the result of the original issue of such Option shall not be deemed issued for the purposes of any subsequent adjustment of the Conversion Price.

(B) Stock Dividends and Subdivisions. In the event that the Corporation at any time or from time to time after the Original Issue Date shall declare or pay any dividend on the Common Stock payable in Common Stock, or effect a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in Common Stock), then Additional Shares of Common Stock shall be deemed to have been issued:

(I) in the case of any such dividend, immediately after the close of business on the record date for the determination of holders or any class of securities entitled to receive such dividend, or

(II) in the case of any subdivision, at the close of business on the date immediately prior to the date upon which such corporate action becomes effective.

If such record date shall have been fixed and such dividend shall not have been fully paid on the date fixed therefor, the adjustment previously made in the applicable Conversion Price which became effective on such record date shall be canceled as of the close of business on such record date, and thereafter the Conversion Price shall be adjusted pursuant to this Subsection 4(d)(iii) as of the time of actual payment of such dividend.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock.

In the event the Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection 4(d)(iii)), without consideration or for a consideration per share less than the applicable Conversion Price in effect on the date of and immediately prior to such issue, then and in such event, such Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Conversion Price; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued; provided that, for the purpose of

this Subsection 4(d)(iv), all shares of Common Stock issuable upon conversion of shares of Series A Preferred Stock or other Convertible Securities and upon exercise of options or warrants outstanding immediately prior to such issue shall be deemed to be outstanding, and immediately after any Additional Shares of Common Stock are deemed issued pursuant to Subsection 4(d)(iii) (whether or not excluded from the definition of "Additional Shares of Common Stock" by virtue of clauses (II), (III) and (IV) of Subsection 4(d)(i)(D)), such Additional Shares of Common Stock shall be deemed to be outstanding; provided further, that in the event the Corporation, without receiving any consideration, declares a dividend on Common Stock payable in Common Stock or effects a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock, the Conversion Price in effect immediately prior to such stock dividend or subdivision shall, on the date that Additional Shares of Common Stock are deemed issued pursuant to Subsection 4(d)(iii)(B), be decreased proportionately, and provided further, that the applicable Conversion Price shall not be so reduced at such time if the amount of such reduction would be an amount less than \$.05, but any such amount shall be carried forward and reduction with respect thereto made at the time of and together with any subsequent reduction which, together with such amount and any other amount or amounts so carried forward, shall aggregate \$.05 or more.

(v) Determination of Consideration. For purposes of this Subsection 4(d), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(A) Cash and Property: Such consideration shall:

(i) insofar as it consists of cash, be computed at the aggregate of cash received by the Corporation, excluding amounts paid or payable for accrued interest or accrued dividends;

(ii) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, determined as of the close of business on the date of computation based on the closing price for such property on the principal market on which such property trades or, if there is no established market for such property, as determined in good faith by the Board of Directors; and

(iii) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (i) and (ii) above, as determined in good faith by the Board of Directors.

(B) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Subsection 4(d)(iii)(A), relating to Options and Convertible Securities, shall be determined by dividing

(I) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(II) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(C) Stock Dividends and Stock Subdivisions. Any Additional Shares of Common Stock deemed to have been issued pursuant to Subsection 4(d)(iii)(B), relating to stock dividends and stock subdivisions, shall be deemed to have been issued for no consideration.

(vi) Adjustment for Combinations or Consolidation of Common Stock.

In the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, the applicable Conversion Price in effect immediately prior to such combination or consolidation shall, concurrently with the effectiveness of such combination or consolidation, be increased proportionately.

(vii) Adjustment for Merger or Reorganization, etc.

In case of any Acquisition Event (other than an Acquisition Event which is treated as a liquidation pursuant to Subsection 2(c)), each share of Series A Preferred Stock shall thereafter be convertible into the kind and amount of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the Corporation deliverable upon conversion of such Series A Preferred Stock would have been entitled upon such Acquisition Event; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors) shall be made in the application of the provisions in this Section 4 set forth with respect to the rights and interest thereafter of the holders of the Series A Preferred Stock, to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any shares of stock or other property thereafter deliverable upon the conversion of the Series A Preferred Stock.

(e) No Impairment. The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, 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 hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 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 A Preferred Stock against impairment.

(f) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series A 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 A Preferred Stock, furnish or cause to be furnished to such holder a similar certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price then in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which then would be received upon the conversion of Series A Preferred Stock.

(g) Notice of Record Date. In the event:

- (i) that the Corporation declares a dividend (or any other distribution) on its Common Stock payable in Common Stock or other securities of the Corporation;
- (ii) that the Corporation subdivides or combines its outstanding shares of Common Stock;
- (iii) of any reclassification of the Common Stock of the Corporation (other than a subdivision or combination of its outstanding shares of Common Stock or a stock dividend or stock distribution thereon), or of any Acquisition Event; or
- (iv) of the involuntary or voluntary dissolution, liquidation or winding up of the Corporation;

then the Corporation shall cause to be filed at its principal office or at the office of the transfer agent of the Series A Preferred Stock, and shall cause to be mailed to the holders of the Series A Preferred Stock at their last addresses as shown on the records of the Corporation or such transfer agent, at least ten days prior to the record date specified in (A) below or twenty days before the date specified in (B) below, a notice stating

(A) the record date of such dividend, distribution, subdivision or combination, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution, subdivision or combination are to be determined, or

(B) the date on which such reclassification, consolidation, merger, sale, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, dissolution or winding up.

5. **Mandatory Conversion.**

(a) All, and not less than all, of the holders of shares of Series A Preferred Stock then outstanding will be required to convert their shares of Series A Preferred Stock into shares of Common Stock, at the then effective Conversion Price, in the event of a public offering pursuant to an effective registration statement under the Securities Act, resulting in at least \$20,000,000 of gross proceeds to the Corporation (a "Qualified Public Offering").

(b) In addition to the mandatory conversion provisions of Section 5(a) hereof, all and not less than all, of the holders of shares of Series A Preferred Stock then outstanding will be required to convert their shares of Series A Preferred Stock into shares of Common Stock, at the then effective Conversion Price, at any time upon written notice received from the holders of at least two-thirds (2/3) of the then outstanding shares of Series A Preferred Stock consenting to the automatic conversion of all of the Series A Preferred Stock into shares of Common Stock pursuant to this Section 5(b).

(c) In the case of any automatic conversion pursuant to this Section 5, the outstanding shares of Series A Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, that the Corporation shall not be obligated to issue to any holder certificates evidencing the shares of Common Stock issuable such conversion unless certificates evidencing such shares of Series A Preferred Stock are delivered either to the Corporation or any transfer agent of the Corporation.

(d) All certificates evidencing shares of Series A Preferred Stock which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the date such certificates are so required to be surrendered, be deemed to have been retired and canceled and the shares of Series A Preferred Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date. The Corporation may thereafter take such appropriate action as may be necessary to reduce the authorized Series A Preferred Stock accordingly.

6. **Mandatory Redemption.**

(a) If the Company has not consummated a Qualified Public Offering, then at any time following the earlier of (i) December 31, 2001, or (ii) six months following the date on which the Company's first public offering pursuant to a registration statement under the Securities Act of

1933, as amended, that is not a Qualified Public Offering has been consummated, the holders of Series A Preferred Stock shall have the right to require the Corporation to redeem shares of Series A Preferred Stock as described in this Section 6 (the "Redemption") at the Redemption Price (as defined in Section 6(f) below) by delivering written notice to the Corporation (a "Redemption Election").

(b) Upon the delivery of a Redemption Election, a disinterested appraisal firm which is a member of a recognized professional association reasonably acceptable to the Corporation and the holders of a majority of the Series A Preferred Stock shall determine Market Value as set forth below. If the parties are unable to agree on an appraisal firm within 10 days after the expiration of the delivery of a Redemption Election, a firm shall be selected by lot from the top-tier investment banking firms, after the Corporation and the holders of the Series A Preferred Stock have each eliminated one such firm (the "Appraisal Firm"). The Appraisal Firm shall then make a determination of the Market Value, and, using such determination of Market Value, shall calculate the Redemption Price. The selection and determination of the Appraisal Firm shall be final and binding upon all parties. The expenses of the Appraisal Firm shall be borne equally by the holders of the Series A Preferred Stock, as a group and on a pro rata basis in accordance with the shares of Series A Preferred Stock to be redeemed, and the Corporation.

(c) Within 10 days after the final determination of the Redemption Price pursuant to subparagraph (b) above, the Corporation shall notify promptly all holders of shares of Series A Preferred Stock in writing (the "Redemption Notice") of the delivery of the Redemption Election and of the determination of the Redemption Price. The holders of shares of Series A Preferred Stock may elect to sell to the Corporation all or a portion of their shares of Series A Preferred Stock by delivering written notice to the Corporation within 25 days after delivery of the Redemption Notice. Subject to the provisions hereof, within 40 days after delivery of the Redemption Notice, the Corporation shall purchase, and all such electing holders of Series A Preferred Stock shall sell, the portion of such shares which the holders thereof have elected to sell to the Corporation at a time and place mutually agreeable to the Corporation and the holders of the Series A Preferred Stock (the "Redemption Closing"). The Corporation shall notify all holders of Series A Preferred Stock of the date and place of the Redemption Closing at least seven days prior to the Redemption Closing.

(d) At the Redemption Closing, the holders of Series A Preferred Stock shall deliver to the Corporation certificates representing the shares of Series A Preferred Stock which they have elected to sell to the Corporation, and the Corporation shall deliver to each such holder the Redemption Price for each share of Series A Preferred Stock to be sold to the Corporation by cashier's or certified check, by wire transfer to immediately available funds to an account designated by such holder, by the delivery of a Redemption Note (as hereinafter defined), or by a combination thereof, at the sole election of the Corporation. Any portion owed to such holders which is not paid in cash or cash equivalents at the Redemption Closing shall be paid for by the issuance at the Redemption Closing of promissory notes secured by the Series A Preferred Stock of the Corporation in form and substance reasonably satisfactory to the holders of the Series A Preferred Stock (the "Redemption Notes"). At any time that Redemption Notes are outstanding,

the Corporation may incur bank debt or third-party institutional non-equity financing in connection with the operation of its business which is senior to the Redemption Notes so long as such debt does not prohibit the timely payment of amounts due on the Redemption Notes unless such senior debt is in default at such time. Notwithstanding the foregoing, the Redemption Notes shall remain senior to any obligations owed to Clayton A. Thomas, Jr., Bruce W. Bednarski, Peter B. Callowhill, Corlyn A. Marsan, or other holders of Common Stock.

(c) The Redemption Notes will bear interest per annum at the greater of (i) Prime plus 100 basis points, or (ii) 8.0%. "Prime" means a floating rate per annum equal to the prime interest rate per annum published from time to time in the "Money Rates" section of the Wall Street Journal (and the highest such rate if more than one is so published). Accrued interest on the Redemption Notes will be payable monthly. The principal amount of the Redemption Notes will be payable in thirty-six (36) equal monthly installments beginning within 30 days of the Redemption Closing as set forth in Section 6(d) above. The Redemption Notes will be prepayable at the Corporation's option at any time without penalty or premium.

(f) The "Redemption Price" of a share of Series A Preferred Stock means the amount equal to the amount which would be received per share of Series A Preferred Stock if the assets of the Corporation were sold for cash equal to the Market Value, and the Corporation were liquidated immediately thereafter pursuant to Section 2.

"Market Value" means the fair market value of the Corporation as a going concern determined on the basis of the sale of 100% of the Corporation as between a strategic buyer and a willing seller and taking into account all relevant factors determinative of value.

[signature on following page]

**RESTATED CERTIFICATE OF INCORPORATION
OF NET2000 GROUP, INC.**

Net2000 Group, Inc. (hereinafter called the "Corporation"), organized and existing under and by virtue of the General Corporation Law of the State of Delaware, does hereby certify as follows:

The date of incorporation of the Corporation is October 1, 1997.

The the Board of Directors of the Corporation by unanimous written consent as provided by Section 141(f) of the General Corporation Law of the State of Delaware, adopted a resolution, pursuant to Section 242 of the General Corporation Law of the State of Delaware, setting forth an amended and restated Certificate of Incorporation of the Corporation and declaring said amendment and restatement to be advisable. The stockholders of the Corporation duly approved said proposed amendment and restatement by written consent in accordance with Sections 228 242 and 245 of the General Corporation Law of the State of Delaware, and written notice of such consent has been given to all stockholders who have not consented in writing to said amendment and restatement. The resolution setting forth the amendment is as follows.

RESOLVED: That the Certificate of Incorporation of the Corporation be and hereby is amended and restated as follows:

FIRST: The name of the corporation (which is hereinafter called the "Corporation") is:

Net2000 Group, Inc.

SECOND: The registered office of the Corporation in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle, Delaware 19801. The name of its registered agent in the State of Delaware at such address is The Corporation Trust Company

THIRD: The nature of the business 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 and to possess and exercise all of the powers and privileges granted under such law and the other laws of the State of Delaware.

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is 35,000,000 in the designated classes as follows:

<u>Class</u>	<u>Number of Shares</u>
Common Stock, \$.01 par value per share	28,000,000

Preferred Stock, \$0.01 par value per share 7,000,000

A. Common Stock

(1) The voting, dividend and liquidation rights of holders of shares of Common Stock are subject to, and qualified by, the rights of the holders of the Preferred Stock of any series as may be designated by the Board of Directors.

(2) Subject to the voting rights of holders of shares of the Preferred Stock, the holders of the Common Stock are entitled to one vote for each share held at all meetings of stockholders (and written actions in lieu of meetings). There shall be no cumulative voting and at any meeting held for the purpose of electing directors, the presence in person or by proxy of the holders or a majority of the shares of Common Stock then outstanding shall constitute a quorum of the Common Stock for the purpose of electing directors by holders of Common Stock.

(3) Dividends may be declared and paid on the Common Stock from funds lawfully available therefor as, if and when determined by the Board of Directors and subject to any preferential dividend rights of any then outstanding Preferred Stock.

(4) Upon voluntary or involuntary liquidation, sale, merger, consolidation, dissolution or winding up of the Corporation, holders of shares of Common Stock will be entitled to receive all assets of the Corporation available for distribution to its stockholders, subject to any preferential rights of any then outstanding Preferred Stock.

(5) The Common Stock is nonredeemable

B. Preferred Stock

One million twenty-one thousand eight hundred and ninety-eight (1,021,898) shares of preferred stock shall be designated as "Series A Convertible Preferred Stock" (the "Series A Preferred Stock"), par value \$0.01 value. Five Million five hundred ten thousand five hundred thirty-five (5,510,535) shares of Preferred Stock shall be designated as "Series B Convertible Preferred Stock" (the "Series B Preferred Stock"), par value \$0.01. As more fully described below, the Series A Preferred Stock and the Series B Preferred Stock shall rank, as to dividends and upon a Liquidation Event (as defined in Article FOURTH(B)(2) hereof), senior and prior to the Common Stock and all other classes or series of shares issued by the Corporation (the "Junior Stock"). As more fully described below, the Series B Preferred Stock shall rank, as to dividends and upon a Liquidation Event, senior to the Series A Preferred Stock. The Series A Preferred Stock and the Series B Preferred Stock shall be referred to herein collectively as the "Preferred Stock."

Notwithstanding anything contained in this Restated Certificate of Incorporation to the contrary, in no event shall any Adjustment (as defined below) be made to any of the terms of the Series B Preferred Stock as a result of the stock split being effectuated by the Corporation concurrently with the filing of this Restated Certificate of Incorporation (the "Stock Split"). The terms of the Series A Preferred Stock shall be subject to Adjustment as a result of the Stock Split

The Preferred Stock shall have the following rights, preferences, powers, privileges and restrictions, qualifications and limitations:

1. Dividends.

(a) The holders of shares of Series B Preferred Stock shall be entitled to receive, out of funds legally available therefor, when and if declared by the Board of Directors:

(i) annual dividends at the rate per annum of \$.309 per share of the Series B Preferred Stock as adjusted for stock splits, stock dividends, recapitalizations, reclassifications and similar events which affect the number of outstanding shares of the Series B Preferred Stock (any such event, an "Adjustment"), such dividends will accrue if not declared by the Board of Directors; provided however, that if a Qualifying Event (as defined in Section 1(d)) has been consummated prior to the third anniversary of the Series B Original Issue Date (as defined below), no such dividends, whether accrued or unaccrued, will be payable, and upon the occurrence of the Qualifying Event, dividends pursuant to this Section 1(a)(i) will cease to accrue,

(ii) if a dividend or other distribution is declared or distributed on the Common Stock of the Corporation below, dividends or distributions in an amount at least equal to the amount that would have been paid on the Common Stock into which the Series B Preferred Stock is then convertible if all such Common Stock had been issued upon conversion and had been outstanding on the record date for such dividend or distribution on Common Stock (or, if no record is taken, the date as of which the record holders entitled to such dividend or distribution are determined) and therefor entitled to such dividends or distributions; provided that any such dividends payable under this clause (ii) shall offset any dividends accruing thereafter pursuant to clause (i); and

(iii) such other dividends or distributions when and as declared by the Board of Directors of the Corporation, acting in its sole discretion.

(b) The holders of shares of Series A Preferred Stock shall be entitled to receive, out of funds legally available therefor, when and if declared by the Board of Directors:

(i) annual dividends at the rate per annum of \$0.274 per share of the Series A Preferred Stock, subject to Adjustment; such dividends will accrue if not declared by the Board of Directors; provided however, that if a Qualifying Event (as defined in Section 1(d)) has been

consummated prior to the third anniversary of the Series A Original Issue Date (as defined below), no such dividends, whether accrued or unaccrued, will be payable, and upon the occurrence of the Qualifying Event, dividends pursuant to this Section 1(b)(i) will cease to accrue;

(ii) if a dividend or other distribution is declared or distributed on the Common Stock of the Corporation below, dividends or distributions in an amount at least equal to the amount that would have been paid on the Common Stock into which the Series A Preferred Stock is then convertible if all such Common Stock had been issued upon conversion and had been outstanding on the record date for such dividend or distribution on Common Stock (or, if no record is taken, the date as of which the record holders entitled to such dividend or distribution are determined) and therefor entitled to such dividends or distributions; provided that any such dividends payable under this clause (ii) shall offset any dividends accruing thereafter pursuant to clause (i); and

(iii) such other dividends or distributions when and as declared by the Board of Directors of the Corporation, acting in its sole discretion.

(c) The holders of the Series B Preferred Stock shall be entitled to be paid, in full, the dividends and distributions declared or accrued (regardless of whether payable) or payable in accordance with clauses (a)(i) and (a)(ii) above, prior to the payment of any dividends or distributions in respect of Common Stock of the Corporation, the Series A Preferred Stock, including any dividends or distributions payable in accordance with clause (b) above, or in respect of any other series of Preferred Stock of the Corporation whose right to payment of dividends or distributions is junior to the Series B Preferred Stock, unless the holders of a majority of the shares of Series B Preferred Stock agree otherwise in writing. The holders of the Series A Preferred Stock shall be entitled to be paid, in full, the dividends and distributions declared or accrued (regardless of whether payable) or payable in accordance with clauses (b)(i) and (b)(ii) above, prior to the payment of any dividends or distributions in respect of Common Stock of the Corporation, or in respect of any other series of Preferred Stock of the Corporation whose right to payment of dividends or distributions is junior to the Series A Preferred Stock, unless the holders of a majority of the shares of Series A Preferred Stock agree otherwise in writing.

(d) A "Qualifying Event" shall mean (a) a Qualified Public Offering (as defined in Section 5(a) hereof) or (b) an Acquisition Event (as defined in Section 2(d) hereof).

2. Liquidation, Dissolution or Winding Up.

(a) In the event of any liquidation, dissolution or winding up of the Corporation (a "Liquidation Event"), the assets of the Corporation available for distribution to its stockholders, whether from capital, surplus or earnings (the "Corporate Assets") shall be distributed as follows:

(i) First, subject to Section 2(b), to the holders of Series B Preferred Stock an amount sufficient to pay the holders of shares of Series B Preferred Stock then outstanding an amount equal to \$ 3.085 per share (subject to Adjustment) plus all accrued and unpaid dividends thereon to be shared on a pro rata basis;

(ii) Second, subject to Section 2(b), to the holders of Series A Preferred Stock an amount sufficient to pay the holders of shares of Series A Preferred Stock then outstanding an amount equal to \$3.425 per share (subject to Adjustment), plus all accrued and unpaid dividends thereon to be shared on a pro rata basis; and

(iii) Third, to the holders of Common Stock, the holders of Series A Preferred Stock and the holders of Series B Preferred Stock, on a pro rata basis, with the amount distributable computed on the basis of the number of shares of Common Stock which would be held by such holders if immediately prior to the Liquidation Event all of the shares of the Series A Preferred Stock and Series B Preferred Stock had been converted into shares of Common Stock: provided, however, that in the event that the holders of the Series B Preferred Stock receive no distribution under Section 2(a)(i) as a result of the operation of Section 2(b), in no event shall the distribution with respect to the holders of the Series B Preferred Stock under this Section 2(a)(iii) be less than the Series B Distribution Minimum (as defined below) and provided, further, that in the event that the holders of the Series A Preferred Stock receive no distribution under Section 2(a)(ii) as a result of the operation of Section 2(b), in no event shall the distribution with respect to the holders of the Series A Preferred Stock under this Section 2(a)(iii) be less than the Series A Distribution Minimum (as defined below).

For purposes of this Section 2(a), the term "Series A Distribution Minimum" shall mean the amount which would be distributed to the holders of the Series A Preferred Stock under this Section 2(a) if the amount to be distributed under this Section 2(a) equaled the highest amount which would not cause the first sentence of Section 2(b) to become effective. For purposes of this Section 2(a), the term "Series B Distribution Minimum" shall mean the amount which would be distributed to the holders of the Series B Preferred Stock under this Section 2(a) if the amount to be distributed under this Section 2(a) equaled the highest amount which would not cause the second sentence of Section 2(b) to become effective.

(b) Notwithstanding Section 2(a)(ii), in the event of any Liquidation Event in which the Corporate Assets, after the distribution, if any, to the holders of the Series B Preferred Stock required pursuant to Section 2(a)(i), exceed an amount which is sufficient to pay to the holders of Common Stock, Series B Preferred Stock and Series A Preferred Stock, on an as-if-converted and fully-diluted basis, an amount per share greater than all accrued and unpaid dividends per share on the outstanding shares of Series A Preferred Stock plus \$10.275 without taking into account any rights of the Series A Preferred to preferential payment (subject to Adjustment), then no Corporate Assets shall be distributed pursuant to Section 2(a)(ii) and therefore the Corporate Assets should be distributed pursuant to Section 2(a)(i) and 2(a)(iii), subject to the last sentence of this Section 2(b). Notwithstanding Section 2(a)(i), in the event of any Liquidation Event in

which the Corporate Assets exceed an amount which is sufficient to pay to the holders of Common Stock, Series B Preferred Stock and Series A Preferred Stock, on an as-if-converted and fully-diluted basis, an amount per share greater than all accrued and unpaid dividends per share on the outstanding shares of Series B Preferred Stock plus \$ 4.628 without taking into account any rights of the Series B Preferred Stock or the Series A Preferred Stock to preferential payment (subject to Adjustment), then no Corporate Assets shall be distributed pursuant to Section 2(a)(i) or 2(a)(ii) and therefore the Corporate Assets should be distributed in accordance with 2(a)(iii) hereof.

(c) Written notice of such liquidation, dissolution or winding up, stating a payment date, the amount of the liquidation payments and the place where said liquidation payment shall be payable, shall be delivered in person, mailed by certified or registered mail, return receipt requested, or sent by telecopier or telex not less than 20 days prior to the payment date stated therein, to the holders of record of Preferred Stock, such notice to be addressed to each such holder at its address as shown by the records of the Corporation.

(d) Unless the holders of a majority of the then outstanding shares of Series B Preferred Stock elect otherwise, the merger, reorganization or consolidation of the Corporation into or with another corporation, or the sale of all or substantially all of the assets of the Corporation, or other similar transaction or series of related transactions, in which more than 50% of the voting power of the Corporation is disposed of or in which the stockholders of the Corporation immediately prior to such merger, reorganization or consolidation, own less than 50% of the Corporation's voting power immediately after such merger, reorganization or consolidation, or the sale of all or substantially all the assets of the Corporation (any such event an "Acquisition Event"), shall be deemed to be a liquidation, dissolution or winding up of the Corporation for purposes of Section 2(a).

(e) Unless the holders of at least two-thirds (2/3) of the then outstanding shares of Series A Preferred Stock elect otherwise, any Acquisition Event shall be deemed to be a liquidation, dissolution or winding up of the Corporation for purposes of Section 2(b).

3. Voting.

(a) Except as provided in Sections 3(b) and (c) below and elsewhere in this Restated Certificate of Incorporation, each holder of outstanding shares of Preferred Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which the shares of Preferred Stock held by such holder are convertible (as adjusted from time to time pursuant to Section 4 hereof), at each meeting of the stockholders of the Corporation (and written actions of stockholders in lieu of meetings) with respect to any and all matters presented to the stockholders of the Corporation for their action or consideration. Except as provided by law, by the provisions of Sections 3(b) and (c) below or by the provisions establishing any other series of Preferred Stock, holders of Series A Preferred Stock, Series B Preferred Stock and of any other

outstanding series of Preferred Stock shall vote together with the holders of Common Stock as a single class.

(b) The holders of a majority of the shares of the Series B Preferred Stock, voting together as a separate class, shall be entitled to (i) elect one director to the Corporation's Board of Directors (the "Series B Preferred Director"), (ii) to remove the Series B Preferred Director, and (iii) to fill any vacancy occurring on the Board of Directors as a result of the death, resignation or removal of the Series B Preferred Director.

(c) The holders of a majority of the shares of the Series A Preferred Stock, voting together as a separate class, shall be entitled to (i) elect one director to the Corporation's Board of Directors (the "Series A Preferred Director"), (ii) to remove the Series A Preferred Director, and (iii) to fill any vacancy occurring on the Board of Directors as a result of the death, resignation or removal of the Series A Preferred Director.

(d) Any and all director positions in excess of the one director elected by the holders of the Series B Preferred Stock pursuant to Section 3(b) and the one director elected by the holders of the Series A Preferred Stock pursuant to Section 3(c) shall be elected by the holders of the Common Stock and the Preferred Stock voting as a single class. The Corporation shall not expand the number of Directors without the written consent or affirmative vote of the holders of a majority of the then outstanding shares of each of Series A Preferred Stock and Series B Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be), each voting separately as a class.

(e) The Corporation shall not, without the written consent or affirmative vote of a majority of the holders of the then outstanding shares of Series B Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) together as a class.

(i) prior to May 18, 2001, engage in an Acquisition Event, unless the value of the Corporation based on such transaction is equal to or exceeds \$130,000,000 and the proceeds received by the Corporation are in cash or securities publicly traded on a recognized United States securities exchange;

(ii) authorize, create or issue any shares of stock, or securities exchangeable for, convertible into or evidencing the right to purchase any shares of stock, having rights, preferences or privileges (including without limitation, redemption rights or rights of anti-dilution protection) superior to or on a parity with that of the Series B Preferred Stock, including, without limitation, authorization or issuance of additional shares of Series B Preferred Stock;

(iii) amend, alter, or repeal the Corporation's Bylaws (including, without limitation, Article 2 thereof) or this Certificate of Incorporation so as to materially affect the preferences, special rights or other powers of the Series B Preferred Stock,

(iv) declare or pay any dividend on the Series A Preferred Stock, Series B Preferred Stock or the Common Stock unless such dividend is paid in the form of shares of the Common Stock; or

(v) repurchase or redeem any shares of the Common Stock or of the Series A Preferred Stock, including, without limitation, repurchases made from Clayton A. Thomas, Jr., Bruce W. Bednarski, Mark Mendes, Peter B. Callowhill and Corlyn A. Marsan, but other than repurchases made from other employees or consultants in connection with their termination of employment or consulting services, as the case may be, or in accordance with the terms of the Corporation's Right of First Refusal as set forth in the Amended and Restated Investor Rights Agreement between the Corporation, the holders of the Preferred Stock and certain holders of Common Stock, dated May 18, 1998.

(f) The Corporation shall not, without the written consent or affirmative vote of the holders of a majority the then outstanding shares of Series A Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) together as a class:

(i) prior to December 31, 2000, engage in an Acquisition Event, unless the value of the Corporation based on such transaction is equal to or exceeds \$30,000,000 and the proceeds received by the Corporation are in cash or securities publicly traded on a recognized United States securities exchange,

(ii) authorize, create or issue any shares of stock, or securities exchangeable for, convertible into or evidencing the right to purchase any shares of stock, having rights, preferences or privileges (including without limitation, redemption rights or rights of anti-dilution protection) superior to or on a parity with that of the Series A Preferred Stock, including, without limitation, authorization or issuance of additional shares of Series A Preferred Stock;

(iii) amend, alter, or repeal the Corporation's Bylaws (including, without limitation, Article 2 thereof) or this Certificate of Incorporation so as to materially affect the preferences, special rights or other powers of the Series A Preferred Stock;

(iv) declare or pay any dividend on the Series A Preferred Stock, Series B Preferred Stock or the Common Stock unless such dividend is paid in the form of shares of the Common Stock; or

(v) repurchase or redeem any shares of the Common Stock or of the Series A Preferred Stock, including, without limitation, repurchases made from Clayton A. Thomas, Jr., Bruce W. Bednarski, Peter B. Callowhill and Corlyn A. Marsan, but other than repurchases made from other employees or consultants in connection with their termination of employment or consulting services, as the case may be, or in accordance with the terms of the Corporation's Right of First Refusal as set forth in the Amended and Restated Investor Rights Agreement

between the Corporation, the holders of the Preferred Stock and certain holders of Common Stock, dated May 18, 1998.

(g) The Corporation shall not, without the consent or affirmative vote of a majority of the Board of Directors, given in writing or by vote at a meeting:

(i) incur senior and subordinated indebtedness that in the aggregate exceeds the greater of (x) four times the Corporation's earnings before interest, taxes, depreciation and amortization and (y) \$30,000,000; or

(ii) make capital expenditures that exceed \$15,000,000 per annum.

4. **Optional Conversion.** The holders of the Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) **Right to Convert.** Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the applicable Original Purchase Price (as defined below) by the Conversion Price (as defined below) in effect at the time of conversion. The Original Purchase Price of the Series A Preferred Stock shall be \$ 3.425. The Original Purchase Price of the Series B Preferred Stock shall be \$3.085. The conversion price at which shares of Common Stock shall be deliverable upon conversion of the Preferred Stock without the payment of additional consideration by the holder thereof (the "Conversion Price") shall initially be \$ 3.425 for the Series A Preferred Stock and \$3.085 for the Series B Preferred Stock. Each initial Conversion Price, and the rate at which shares of Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

In the event of a notice of redemption of any shares of Preferred Stock pursuant to Section 6 hereof, the Conversion Rights of the shares designated for redemption shall terminate at the close of business on the fifth full day preceding the date fixed for redemption, unless the redemption price is not paid when due, in which case the Conversion Rights for such shares shall continue until such price is paid in full. In the event of a liquidation of the Corporation, the Conversion Rights shall terminate at the close of business on the first full day preceding the date fixed for the payment of any amounts distributable on liquidation to the holders of Preferred Stock.

(b) **Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of the Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then effective applicable Conversion Price.

(c) **Mechanics of Conversion.**

(i) In order for a holder of Preferred Stock to convert shares of Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Preferred Stock at the office of the transfer agent for the Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares of the Preferred Stock represented by such certificate or certificates. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his or its attorney duly authorized in writing. The date of receipt of such certificates and notice by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) shall be the conversion date ("Conversion Date"). The Corporation shall, as soon as practicable after the Conversion Date, issue and deliver at such office to such holder of Preferred Stock, or to his or its nominees, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled, together with cash in lieu of any fraction of a share.

(ii) The Corporation shall at all times when the Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Preferred Stock. Before taking any action which would cause an adjustment reducing the Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Conversion Price.

(iii) Upon any such conversion, no adjustment to the applicable Conversion Price shall be made for any accrued and unpaid dividends on Preferred Stock surrendered for conversion provided that all accrued and unpaid dividends shall remain payable pursuant to the terms of Section 1 above.

(iv) All shares of Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall immediately cease and terminate on the Conversion Date, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor and payment of any accrued and unpaid dividends on the shares of Preferred Stock exchanged. Any shares of Preferred Stock so converted shall be retired and canceled and shall not be reissued, and the Corporation may from time to time take such appropriate action as may be necessary to reduce the authorized Preferred Stock accordingly.

(d) Adjustments to Conversion Price for Diluting Issues:

(i) Special Definitions. For purposes of this Subsection 4(d), the following definitions shall apply:

(A) "Option" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities, excluding options granted to employees or consultants of the Corporation pursuant to an option plan or other arrangements adopted by the Board of Directors, to acquire up to a maximum of 2,411,698 shares of Common Stock, such number of shares giving effect to the Stock Split, as outstanding on the date hereof (subject to appropriate adjustment for any stock dividend, stock split, combination or other similar recapitalization affecting such shares).

(B) "Original Issue Date" shall mean the date on which a share of Series A Preferred Stock or Series B Preferred Stock, as applicable, was first issued.

(C) "Convertible Securities" shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock.

(D) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Subsection 4(d)(iii) below, deemed to be issued) by the Corporation after the Series B Original Issue Date, other than shares of Common Stock issued or issuable:

(I) upon conversion of shares of Preferred Stock outstanding on the Series B Original Issue Date;

(II) as a dividend or distribution on Preferred Stock;

(III) by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock excluded from the definition of Additional Shares of Common Stock by the foregoing clauses (I) and (II) or this clause (III); or

(IV) upon the exercise of the options excluded from the definition of "Option" in Subsection 4(d)(i)(A).

(ii) No Adjustment of Conversion Price. No adjustment in the number of shares of Common Stock into which Preferred Stock is convertible shall be made, by adjustment in the applicable Conversion Price thereof: (a) unless the consideration per share (determined pursuant to Subsection 4(d)(v)) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the applicable Conversion Price in effect on the date of,

and immediately prior to, the issue of such Additional Shares, or (b) if prior to such issuance, the Corporation receives written notice from the holders of at least two-thirds (2/3) of the then outstanding shares of each of the Series A Preferred Stock and the Series B Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance of Additional Shares of Common Stock.

(iii) Issue of Securities Deemed Issue of Additional Shares of Common Stock.

(A) Options and Convertible Securities. If the Corporation at any time or from time to time after the applicable Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share (determined pursuant to Subsection 4(d)(v) hereof) of such Additional Shares of Common Stock would be less than the applicable Conversion Price in effect on the date of and immediately prior to such issue, or such record date, as the case may be, and provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(I) no further adjustment in the applicable Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities,

(II) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the consideration payable to the Corporation, or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the applicable Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities,

(III) no readjustment pursuant to clause (II) above shall have the effect of increasing the applicable Conversion Price to an amount which exceeds the lower of (i) the applicable Conversion Price on the original adjustment date, or (ii) the applicable Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date; and

(IV) upon the expiration or termination of any unexercised Option, the applicable Conversion Price shall not be readjusted, but the Additional Shares of Common Stock deemed issued as the result of the original issue of such Option shall not be deemed issued for the purposes of any subsequent adjustment of the applicable Conversion Price.

(B) Stock Dividends and Subdivisions. In the event that the Corporation at any time or from time to time after the applicable Original Issue Date shall declare or pay any dividend on the Common Stock payable in Common Stock, or effect a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in Common Stock), then Additional Shares of Common Stock shall be deemed to have been issued:

(I) in the case of any such dividend, immediately after the close of business on the record date for the determination of holders or any class of securities entitled to receive such dividend, or

(II) in the case of any subdivision, at the close of business on the date immediately prior to the date upon which such corporate action becomes effective.

If such record date shall have been fixed and such dividend shall not have been fully paid on the date fixed therefor, the adjustment previously made in the applicable Conversion Price which became effective on such record date shall be canceled as of the close of business on such record date, and thereafter the applicable Conversion Price shall be adjusted pursuant to this Subsection 4(d)(iii) as of the time of actual payment of such dividend.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock.

(A) Issuance Prior to Full Ratchet Date. In the event the Corporation shall issue Additional Shares of Common Stock prior to the applicable Full Ratchet Date (as defined below) (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection 4(d)(iii)), without consideration or for a consideration per share less than the applicable Conversion Price in effect on the date of and immediately prior to such issue, then and in such event, such Conversion Price shall be reduced, concurrently with such issue, to a price equal to the consideration per share for such Additional Shares of Common Stock effective as of the date of the issuance of such Additional Shares of Common Stock; provided that in the event the Corporation, without receiving any consideration, declares a dividend on Common Stock payable in Common Stock or effects a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock, the Conversion Price in effect immediately prior to such stock dividend or subdivision shall, on the date that Additional Shares of Common Stock are deemed issued pursuant to Subsection 4(d)(iii)(B), be decreased proportionately, and provided further, that the applicable Conversion Price shall not be so reduced at such time if the amount of such reduction would be an amount less than \$.05, but any such amount shall be

carried forward and reduction with respect thereto made at the time of and together with any subsequent reduction which, together with such amount and any other amount or amounts so carried forward, shall aggregate \$.05 or more. The "Full Ratchet Date" for the Series A Preferred Stock shall mean May 18, 1999. The "Full Ratchet Date" for the Series B Preferred Stock shall mean November 14, 1999.

(B) Issuance to Holders of Preferred Stock Prior to Full Ratchet Date. Notwithstanding anything contained in Section (A) above to the contrary, in the event the Corporation shall issue Additional Shares of Common Stock solely to any holders of the Series A Preferred Stock or the Series B Preferred Stock prior to the applicable Full Ratchet Date (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection 4(d)(iii)), without consideration or for a consideration per share less than the applicable Conversion Price in effect on the date of and immediately prior to such issue, then and in such event, such Conversion Price shall be reduced, concurrently with such issue, to a price equal to the greater of (x) the consideration per share for such Additional Shares of Common Stock effective as of the date of the issuance of such Additional Shares of Common Stock or (y) the Share Fair Market Value (as defined below); provided that the applicable Conversion Price shall not be so reduced at such time if the amount of such reduction would be an amount less than \$.05, but any such amount shall be carried forward and reduction with respect thereto made at the time of and together with any subsequent reduction which, together with such amount and any other amount or amounts so carried forward, shall aggregate \$.05 or more. The "Share Fair Market Value" shall mean the fair market value of share of Common Stock on the date of and immediately prior to such issue to be determined by disinterested appraisal firm which is a member of a recognized professional association reasonably acceptable to the Corporation and the holders of a majority of the Preferred Stock. If the parties are unable to agree on an appraisal firm within 10 days after the issue of stock, a firm shall be selected by lot from the top-tier investment banking firms, after the Corporation and the holders of the Preferred Stock have each eliminated one such firm. The selected appraisal firm shall then make a determination of the Share Fair Market Value. The selection and determination of the appraisal firm shall be final and binding upon all parties. The expenses of the appraisal firm shall be borne by the Corporation.

(C) Issuance After Full Ratchet Date. In the event the Corporation shall issue Additional Shares of Common Stock on or after the applicable Full Ratchet Date (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection 4(d)(iii)), without consideration or for a consideration per share less than the applicable Conversion Price in effect on the date of and immediately prior to such issue, then and in such event, such Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Conversion Price; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such

Additional Shares of Common Stock so issued; provided that, for the purpose of this Subsection 4(d)(iv), all shares of Common Stock issuable upon conversion of shares of Preferred Stock or other Convertible Securities and upon exercise of options or warrants outstanding immediately prior to such issue shall be deemed to be outstanding, and immediately after any Additional Shares of Common Stock are deemed issued pursuant to Subsection 4(d)(iii) (whether or not excluded from the definition of "Additional Shares of Common Stock" by virtue of clauses (II), (III) and (IV) of Subsection 4(d)(i)(D)), such Additional Shares of Common Stock shall be deemed to be outstanding; provided further, that in the event the Corporation, without receiving any consideration, declares a dividend on Common Stock payable in Common Stock or effects a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock, the Conversion Price in effect immediately prior to such stock dividend or subdivision shall, on the date that Additional Shares of Common Stock are deemed issued pursuant to Subsection 4(d)(iii)(B), be decreased proportionately, and provided further, that the applicable Conversion Price shall not be so reduced at such time if the amount of such reduction would be an amount less than \$.05, but any such amount shall be carried forward and reduction with respect thereto made at the time of and together with any subsequent reduction which, together with such amount and any other amount or amounts so carried forward, shall aggregate \$.05 or more.

(v) Determination of Consideration. For purposes of this Subsection 4(d), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(A) Cash and Property: Such consideration shall:

(I) insofar as it consists of cash, be computed at the aggregate of cash received by the Corporation, excluding amounts paid or payable for accrued interest or accrued dividends;

(II) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, determined as of the close of business on the date of computation based on the closing price for such property on the principal market on which such property trades or, if there is no established market for such property, as determined in good faith by the Board of Directors; and

(III) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (I) and (II) above, as determined in good faith by the Board of Directors.

(B) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued

pursuant to Subsection 4(d)(iii)(A), relating to Options and Convertible Securities, shall be determined by dividing

(I) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(II) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(C) Stock Dividends and Stock Subdivisions. Any Additional Shares of Common Stock deemed to have been issued pursuant to Subsection 4(d)(iii)(B), relating to stock dividends and stock subdivisions, shall be deemed to have been issued for no consideration.

(vi) Adjustment for Combinations or Consolidation of Common Stock.

In the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, the applicable Conversion Price in effect immediately prior to such combination or consolidation shall, concurrently with the effectiveness of such combination or consolidation, be increased proportionately.

(vii) Adjustment for Merger or Reorganization, etc.

In case of any Acquisition Event (other than an Acquisition Event which is treated as a liquidation pursuant to Subsection 2(d) or 2(e)), each share of Preferred Stock shall thereafter be convertible into the kind and amount of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the Corporation deliverable upon conversion of such Preferred Stock would have been entitled upon such Acquisition Event; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors) shall be made in the application of the provisions in this Section 4 set forth with respect to the rights and interest thereafter of the holders of Preferred Stock, to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the applicable Conversion Price) shall thereafter be applicable, as nearly as

reasonably may be, in relation to any shares of stock or other property thereafter deliverable upon the conversion of the Preferred Stock.

(e) No Impairment. The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, 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 hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 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 Preferred Stock against impairment.

(f) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of a Conversion Price pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of 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 Preferred Stock, furnish or cause to be furnished to such holder a similar certificate setting forth (i) such adjustments and readjustments, (ii) the applicable Conversion Price then in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which then would be received upon the conversion of the applicable Preferred Stock.

(g) Notice of Record Date. In the event:

(i) that the Corporation declares a dividend (or any other distribution) on its Common Stock payable in Common Stock or other securities of the Corporation;

(ii) that the Corporation subdivides or combines its outstanding shares of Common Stock;

(iii) of any reclassification of the Common Stock of the Corporation (other than a subdivision or combination of its outstanding shares of Common Stock or a stock dividend or stock distribution thereon), or of any Acquisition Event; or

(iv) of the involuntary or voluntary dissolution, liquidation or winding up of the Corporation;

then the Corporation shall cause to be filed at its principal office or at the office of the transfer agent of Preferred Stock, and shall cause to be mailed to the holders of Preferred Stock at their last addresses as shown on the records of the Corporation or such transfer agent, at least ten days prior to the record date specified in (A) below or twenty days before the date specified in (B) below, a notice stating

(A) the record date of such dividend, distribution, subdivision or combination, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution, subdivision or combination are to be determined, or

(B) the date on which such reclassification, consolidation, merger, sale, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, dissolution or winding up.

5. Mandatory Conversion.

(a) Series B Preferred Stock.

(i) All, and not less than all, of the shares of Series B Preferred Stock then outstanding shall be automatically converted, without any action on the part of the holder thereof, into shares of Common Stock, at the then effective applicable Conversion Price, at the closing of a public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least \$20,000,000 of gross proceeds to the Corporation, and at a price of at least \$ 6.17 per share of Common Stock (subject to Adjustment) (such offering, a "Qualified Public Offering").

(ii) In addition to the mandatory conversion provisions of Section 5(a)(i) hereof, all and not less than all, of the holders of shares of Series B Preferred Stock then outstanding will be required to convert their shares of Series B Preferred Stock into shares of Common Stock, at the then effective applicable Conversion Price, at any time upon written notice received from the holders of at least two-thirds (2/3) of the then outstanding shares of Series B Preferred Stock consenting to the automatic conversion of all of the Series B Preferred Stock into shares of Common Stock pursuant to this Section 5(a)(i).

(b) Series A Preferred Stock.

(i) All, and not less than all, of the shares of Series A Preferred Stock then outstanding shall be automatically converted, without any action on the part of the holder thereof, into shares of Common Stock, at the then effective applicable Conversion Price, at the closing of a Qualified Public Offering.

(ii) In addition to the mandatory conversion provisions of Section 5(b)(i) hereof, all and not less than all, of the holders of shares of Series A Preferred Stock then outstanding will be required to convert their shares of Series A Preferred Stock into shares of Common Stock, at the then effective applicable Conversion Price, at any time upon written notice received from the holders of at least two-thirds (2/3) of the then outstanding shares of

Series A Preferred Stock consenting to the automatic conversion of all of the Series A Preferred Stock into shares of Common Stock pursuant to this Section 5(b)(ii).

(c) In the case of any automatic conversion pursuant to this Section 5, the outstanding shares of Preferred Stock to be automatically converted shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, that the Corporation shall not be obligated to issue to any holder certificates evidencing the shares of Common Stock issuable such conversion unless certificates evidencing such shares of Preferred Stock are delivered either to the Corporation or any transfer agent of the Corporation.

(d) All certificates evidencing shares of Preferred Stock which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the date such certificates are so required to be surrendered, be deemed to have been retired and canceled and the shares of Preferred Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date. The Corporation may thereafter take such appropriate action as may be necessary to reduce the authorized Preferred Stock accordingly.

6. **Redemption.**

(a) **Series B Redemption.**

(i) If the Company has not consummated a Qualified Public Offering, then at any time during the Series B Redemption Period (as defined below) the holders of Series B Preferred Stock shall have the right to require the Corporation to redeem shares of Series B Preferred Stock as described in this Section 6 at the Series B Redemption Price (as defined below) by delivering written notice to the Corporation (a "Series B Redemption Election"). The "Series B Redemption Period" shall mean the later of (x) the 30 day period commencing on the date that is the one year anniversary of the maturity date of any high yield debt issued by the Corporation prior to December 31, 1998; or (y) March 31, 2003.

(ii) Upon the delivery of a Series B Redemption Election, the Corporation shall notify promptly all holders of shares of Series B Preferred Stock in writing (the "Series B Redemption Notice") of the delivery of the Redemption Election, and a disinterested appraisal firm which is a member of a recognized professional association reasonably acceptable to the Corporation and the holders of a majority of the Series B Preferred Stock shall determine Market Value as set forth below. If the parties are unable to agree on an appraisal firm within 10 days after the expiration of the delivery of the Series B Redemption Notice, a firm shall be selected by lot from the top-tier investment banking firms, after the Corporation and the holders of the Series B Preferred Stock have each eliminated one such firm (the "Appraisal Firm"). The Appraisal Firm shall then make a determination of the Market Value, and, using such determination of Market Value, shall calculate the Series B Redemption Price. The selection and determination of

the Appraisal Firm shall be final and binding upon all parties. The expenses of the Appraisal Firm shall be borne equally by the holders of the Series B Preferred Stock, as a group and on a pro rata basis in accordance with the shares of Series B Preferred Stock to be redeemed, and the Corporation.

(iii) The holders of shares of Series B Preferred Stock may elect to sell to the Corporation all or a portion of their shares of Series B Preferred Stock by delivering written notice to the Corporation within 15 days after final determination of the Series B Redemption Price. Subject to the provisions hereof, within 40 days after final determination of the Series B Redemption Price, the Corporation shall purchase, and all such electing holders of Series B Preferred Stock shall sell, the portion of such shares which the holders thereof have elected to sell to the Corporation at a time and place mutually agreeable to the Corporation and the holders of the Series B Preferred Stock (the "Series B Redemption Closing"). The Corporation shall notify all holders of Series B Preferred Stock of the date and place of the Series B Redemption Closing at least seven days prior to the Series B Redemption Closing.

(iv) At the Series B Redemption Closing, the holders of Series B Preferred Stock shall deliver to the Corporation certificates representing the shares of Series B Preferred Stock which they have elected to sell to the Corporation, and the Corporation shall deliver to each such holder the Series B Redemption Price for each share of Series B Preferred Stock to be sold to the Corporation by cashier's or certified check or by wire transfer to immediately available funds to an account designated by such holder.

(v) The "Series B Redemption Price" of a share of Series B Preferred Stock means the amount equal to the amount which would be received per share of Series B Preferred Stock if the assets of the Corporation were sold for cash equal to the Market Value, and the Corporation were liquidated immediately thereafter pursuant to Section 2. "Market Value" means the fair market value of the Corporation as a going concern determined on the basis of the sale of 100% of the Corporation as between a strategic buyer and a willing seller and taking into account all relevant factors determinative of value.

(b) Series A Redemption

(i) If the Company has not consummated a Qualified Public Offering, then at any time following either (x) the Series B Redemption Closing if any holders of Series B Preferred Stock shall have delivered a Series B Redemption Election to the Corporation or (y) the end of the Series B Redemption Period if no holders of Series B Preferred Stock shall have delivered a Series B Redemption Election to the Corporation, the holders of Series A Preferred Stock shall have the right to require the Corporation to redeem shares of Series A Preferred Stock as described in this Section 6 at the Series A Redemption Price (as defined below) by delivering written notice to the Corporation (a "Series A Redemption Election").

(ii) Upon the delivery of a Series A Redemption Election, the Corporation shall notify promptly all holders of shares of Series A Preferred Stock in writing (the "Series A Redemption Notice") of the delivery of the Series A Redemption Election, and a disinterested Appraisal Firm which is a member of a recognized professional association reasonably acceptable to the Corporation and the holders of a majority of the Series A Preferred Stock shall determine Market Value as set forth below. If the parties are unable to agree on an Appraisal Firm within 10 days after the expiration of the delivery of the Series A Redemption Notice, a firm shall be selected by lot from the top-tier investment banking firms, after the Corporation and the holders of the Series A Preferred Stock have each eliminated one such firm. The Appraisal Firm shall then make a determination of the Market Value, and, using such determination of Market Value, shall calculate the Series A Redemption Price. The selection and determination of the Appraisal Firm shall be final and binding upon all parties. The expenses of the Appraisal Firm shall be borne equally by the holders of the Series A Preferred Stock, as a group and on a pro rata basis in accordance with the shares of Series A Preferred Stock to be redeemed, and the Corporation.

(iii) Within 10 days after the final determination of the Series A Redemption Price pursuant to subparagraph (b) above, the holders of shares of Series A Preferred Stock may elect to sell to the Corporation all or a portion of their shares of Series A Preferred Stock by delivering written notice to the Corporation. Subject to the provisions hereof, within 40 days after the final determination of the Series A Redemption Price, the Corporation shall purchase, and all such electing holders of Series A Preferred Stock shall sell, the portion of such shares which the holders thereof have elected to sell to the Corporation at a time and place mutually agreeable to the Corporation and the holders of the Series A Preferred Stock (the "Series A Redemption Closing"). The Corporation shall notify all holders of Series A Preferred Stock of the date and place of the Series A Redemption Closing at least seven days prior to the Series A Redemption Closing.

(iv) At the Series A Redemption Closing, the holders of Series A Preferred Stock shall deliver to the Corporation certificates representing the shares of Series A Preferred Stock which they have elected to sell to the Corporation, and the Corporation shall deliver to each such holder the Series A Redemption Price for each share of Series A Preferred Stock to be sold to the Corporation by cashier's or certified check, or by wire transfer of immediately available funds to an account designated by such holder.

(v) The "Series A Redemption Price" of a share of Series A Preferred Stock means the amount equal to the amount which would be received per share of Series A Preferred Stock if the assets of the Corporation were sold for cash equal to the Market Value, and the Corporation were liquidated immediately thereafter pursuant to Section 2.

(c) Notwithstanding anything to the contrary contained in this Section 6, if the Corporation is unable to redeem in full all shares tendered for redemption because the Corporation has insufficient legal capital available to effect such redemptions, the Corporation

shall allocate its available legal capital as follows: (i) first, to payment of the aggregate Series B Redemption Price to holders of Series B Preferred Stock that have requested that the Corporation redeem their shares of Series B Preferred Stock in accordance with Section 6(a) above; and (ii) second, to payment of the aggregate Series A Redemption Price to holders of Series A Preferred Stock that have requested that the Corporation redeem their shares of Series A Preferred Stock in accordance with Section 6(b) above. Any portion payable to holders of Preferred Stock pursuant to this Section 6 that is not paid in cash or cash equivalents at the respective Redemption Closing shall be paid for by the issuance at such Redemption Closing of promissory notes in form and substance reasonably satisfactory to the holders of the Preferred Stock receiving such notes (the "Redemption Notes"). At any time that Redemption Notes are outstanding, the Corporation may incur bank debt or third-party institutional non-equity financing in connection with the operation of its business which is senior to the Redemption Notes so long as such debt does not prohibit the timely payment of amounts due on the Redemption Notes unless such senior debt is in default at such time. Notwithstanding the foregoing, the Redemption Notes shall remain senior to any obligations owed to Clayton A. Thomas, Jr., Bruce W. Bednarski, Peter B. Callowhill, Corlyn A. Marsan, or other holders of Common Stock.

The Redemption Notes will bear interest per annum at the greater of (i) Prime plus 100 basis points, or (ii) 8.0%. "Prime" means a floating rate per annum equal to the prime interest rate per annum published from time to time in the "Money Rates" section of the Wall Street Journal (and the highest such rate if more than one is so published). Accrued interest on the Redemption Notes will be payable monthly. The principal amount of the Redemption Notes will be payable in thirty-six (36) equal monthly installments beginning within 30 days of the applicable Redemption Closing as set forth above. The Redemption Notes will be prepayable at the Corporation's option at any time without penalty or premium.

FIFTH: Except as otherwise provided in this Certificate of Incorporation or a certificate of designation relating to the rights of the holders of any class or series of Preferred Stock, voting separately by class or series, to elect additional directors under specified circumstances, the number of directors of the Corporation shall be as fixed from time to time by or pursuant to the By-laws of the Corporation (the "By-Laws"). No director of the Corporation need be a Stockholder.

SIXTH: The Corporation is to have perpetual existence.

SEVENTH: In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized:

- (a) To make, alter or repeal By-Laws of the Corporation.
- (b) To authorize and cause to be executed mortgages and liens upon the real and personal property of the Corporation.

(c) To set apart out of any of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and to abolish any such reserve in the manner in which it was created.

(d) To designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. The By-Laws may provide, that, in the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors, or in the By-Laws of the Corporation, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to amending the Certificate of Incorporation, adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets, recommending to the stockholders a dissolution of the Corporation or a revocation of a dissolution, or amending the By-Laws of the Corporation; and, unless the resolution or By-Laws expressly so provide, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock.

(e) When and as authorized by the stockholders in accordance with statute, to sell, lease, exchange or otherwise dispose of all or substantially all of the property and assets of the Corporation, including its good will and its corporate franchises, upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property including shares of stock in, and/or other securities of, any other corporation or corporations, as its Board of Directors shall deem expedient and for the best interests of the Corporation.

(f) To fix, determine and vary from time to time the amount to be maintained as surplus and the amount or amounts to be set apart as working capital.

(g) To authorize the payment of compensation to the directors for services to the Corporation, including fees for attendance at meetings of the Board of Directors, of the Executive Committee, and of other committees, and to determine the amount of such compensation and fees.

(h) To authorize the issuance from time to time of shares of its stock of any class whether now or hereafter authorized, or securities convertible into shares of its stock

of any class or classes, whether now or hereafter authorized, for such consideration as may be deemed advisable by the Board of Directors and, except as otherwise set forth in this Certificate of Incorporation, without any action by the stockholders

EIGHTH: Meetings of stockholders may be held within or without the State of Delaware, as the By-Laws may provide. The books of the Corporation may be kept (subject to any provisions 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 By-Laws of the Corporation. Elections of directors need not be by written ballot unless the By-Laws of the Corporation shall so provide.

NINTH: 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 Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit. If the Delaware General Corporation Law is amended after approval of this article to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

Any repeal or modification of the foregoing paragraph 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.

TENTH: The corporation shall, to the fullest extent permitted by Section 145 of the General Corporation Law of Delaware, as amended from time to time, indemnify each person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was, or has agreed to become, a director or officer of the corporation, or is or was serving, or has agreed to serve, at the request of the corporation, as a director, officer or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or on his behalf in connection with such action, suit or proceeding and any appeal therefrom.

Indemnification may include payment by the corporation of expenses in defending an action or proceeding in advance of the final disposition of such action or proceeding upon receipt of an undertaking by the person indemnified to repay such payment if it is ultimately determined that such person is not entitled to indemnification under this TENTH Article, which

undertaking may be accepted without reference to the financial ability of such person to make such repayment.

The corporation shall not indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person unless the initiation thereof was approved by the Board of Directors of the corporation

The indemnification rights provided in this TENTH Article (i) shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any law, agreement or vote of stockholders or disinterested directors or otherwise, and (ii) shall inure to the benefit of the heirs, executors and administrators of such persons. The corporation may, to the extent authorized from time to time by its Board of Directors, grant indemnification rights to other employees or agents of the corporation or other persons serving the corporation and such rights may be equivalent to, or greater or less than, those set forth in this TENTH Article.

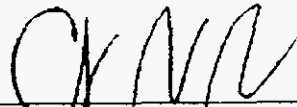
ELEVENTH The Corporation reserves the right, following the receipt of the necessary approvals of its stockholders, to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute and the Certificate of Incorporation, and all rights conferred upon stockholders herein are granted subject to this reservation.

[signature on following page]

IN WITNESS WHEREOF, Net2000 Group, Inc. has caused this Restated Certificate of Incorporation to be executed in its name and on its behalf by its President on May 19, 1998

NET2000 GROUP, INC.

By:



Clayton A. Thomas, Jr., President

**CERTIFICATE OF AMENDMENT
TO
CERTIFICATE OF INCORPORATION
OF
NET2000 GROUP, INC.**

Pursuant to Section 242
of the General Corporation Law
of the State of Delaware

Net2000 Group, Inc., (hereinafter called the "Corporation"), organized and existing under and by virtue of the General Corporation Law of the State of Delaware, does hereby certify as follows:

FIRST: Transitional Provisions.

A. Pre-Split Shares - Common Stock. Upon the filing of this Certificate of Amendment to Certificate of Incorporation (the "Effective Time"), each share of the Corporation's Common Stock issued and outstanding immediately prior thereto (the "Pre-Split Shares") shall, *ipso facto* and without any action on the part of the holder of the Pre-Split Shares, be changed, converted and reclassified into 0.000004975 shares of Common Stock (the "Reverse Split"), and the par value of all shares of Common Stock shall continue to be, as of the Effective Time and henceforth thereafter, \$0.01 per share. The shares of Common Stock into which the Pre-Split Shares will be converted upon the Effective Time are referred to herein as the "Split Shares."

B. No Fractional Shares. No fractional Split Shares will be issued as a result of the Reverse Split; in lieu of the holder of each Pre-Split Share otherwise entitled to a fractional Split Share may be paid an amount in cash determined at the rate of \$10.00 per Split Share.

C. Delivery of New Certificates.

(1) Exchange of Certificates. Each holder of certificates representing Pre-Split Shares may deliver and surrender all of such certificates to the Corporation for cancellation after the Effective Time, and shall receive upon such delivery, surrender and cancellation, or as soon thereafter as is practicable, in place thereof a certificate or certificates for the number of Split Shares of Common Stock into which such holder's Pre-Split Shares were converted upon the Effective Time.

(2) Interim Rights. Until surrendered as provided in paragraph (C)(1) above, as of the Effective Time, certificates formerly representing Pre-Split Shares shall be deemed for all corporate purposes to represent solely the right to receive the Split Shares into which such Pre-Split Shares were converted at the Effective Time and the

right to be paid cash for fractional Split Shares, if any, all upon surrender of such Pre-Split Share certificates.

SECOND: By unanimous written consent, the Board of Directors of the Corporation adopted resolutions pursuant to Sections 141(f) and 242 of the General Corporation Law of the State of Delaware setting forth the following amendments to the Certificate of Incorporation of the Corporation, including the Reverse Split, and declaring said amendments to be advisable. The stockholder of the Corporation duly approved said proposed amendments, including the Reverse Split, by written consent in accordance with Sections 228 and 242 of the General Corporation Law of the State of Delaware. Accordingly, the Certificate of Incorporation of the Corporation is hereby amended by deleting the entire document and and inserting the following in lieu thereof.

FIRST: The name of the corporation (which is hereinafter called the "Corporation") is Net2000 Communications Services, Inc.

SECOND: 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.

THIRD: The nature of the business of the Corporation to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law and to possess and exercise all of the powers and privileges granted under such law and the other laws of the State of Delaware.

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is 100, all of which shall be Common Stock, \$0.01 par value per share, with an aggregate par value of \$1.00.

FIFTH: The number of directors of the Corporation shall be as fixed from time to time by or pursuant to the By-laws of the Corporation (the "By-Laws"). No director of the Corporation need be a Stockholder.

SIXTH: The Corporation is to have perpetual existence.

SEVENTH: No director of the Corporation shall 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 Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit. If the Delaware General Corporation Law is amended after approval of this article to

authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

Any repeal or modification of the foregoing paragraph 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.

EIGHTH: The corporation shall, to the fullest extent permitted by Section 145 of the Delaware General Corporation Law, as amended from time to time, indemnify each person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was, or has agreed to become, a director or officer of the corporation, or is or was serving, or has agreed to serve, at the request of the corporation, as a director, officer or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or on his behalf in connection with such action, suit or proceeding and any appeal therefrom.

Indemnification may include payment by the corporation of expenses in defending an action or proceeding in advance of the final disposition of such action or proceeding upon receipt of an undertaking by the person indemnified to repay such payment if it is ultimately determined that such person is not entitled to indemnification under this **EIGHTH** Article, which undertaking may be accepted without reference to the financial ability of such person to make such repayment.

The corporation shall not indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person unless the initiation thereof was approved by the Board of Directors of the corporation.

The indemnification rights provided in this **EIGHTH** Article (i) shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any law, agreement or vote of stockholders or disinterested directors or otherwise, and (ii) shall inure to the benefit of the heirs, executors and administrators of such persons. The corporation may, to the extent authorized from time to time by its Board of Directors, grant indemnification rights to other employees or agents of the corporation or other persons serving the corporation

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and such rights may be equivalent to, or greater or less than, those set forth in this EIGHTH Article.


NINTH: 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 the Certificate of Incorporation, and all rights conferred upon stockholders herein are granted subject to this reservation.

IN WITNESS WHEREOF, the Corporation has caused its corporate seal to be affixed hereto and this Certificate of Amendment to be signed by the President and Chief Executive Officer this 30th day of October, 1998.

{Corporate Seal}

NET2000 GROUP, INC.

By:



Clayton A. Thomas, Jr.

President and Chief Executive Officer

EXHIBIT C

FINANCIAL STATEMENTS

Throughout our history, Net2000 has been very successful in raising capital in a very challenging financial environment, validating the strength of our product offerings and management team. Net2000 provides below information describing our strategic outside investments and vendor financing efforts to demonstrate our ability to raise, and continue to raise, the necessary capital to fund our telecommunications operations in the State of Florida. As a result of these efforts, Net2000 has sufficient cash on hand to meet our requirements and has funded our current business plan into the third quarter of 2002.

- In 1997, Net2000 received initial venture capital financing of \$3.5 million from firms that include Blue Water Capital, Mid-Atlantic Venture Fund, and Societe Generale.
- In 1998, Net2000 closed our second round of venture capital financing, receiving \$17 million in private equity investment with additional commitments of \$5 million, bringing the total to \$22 million in venture capital from firms that include The Carlyle Group, PNC Equity Management, Mid-Atlantic Venture Fund, Societe Generale, and Blue Water Capital.
- In November 1998, Northern Telecom ("Nortel") made a \$30 million equity investment in our company. This transaction was the first equity investment made by Nortel in a competitive local exchange carrier, demonstrating Nortel's confidence in our business plan and operations.
- Also in November 1998, Net2000 entered into a \$140 million credit agreement with Nortel to fund the construction of our network and provide working capital. In particular, Net2000 entered into a \$120 million term loan facility and \$20 million revolving loan facility with Nortel.
- In late 1999, Net2000 amended and restated the November 1998 credit agreement with Nortel to provide for additional working capital availability. Specifically, Net2000 entered into a \$75 million term loan facility with Nortel to finance the purchase of goods and services and a \$75 million senior discount note to be used for working capital. Increased competition among equipment suppliers has made this type of vendor financing very common in the telecommunications industry. The term loan facility may be used by Net2000 as a line of credit to purchase Nortel equipment and is secured by a security interest in such equipment. In addition, for each \$1 spent on equipment, Net2000 will receive another \$0.50 for general corporate purposes.
- In March 2000, Net2000 benefited from an initial public offering of our shares which generated \$212 million in available cash through equity investment.

- In April 2000, Net2000 obtained a commitment from TD Securities, Inc. to underwrite and lead a \$200 million senior secured credit facility. The facility consists of a \$100 million revolving credit facility and a \$100 million delayed draw facility, replacing the \$75 million credit facility closed at the end of 1999.

PART I. -- FINANCIAL INFORMATION

NET2000 COMMUNICATIONS, INC
CONSOLIDATED BALANCE SHEETS
March 31, 2000 and December 31, 1999
(Dollars in Thousands, except share amounts)

ASSETS	March 31, 2000 (Unaudited)	December 31, 1999
Current assets:		
Cash & cash equivalents	\$ 191,248	\$ 5,523
Restricted cash	3,644	3,517
Accounts receivable, net of allowance for doubtful accounts of approximately \$2,120 and \$1,919 at March 31, 2000 and December 31, 1999, respectively	8,706	7,595
Other current assets	888	1,528
Total current assets	204,486	18,163
Property and equipment, net of accumulated depreciation	91,157	72,592
Other noncurrent assets	4,150	3,598
Unamortized debt discount	2,299	7,315
Total assets	\$ 302,092	\$ 101,668
LIABILITIES AND STOCKHOLDERS' (DEFICIT) EQUITY		
Current liabilities:		
Accounts payable	\$ 2,558	\$ 792
Accrued expenses and other current liabilities	24,087	21,635
Total current liabilities	26,645	22,427
Related party noncurrent liabilities	24,534	26,428
Other noncurrent liabilities	156	215
Long-term debt	52,966	46,039
Redeemable convertible Series A, B and C preferred stock, \$0.01 par value; 11,738,437 shares authorized, no shares and 11,738,437 issued and outstanding at March 31, 2000 and December 31, 1999 respectively	—	80,940
Stockholders' (deficit) equity:		
Common stock, \$0.01 par value; 200,000,000 shares authorized, 37,680,502, and 10,189,562 shares issued and outstanding March 31, 2000 and December 31, 1999, respectively	377	102
Additional capital	317,301	16,707
Deferred stock compensation	(8,975)	(7,002)
Accumulated deficit	(110,912)	(84,188)
Total stockholders' (deficit) equity	197,791	(74,381)
Total liabilities and stockholders' deficit	\$ 302,092	\$ 101,668

Note: The balance sheet at December 31, 1999 has been derived from the audited financial statements at that date but does not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements.

NET2000 COMMUNICATIONS, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(Dollars in Thousands, except share amounts)

	For the Three Months Ending	
	March 31,	
	2000	1999
Revenues.....	\$ 10,612	\$ 5,057
Operating costs and expenses:		
Operating costs.....	8,519	4,393
Selling, general and administrative (exclusive of non-cash compensation expense shown below).....	16,247	6,648
Non-cash compensation expense.....	660	20
Depreciation and amortization.....	2,440	447
Loss from operations.....	<u>(17,254)</u>	<u>(6,451)</u>
Other income (expenses):		
Miscellaneous income.....	12	2
Interest income.....	1,084	386
Interest expense.....	(2,083)	(107)
Loss before provision for income taxes.....	<u>(18,241)</u>	<u>(6,170)</u>
Provision for income taxes.....	—	—
Loss before extraordinary item.....	<u>(18,241)</u>	<u>(6,170)</u>
Extraordinary debt extinguishment loss.....	(4,724)	—
Net loss.....	<u>(22,965)</u>	<u>(6,170)</u>
Preferred stock accretion.....	(3,759)	(5,394)
Net loss available to common stockholders.....	<u>\$ (26,724)</u>	<u>\$ (11,564)</u>
Pro forma net loss available to common shareholders.....	<u>\$ (22,965)</u>	<u>\$ (6,170)</u>
Basic and diluted loss per shares:		
Available to common stockholders before extraordinary item..	\$ (1.23)	\$ (1.14)
Extraordinary loss.....	(.26)	—
Available to common stockholders.....	<u>\$ (1.49)</u>	<u>\$ (1.14)</u>
Pro forma basic and diluted loss per share:		
Available to common stockholders before extraordinary item..	\$ (.64)	\$ (.25)
Extraordinary loss.....	(.17)	—
Available to common stockholders.....	<u>\$ (.81)</u>	<u>\$ (.25)</u>
Shares used in calculation of loss per share:		
Basic and diluted.....	17,910,673	10,109,490
Pro forma basic and diluted.....	28,552,662	24,782,535

NET2000 COMMUNICATIONS, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(Dollars in Thousands, except share amounts)

	For the three months ended	
	<u>March 31,</u>	
	<u>2000</u>	<u>1999</u>
Operating activities		
Net loss	\$ (22,965)	\$ (6,170)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	2,440	447
Allowance for doubtful accounts	289	126
Deferred stock compensation	660	20
Amortization of debt discount	292	—
Accretion of note payable	860	—
Extraordinary debt extinguishment loss	4,724	—
Changes in operating assets and liabilities:		
Accounts receivable	(1,400)	(2,332)
Other current assets	640	(422)
Other noncurrent assets	(552)	(73)
Accounts payable	1,766	(565)
Accrued expenses and other current liabilities	2,673	2,602
Other noncurrent liabilities	(59)	(2,575)
Net cash used in operating activities	<u>(10,632)</u>	<u>(8,942)</u>
Investing activities		
Acquisition of property and equipment	(22,026)	(7,941)
Restricted cash	(127)	(1)
Net cash used in investing activities	<u>(22,153)</u>	<u>(7,942)</u>
Financing activities		
Proceeds from note payable	48,567	—
Repayments on note payable	(42,412)	—
Proceeds from issuance of common stock	212,538	—
Proceeds from notes payable to related party	—	9,843
Proceeds from exercise of stock options	999	—
Repayment of capital leases	(1,182)	(624)
Net cash provided by financing activities	<u>218,510</u>	<u>9,219</u>
Net increase (decrease) in cash	185,725	(7,665)
Cash at the beginning of period	5,523	33,439
Cash at the end of period	<u>\$ 191,248</u>	<u>\$ 25,774</u>

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

Net2000 Communications, Inc.

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REPORT OF INDEPENDENT AUDITORS

Board of Directors
Net2000 Communications, Inc.

We have audited the accompanying consolidated balance sheets of Net2000 Communications, Inc. as of December 31, 1998 and 1999 and the related consolidated statements of operations, stockholders' deficit and cash flows for each of the three years in the period ended December 31, 1999. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Net2000 Communications, Inc. at December 31, 1998 and 1999 and the results of their operations and their cash flows for each of the three years in the period ended in December 31, 1999, in conformity with accounting principles generally accepted in the United States.

/s/ Ernst & Young LLP

McLean, VA
January 26, 2000

NET2000 COMMUNICATIONS, INC
CONSOLIDATED BALANCE SHEETS

ASSETS

	December 31, 1998	December 31, 1999	Pro forma December 31, 1999 (Unaudited)
Current assets:			
Cash & cash equivalents	\$ 33,439,030	\$ 5,522,935	\$ 5,522,935
Restricted cash	948,707	3,516,629	3,516,629
Accounts receivable, net of allowance for doubtful accounts of approximately \$229,000 and \$1,919,000 at December 31, 1998 and 1999, respectively	3,618,646	7,595,418	7,595,418
Other current assets	50,950	1,528,082	1,528,082
Total current assets	38,057,333	18,163,064	18,163,064
Property and equipment, net of accumulated depreciation ..	11,528,518	72,592,117	72,592,117
Other noncurrent assets	504,657	3,597,590	3,597,590
Unamortized debt discount	—	7,315,370	7,315,370
Total assets	\$ 50,090,508	\$101,668,141	\$101,668,141

LIABILITIES AND STOCKHOLDERS' (DEFICIT) EQUITY

Current liabilities:			
Accounts payable	\$ 1,402,010	\$ 791,646	\$ 791,646
Accrued expenses and other current liabilities	3,670,907	17,612,436	17,612,436
Current maturity of note payable to bank	—	41,667	41,667
Current maturities of capital lease obligation	2,422,597	3,981,133	3,981,133
Total current liabilities	7,495,514	22,426,882	22,426,882
Capital lease obligation, less current maturities	2,000,155	4,572,791	4,572,791
Related party noncurrent liabilities	4,811,381	26,427,946	26,427,946
Other noncurrent liabilities	—	215,531	215,531
Notes payable	—	41,389,549	41,389,549
Note payable to bank	—	76,389	76,389
Redeemable convertible Series A, B and C preferred stock, \$0.01 par value; 11,738,437 shares authorized, 11,738,437 and 11,738,437 issued and outstanding at December 31, 1998 and 1999, respectively	59,403,297	80,940,295	—
Stockholders' (deficit) equity:			
Common stock, \$0.01 par value; 200,000,000 shares authorized, 10,109,490 and 10,189,562 shares issued and outstanding December 31, 1998 and 1999, respectively	101,095	101,896	248,626
Additional capital	299,061	16,706,946	97,500,511
Deferred stock compensation	(162,102)	(7,002,437)	(7,002,437)
Accumulated deficit	(23,857,893)	(84,187,647)	(84,187,647)
Total stockholders' (deficit) equity	(23,619,839)	(74,381,242)	6,559,053
Total liabilities and stockholders' deficit	\$ 50,090,508	\$101,668,141	\$101,668,141

See accompanying notes.

NET2000 COMMUNICATIONS, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS

	Year Ending December 31,		
	1997	1998	1999
Revenues:			
Telecommunications	\$ 88,111	\$ 6,465,903	\$ 27,692,992
Agency commissions and other	3,456,118	2,952,999	—
Total revenues	3,544,229	9,418,902	27,692,992
Operating costs and expenses:			
Operating costs	906,999	7,888,478	22,375,261
Selling, general and administrative (exclusive of non-cash compensation expense shown below)	3,832,971	15,074,961	41,161,490
Non-cash compensation expense	—	63,054	1,645,480
Depreciation and amortization	122,437	686,670	3,865,360
Loss from operations	(1,318,178)	(14,294,261)	(41,354,599)
Other income (expenses):			
Gain on sale of consulting division	875,000	—	—
Settlement of supplier dispute	—	—	3,500,000
Miscellaneous income	7,838	3,104	91,435
Interest income	18,517	679,450	1,059,487
Interest expense	(84,666)	(155,405)	(2,089,079)
Loss before provision for income taxes	(501,489)	(13,767,112)	(38,792,756)
Provision for income taxes	—	—	—
Net loss	<u>\$ (501,489)</u>	<u>\$ (13,767,112)</u>	<u>\$ (38,792,756)</u>
Preferred stock accretion	—	(8,903,296)	(21,536,998)
Net loss available to common stockholders	<u>\$ (501,489)</u>	<u>\$ (22,670,408)</u>	<u>\$ (60,329,754)</u>
Pro forma net loss available to common shareholders			<u>\$ (38,792,756)</u>
Basic and diluted loss per share	<u>\$ (0.05)</u>	<u>\$ (2.25)</u>	<u>\$ (5.97)</u>
Pro forma basic and diluted loss per share			<u>\$ (1.57)</u>
Shares used in calculation of loss per share:			
Basic and diluted	10,000,000	10,079,793	10,113,042
Pro forma basic and diluted			24,786,087

See accompanying notes.

NET2000 COMMUNICATIONS, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' DEFICIT

	Common Stock		Additional Capital	Deferred Stock Compensation	Accumulated Deficit	Total Stockholders' Deficit
	Shares	Amount				
Balance at December 31,						
1996.....	10,000,000	\$100,000	\$ —	\$ —	\$ 159,004	\$ 259,004
Net loss	—	—	—	—	(501,489)	(501,489)
S Corp. distribution	—	—	—	—	(845,000)	(845,000)
Issuance of compensatory stock options	—	—	87,216	(87,216)	—	—
Balance at December 31,						
1997.....	10,000,000	100,000	87,216	(87,216)	(1,187,485)	(1,087,485)
Net loss	—	—	—	—	(13,767,112)	(13,767,112)
Exercise of stock options ...	109,490	1,095	73,905	—	—	75,000
Issuance of compensatory stock Options	—	—	137,940	(137,940)	—	—
Amortization of deferred stock Compensation	—	—	—	63,054	—	63,054
Accretion of Preferred Stock	—	—	—	—	(8,903,296)	(8,903,296)
Balance at December 31,						
1998.....	10,109,490	101,095	299,061	(162,102)	(23,857,893)	(23,619,839)
Net loss	—	—	—	—	(38,792,756)	(38,792,756)
Exercise of stock options ...	80,072	801	19,403	—	—	20,204
Issuance of compensatory stock Options	—	—	8,485,815	(8,485,815)	—	—
Amortization of deferred stock compensation	—	—	—	1,645,480	—	1,645,480
Issuance of Warrants	—	—	7,902,667	—	—	7,902,667
Accretion of Preferred Stock	—	—	—	—	(21,536,998)	(21,536,998)
Balance at December 31,						
1999.....	<u>10,189,562</u>	<u>\$101,896</u>	<u>\$16,706,946</u>	<u>\$(7,002,437)</u>	<u>\$(84,187,647)</u>	<u>\$(74,381,242)</u>

See accompanying notes.

NET2000 COMMUNICATIONS, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS

	Year Ended December 31,		
	1997	1998	1999
Operating activities			
Net loss	\$ (501,489)	\$(13,767,112)	\$(38,792,756)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization	122,437	686,670	3,865,360
Allowance for doubtful accounts	10,000	218,776	1,690,000
Deferred stock compensation	—	63,054	1,645,480
Amortization of debt discount			587,298
Changes in operating assets and liabilities:			
Accounts receivable	(636,255)	(2,790,822)	(5,666,774)
Other current assets	(32,783)	6,893	(1,477,132)
Other noncurrent assets	(70,316)	(426,473)	(3,092,933)
Accounts payable	312,870	1,036,086	(610,364)
Accrued expenses and other current liabilities	319,236	3,255,798	13,941,529
Other noncurrent liabilities			215,531
Net cash used in operating activities	(476,300)	(11,717,130)	(27,694,761)
Investing activities			
Acquisition of property and equipment	(87,746)	(2,031,058)	(36,147,477)
Restricted cash	—	(948,707)	(2,567,922)
Net cash used in investing activities	(87,746)	(2,979,765)	(38,715,399)
Financing activities			
Proceeds from line of credit	560,176	75,000	—
Repayments on line of credit	(120,000)	(515,176)	—
Proceeds from notes payable to shareholders'	952,143	—	—
Repayments of notes payable from shareholders' ..	(1,052,143)	—	—
Proceeds from note payable to bank			125,000
Repayments on note payable to bank			(6,944)
Proceeds from issuance of common stock	—	—	—
Proceeds from notes payable to related party	—	—	41,389,549
Proceeds from exercise of stock options	—	75,000	20,204
Proceeds from sale of redeemable convertible preferred stock	3,500,000	47,000,001	—
S corporation distributions to shareholders'	(845,000)	—	—
Repayment of capital leases	(86,018)	(846,703)	(3,033,744)
Net cash provided by financing activities	2,909,158	45,788,122	38,494,065
Net increase (decrease) in cash	2,345,112	31,091,227	(27,916,095)
Cash at the beginning of period	2,691	2,347,803	33,439,030
Cash at the end of period	<u>\$ 2,347,803</u>	<u>\$ 33,439,030</u>	<u>\$ 5,522,935</u>

See accompanying notes.

NET2000 COMMUNICATIONS, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Organization

Net2000 Group, Inc. was formed on June 18, 1993 under the laws of the State of Virginia and on October 23, 1997, was reincorporated in the state of Delaware. On November 1, 1998, Net2000 Group, Inc. entered into a recapitalization transaction whereby it exchanged all of its stock with Net2000 Communications, Inc. As a result of the exchange, Net2000 Group Inc. became a wholly owned subsidiary of Net2000 Communications, Inc. and accordingly, the financial statements of Net2000 Communications, Inc. include the financial position and results of operations of Net2000 Group, Inc. for all periods prior to the transaction as the successor to Net2000 Group, Inc. Subsequent to the transaction, the ownership interest of Net2000 Communications, Inc. is identical to that of Net2000 Group, Inc. prior to the exchange of stock. References to "the Company" represent Net2000 Group, Inc. for periods prior to the exchange and Net2000 Communications, Inc. for all subsequent periods.

Subsequent to the transaction, seven wholly-owned subsidiaries were created to address specific organizational functions, including Net2000 Communications Holdings, Inc., Net2000 Investments, Inc., Net2000 Communications Group, Inc., Net2000 Communications Capital Equipment, Inc., Net2000 Communications Real Estate, Inc., and Net2000 Communications of Virginia, LLC. In addition, Net2000 Group, Inc. changed its name to Net2000 Communications Services, Inc.

During 1998, the Company changed its primary business activity from the selling of network services of Bell Atlantic on a commission basis to the resale of local, long-distance, and data services. In 1999, the Company began constructing and operating a packet- and circuit- switched network.

2. Summary of Significant Accounting Policies

Principles of Consolidation

The consolidated financial statements include the accounts of the Company and all wholly owned subsidiaries. All material intercompany transactions and balances have been eliminated in consolidation.

Use of Estimates

The preparation of consolidated financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Cash and Cash Equivalents

For purposes of the statements of cash flows, the Company considers all highly liquid investments with a maturity of three months or less at the time of purchase to be cash equivalents. On December 31, 1997, 1998 and 1999, the Company had investments of \$2,335,626, \$32,870,179 and \$5,992,560, respectively, in securities with maturities of less than three months which are included in cash and cash equivalents.

NET2000 COMMUNICATIONS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Stock Compensation

The Company accounts for its stock-based compensation in accordance with APB No. 25, "Accounting for Stock Issued to Employees" ("APB 25") using the intrinsic value method. Stock-based compensation related to stock options granted to non-employees is accounted for using the fair value method in accordance with Statement of Financial Accounting Standard No. 123 "Accounting for Stock-Based Compensation" (SFAS No. 123). The Company has made pro forma disclosures required by SFAS No. 123.

Revenue Recognition

The Company recognizes telecommunications revenues over the period in which the services are provided. Monthly recurring charges include fees paid by customers for lines in service and additional features on those lines. Usage charges are billed in arrears and are fully earned as usage is accrued on the provider's network. Non-recurring revenue, typically for installation fees for new customer lines, is recognized to the extent of direct selling costs incurred, with any excess deferred and amortized to income over the remaining contract term. Commission revenues on agency sales are recognized when the product has been installed or accepted for installation. Consulting revenue is recognized when earned.

Fair Value of Financial Instruments

The Company considers the recorded value of its financial assets and liabilities, consisting primarily of cash and cash equivalents, accounts receivable, accounts payable, accrued expenses and debt, to approximate the fair value of the respective assets and liabilities at December 31, 1997, 1998 and 1999.

Advertising Costs

All advertising costs are expensed as incurred.

Comprehensive Income

For the years ended December 31, 1997, 1998 and 1999 the Company's net income reflects comprehensive income, accordingly, no additional disclosure is presented.

Valuation Accounts

A summary of the Company's allowance for bad debts is as follows:

Balance at December 31, 1997	\$ 10,000
Additions charged to expense	219,000
Accounts receivable written-off	—
Balance at December 31, 1998	229,000
Additions charged to expense	701,000
Additions from settlement (see Note 11)	1,500,000
Accounts receivable written-off	(511,000)
Balance at December 31, 1999	<u>\$1,919,000</u>

NET2000 COMMUNICATIONS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Impairment of Long-Lived Assets

The Company assesses the impairment of long-lived assets in accordance with Statement of Financial Accounting Standards No. 121, Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed of ("SFAS 121"). SFAS 121 requires impairment losses to be recognized for long-lived assets when indicators of impairment are present and the undiscounted cash flows are not sufficient to recover the assets' carrying amount. The impairment loss of these assets is measured by comparing the carrying amount of the asset to its fair value, with any excess of carrying value over fair value written off. Fair value is based on market prices where available, an estimate of market value, or determined by various valuation techniques including discounted cash flow.

3. Net Loss per Common Share

Basic and diluted net loss per common share is calculated by dividing the net loss by the weighted average number of common shares outstanding. Pro forma net loss per share is computed using the weighted average number of shares used for basic and diluted per share amounts and the weighted average redeemable convertible preferred stock outstanding as if such shares were converted to common stock at the time of issuance.

	For the Year Ending December 31,		
	1997	1998	1999
Net loss	\$ (501,489)	\$(13,767,112)	\$(38,792,756)
Preferred stock accretion	—	(8,903,296)	(21,536,998)
Net loss available to common stockholders	<u>\$ (501,489)</u>	<u>\$(22,670,408)</u>	<u>\$(60,329,754)</u>
Pro forma net loss available to common shareholders	<u>—</u>	<u>—</u>	<u>(38,792,756)</u>
Weighted average of common shares, denominator for basic loss per share	10,000,000	10,079,793	10,113,042
Effect of dilutive securities:			
Stock options	—	—	—
Warrants	—	—	—
Convertible stock	—	—	—
Denominator for diluted loss per share	<u>10,000,000</u>	<u>10,079,793</u>	<u>10,113,042</u>
Pro forma adjustment for redeemable preferred stock	—	—	14,673,045
Pro forma denominator for basic and diluted loss per share	<u>—</u>	<u>—</u>	<u>24,786,087</u>

4. Property and Equipment

Property and equipment, including leasehold improvements, are recorded at cost. Depreciation is calculated using the straight-line method over the estimated useful life ranging between three and eight years. Leasehold improvements are amortized over the lesser of the related lease term or the useful life. Interest capitalized and included in the cost of switch equipment totaled \$790,257 for the year ended December 31, 1999.

NET2000 COMMUNICATIONS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The Company capitalizes certain software purchases and implementation costs in accordance with FAS 86.

Construction in process includes equipment and other costs for switches which are not complete as of the balance sheet dates. When construction of a switch is complete the balance of the assets are transferred to switch equipment, and depreciated in accordance with the Company's policy.

Property and equipment consist of the following:

	December 31,	
	1998	1999
Software	\$ 1,039,789	\$11,977,579
Computer equipment	5,241,808	9,005,331
Office furniture and equipment	301,213	4,950,963
Leasehold improvements	487,292	7,972,454
Vehicles	—	295,014
Switch equipment	—	21,958,325
Construction in process	5,290,872	21,129,988
	<u>12,360,974</u>	<u>77,289,654</u>
Less accumulated depreciation and amortization	<u>(832,456)</u>	<u>(4,697,537)</u>
	<u>\$11,528,518</u>	<u>\$72,592,117</u>

5. Debt

Secured Credit Facilities

On November 2, 1998, Net2000 Communications Group, Inc., a subsidiary of the Company (see Note 1, Organization) entered into credit facilities with Northern Telecom, Inc. ("Nortel"), the Series C Preferred shareholder (see Note 7), in the aggregate principal amount of \$140 million. The agreement consisted of a Term Loan Facility in an aggregate principal amount of \$120 million and a Revolving Loan Facility with availability of \$20 million (together, the "Credit Agreement").

On July 30, 1999, the Company amended the Credit Agreement to restructure the existing \$140 million senior secured facility to provide for additional working capital availability. The revised agreement provides for a Senior Term Loan Facility in the aggregate principal amount of \$75 million, and a Senior Discount Note with a face amount of \$75 million. The Senior Term Loan Facility may only be used to purchase Nortel goods and services. The Senior Discount Note may be used for general corporate purposes. The Senior Term Loan Facility is secured by a first priority perfected security interest in or first priority lien on all present and future assets of the Company. The Senior Discount Note is unsecured. Interest on the Senior Term Loan Facility will accrue at a Prime Rate Loan Rate plus 3.5% or Eurodollar Loan Rate plus 4.5% as defined in the terms of the amended Credit Agreement (12% at December 31, 1999). The Senior Discount Note will bear interest at the Treasury rate plus 8% per annum (14.45% at December 31, 1999). Repayment of accrued interest on the Prime Rate Loan Rate is on each quarterly due date. Repayment of accrued interest on a Eurodollar loan is on the last day of the interest period, and in the case of interest periods greater than three months, at three month intervals after the first day of such interest period. Nortel is required to provide access to the credit facilities through November 2, 2001 (commitment termination date). Beginning the quarter after the commitment termination date, the Company is required to begin repayment of the Senior Term Loan in twenty

NET2000 COMMUNICATIONS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

quarterly installments. The Senior Discount Note will accrue interest semi-annually in arrears until the fifth anniversary of the issuance date, after which interest will be due semi-annually in arrears, with the principal due on July 30, 2009. The Senior Term Loan Facility has certain mandatory prepayment options as defined in the agreement. The Senior Discount Note has certain prepayment penalties, call limitations and mandatory redemption features as defined in the agreement. If borrowings have not exceeded approximately \$44 million prior to either the sale of the Note to a third party or July 31, 2000, the loan will automatically increase to that level, and any additional borrowings will be prohibited. The amended Credit Agreement contains covenants which require the Company to meet certain financial measures in addition to other non financial covenants.

In connection with the Credit Agreement, the Company issued to Nortel detachable warrants to acquire 1,119,930 shares of common stock at \$0.008 per share. The fair value of the warrants, \$7.9 million, is treated as a discount on the Company's debt and amortized as additional interest expense over the lives of the respective debt instruments. The Company used the Black-Scholes pricing model to estimate the fair value of the warrants with the following assumptions: estimated fair value of the common stock of \$7.06 per share; dividend yield of 0%; risk free interest rate of 6.5%; volatility of 25%; and expected life of five years, consistent with the assumptions used for the stock option disclosures required under SFAS 123 and included in Note 7 to the financial statements.

On December 23, 1999, the Company's \$75 million Senior Term Loan Facility was purchased and assumed from Nortel by Goldman Sachs Credit Partners L.P. and Toronto Dominion (Texas), Inc. The First Amendment contains terms which are substantially the same as those in the Amended and Restated Credit Agreement dated as of July 30, 1999. In addition, the Company has access to incremental borrowing capacity up to \$50 million, which will carry identical terms and covenants as applicable under the First Amendment and will be available, subject to certain restrictions, after \$60 million has been drawn under the original loans. No borrowing under the incremental tranche can cause there to exist a default on a pro forma basis.

As an additional covenant to the First Amendment, the Company must sell to Nortel an aggregate of \$75 million in principal amount at the stated maturity of the Senior Discount Note on or prior to January 7, 2000. On January 7, 2000, the Company sold an aggregate of \$75 million in principal amount of the Senior Discount Note and proceeds of \$41.5 million were received. As a result of this transaction, both the Senior Term Loan Facility and Senior Discount Note are recorded as a liability by Net2000 Communications Group, Inc., a subsidiary of the Company.

As of December 31, 1999, the Company paid all accrued interest and commitment fee amounts outstanding under the Senior Term Loan Facility.

At December 31, 1998 and 1999, the Company had purchased \$4.8 million and \$26.4 million, respectively, of Nortel goods and services which have been classified as a noncurrent liability as these purchases were subsequently financed under the credit facility. At December 31, 1999, the Company had \$41.4 million and \$0 outstanding under the Senior Term Loan Facility and Senior Discount Note, respectively.

Other Debt

On September 20, 1999, the Company entered into a term loan agreement with a bank for a principal amount of \$125,000 for the purchase of Company vehicles. The agreement calls for repayment over 36 months at an annual interest rate of 8.75%. Availability of the loan to the Company occurred on October 6, 1999.

NET2000 COMMUNICATIONS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Maturities of notes payable outstanding as of December 31, 1999 are as follows:

<u>Fiscal Year</u>	
2000.....	\$ 41,667
2001.....	1,593,775
2002.....	6,243,154
2003.....	6,725,802
2004.....	8,795,279
Thereafter.....	<u>18,107,928</u>
Total notes payable.....	<u>\$41,507,605</u>

The Company paid interest of \$52,410, \$173,058, and \$2,089,079 related to the notes payable and capital leases in the years ended December 31, 1997 and 1998, and 1999, respectively.

Letters of Credit

The Company maintains irrevocable letters of credit with four separate vendors, which are disclosed as restricted cash on the balance sheet. The first letter of credit, in the amount of \$900,000, has a two year term expiring on September 30, 2000 and serves as an advanced security deposit in connection with the financing of certain billing system equipment under capital lease. This letter of credit was amended on October 6, 1999 for an additional amount of \$984,289, which represents an advanced security deposit in connection with the financing of financial and operational support system hardware, software and services under capital lease. The additional amount has a three year term expiring on October 31, 2002. The term of the original \$900,000 amount was extended to February 28, 2002. The second letter of credit for \$730,969 has a seven year term expiring on June 10, 2006, and represents a deposit in support of the Company's obligations under an office space lease agreement. The third letter of credit for \$598,304 has a ten year term expiring on November 02, 2009, and represents a deposit in support of the Company's obligations under a lease agreement for its New York switch facility. The fourth letter of credit for \$291,477 has a ten year term expiring on December 27, 2009, and represents a deposit in support of the Company's obligations under a lease agreement for its Boston switch facility. The letters of credit are fully collateralized by certificates of deposits maintained with a bank, with maturities ranging from 90 days to one year, and with stated interest rates ranging from 3.19% to 5.51%.

Capital Leases

The Company currently leases office furniture and equipment under non-cancelable capital leases. The Company had \$5,366,972 and \$12,552,402 of assets held under capital leases at December 31, 1998 and 1999, respectively. Amortization and depreciation related to capital leased equipment is included in depreciation and amortization expense.

NET2000 COMMUNICATIONS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The future minimum lease payments under non-cancelable capital leases at December 31, 1999 are as follows:

<u>Fiscal Year</u>	
2000	\$4,803,974
2001	3,127,522
2002	1,977,757
2003	15,851
Total minimum lease payments	\$9,925,104
Less amount representing interest	1,371,180
Present value of minimum lease payments	8,553,924
Less current portion of capital lease obligation	3,981,133
Long term portion of capital lease obligation	<u>\$4,572,791</u>

6. Taxes

The Company accounts for taxes under Statement of Financial Accounting Standards No. 109, Accounting for Income Taxes ("SFAS 109"). Under SFAS 109, deferred tax liabilities and assets are determined based on the difference between the financial statement and tax basis of assets and liabilities using enacted rates expected to be in effect during the year in which the differences reverse.

For periods prior to October 31, 1997, the Company and its stockholders were taxed as an S Corporation under the Internal Revenue Code. Under the provisions of the tax code, the Company's stockholders include their pro rata share of the Company's income in their personal income tax returns. Accordingly, the Company was not subject to Federal or state income taxes during that period. On October 31, 1997, the Company sold Redeemable Convertible Series A Preferred Stock, which disqualified the S corporation election. From November 1, 1997 forward, the Company has been taxed as a C corporation.

At December 31, 1999, the Company had net operating losses of approximately \$51.5 million. The timing and manner in which the operating loss carryforward may be utilized in any year by the Company will be limited to the Company's ability to generate future earnings and may be limited upon a change in ownership. Current net operating loss carryforwards will begin expiring substantially in 2018. As the Company has not generated earnings and no assurance can be made of future earnings needed to utilize these net operating losses, a valuation allowance in the amount of the net deferred tax asset has been recorded. The valuation allowance increased \$14,054,251 from December 31, 1998 to December 31, 1999.

NET2000 COMMUNICATIONS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

At December 31, 1998 and 1999, deferred taxes consist of:

	<u>December 31,</u>	
	<u>1998</u>	<u>1999</u>
Tax Liability		
Cash to accrual adjustment	\$ (85,461)	\$ (56,974)
Depreciation	(488,267)	(1,219,953)
Capital lease	(93,753)	(93,745)
Tax Assets		
Net operating loss carryforward	5,613,532	19,572,412
Reserves	—	204,528
Allowance for bad debts	86,843	728,452
Deferred revenue	178,843	81,647
Stock options	49,348	86,222
Other	6,350	19,097
	<u>5,267,435</u>	<u>19,321,686</u>
Valuation allowance	<u>(5,267,435)</u>	<u>(19,321,686)</u>
Net deferred tax asset	<u>\$ —</u>	<u>\$ —</u>

The Company paid no income taxes for the years ended December 31, 1996, 1997, and 1998 or for the nine months ended September 30, 1999.

A summary of the items which cause the recorded income taxes to differ from the statutory Federal income tax rate is as follows:

	<u>Year Ended</u> <u>December 31, 1997</u>	<u>Year Ended</u> <u>December 31, 1998</u>	<u>Year Ended</u> <u>December 31, 1999</u>
Tax expense (benefit) at statutory Federal rate	\$(170,506)	\$(4,680,818)	\$(13,189,537)
Effect of:			
State income tax, net	(30,084)	(826,026)	(1,466,144)
Stock option compensation	—	24,591	544,972
Other	66,485	348,920	56,458
Increase in valuation allowance	<u>134,105</u>	<u>5,133,333</u>	<u>14,054,251</u>
Income tax expense	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>

7. Equity

Equity Transactions

On October 23, 1997, the Company reincorporated in Delaware pursuant to a statutory merger of the Virginia corporation into a newly formed Delaware corporation. On the merger date, each share of the prior Company's \$1 par value common stock was exchanged for

NET2000 COMMUNICATIONS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

500 shares of \$0.01 par value common stock of the new Company. This transaction was accounted for as a stock split and the accompanying financial statements have been restated to reflect this transaction for all periods presented.

On October 31, 1997, the Company sold 4,087,592 shares of Redeemable Convertible Series A Preferred Stock ("Series A Preferred Stock or Share") for \$0.856 per share. On May 19, 1998 the Company sold 5,510,535 shares of Redeemable Convertible Series B Preferred Stock ("Series B Preferred Stock or Share") for \$3.085 per share. Both Series A and B Preferred Shares are convertible into shares of common stock at a rate of 1:1.25. Both Preferred issues have mandatory conversion in the event of an initial public offering. The Series A and B Preferred Stock accrue a dividend of \$0.069 and \$0.309 per annum, respectively, payable if and when declared, and are subject to certain adjustments and limitations as defined in the purchase agreement. Should a qualifying event (initial public offering or acquisition) be consummated prior to the third anniversary of the Series A and B original issue dates, no dividends, whether or not accrued, will be payable. At December 31, 1997, 1998 and 1999, dividends in arrears were \$46,667, \$1,374,868 and \$3,359,667, respectively. Voting rights of both Preferred issues are on an as if converted basis. The Series A and B Preferred Shares have redemption rights at their respective fair values subject to certain limitations, and certain antidilutive and future registration rights as defined in the purchase agreement and other agreements. The Series B Preferred Stock ranks senior and prior to the Series A Preferred Stock as to dividends and upon a liquidation event as defined.

On May 19, 1998, the Board of Directors and stockholders of the Company approved a 4 for 1 stock split of the Company's \$0.01 par value voting common stock. All references in the accompanying financial statements to the number of shares of common stock have been restated to reflect the split.

On November 1, 1998 and pursuant to the recapitalization of the Company discussed in Note 1-Organization, Net2000 Group, Inc. exchanged common shares with the stockholders of the new parent company, Net2000 Communications, Inc., in a one-for-one transfer. In addition, the number of authorized shares of common stock was increased from 28 million to 30 million.

On November 2, 1998, the Company sold 2,140,310 shares of Redeemable Convertible Series C Preferred Stock ("Series C Preferred Stock or Share") for \$14.017 per share. Certain terms and conditions of the Series A and B agreements were amended and restated as a result of the Series C Preferred Stock issuance and are reflected herein. Each Series C Preferred Share is convertible into shares of common stock at a rate of 1:1.25. The Series C Preferred Stock has a mandatory conversion in the event of an initial public offering which has gross proceeds of at least \$50 million and at an IPO price of at least \$6.40 per share of common stock. The Series C Preferred Stock accrues a dividend of \$1.121 per annum, payable if and when declared, and subject to certain adjustments and limitations as defined in the purchase agreement. At December 31, 1998 and 1999, dividends in arrears were \$399,881 and \$2,799,167, respectively. Voting rights of the Series C Preferred Shares are on an as if converted basis. The Series C Preferred Shares have redemption rights at their fair values beginning on the later of one year after the maturity of any high yield debt issued by the Company prior to December 31, 1999 or November 2, 2004; or in the case of an acquisition event, the 30 day period commencing upon the receipt of notice of the acquisition event. The Series C Preferred Shares have certain antidilutive and future registration rights as defined in the agreement. The Series C Preferred Stock ranks senior and prior to the Series B Stock as to dividends and upon a liquidation event as defined in the Company's certificate of incorporation, as amended.

NET2000 COMMUNICATIONS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

On November 10, 1999, the number of authorized shares of common stock was increased from 30 million to 200 million, and the number of authorized shares of preferred stock was reduced from 12,000,000 to 11,738,437. In addition, the Board of Directors authorized the designation and issuance of up to 60 million shares of Undesignated Capital Stock, in one or more series, at \$.01 par value per share. The Board of Directors can establish the preferences, rights, and privileges of each series, which may be superior to the rights of the common stock.

Effective January 12, 2000, the Board of Directors and stockholders of the Company approved a stock dividend of 0.25 shares for each outstanding share of common stock. All references in the accompanying financial statements to the number of shares of common stock and per share amounts have been restated to reflect the dividend.

Stock Option Plan

During 1997, the Company adopted a stock option plan (the "Option Plan") which allows the Company to grant up to 1,678,830 Common Stock options to employees, board members and others who contribute materially to the success of the Company. Individual grants generally become exercisable ratably over a period of four years from the grant date. The contractual term of the options is 10 years from the date of grant. In November 1998, the number of stock options reserved under the Option Plan was increased to 3,379,436. In September 1999, the number of stock options reserved under the Option Plan was increased to 4,373,388.

On November 10, 1999, the Company adopted a stock incentive plan (the "Incentive Plan") which authorizes the grant of stock options, stock appreciation rights, stock awards, phantom stock, and performance awards. As of December 31, 1999, there were 4,375,000 shares reserved under the Incentive Plan, of which 343,750 options to purchase common stock were issued and outstanding.

Also on November 10, 1999, the Company adopted an employee stock purchase plan (the "ESPP") which provides for the issuance of up to 1,875,000 shares of common stock. The ESPP is intended to qualify under Section 423 of the Internal Revenue Code and provides the Company's employees with an opportunity to purchase shares of common stock through payroll deductions.

The Company determines the fair value of its common stock used in its accounting for stock option grants based on both arms length equity transactions and independent valuations obtained during the period from the plan's inception to December 31, 1999.

In December 1997, the Company issued 1,282,595 options to certain employees at an exercise price of \$0.14 which was below the fair market value at the time of the option grant. During 1998, the Company issued 1,689,188 options to certain employees at a weighted average exercise price of \$0.62. The exercise price for a portion of these option grants was below the fair market value of the common stock at the grant date. During 1999, the Company issued 2,349,369 options to certain employees at a weighted average exercise price of \$4.38, which was below the fair market value at the time of the option grant. Accordingly, the Company recorded deferred stock compensation of \$87,216, \$137,940 and \$8,485,815 in 1997, 1998 and 1999, respectively.

During 1998 and 1999, amortization expense for stock based compensation was \$63,054 and \$1,645,480, respectively, and relates to employees whose salaries are included in selling, general and administrative expense.

NET2000 COMMUNICATIONS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Additional information with respect to the Option Plan is summarized as follows:

	Years Ended December 31,					
	1997		1998		1999	
	Shares	Weighted-Average Exercise Price	Shares	Weighted-Average Exercise Price	Shares	Weighted-Average Exercise Price
Outstanding at beginning of period	—	\$ —	1,282,595	\$0.14	2,559,111	\$0.42
Options granted	1,282,595	0.14	1,689,188	0.62	2,349,369	4.38
Options exercised	—	—	(109,490)	0.69	(80,072)	0.25
Options canceled or expired	—	—	(303,182)	0.29	(530,488)	2.59
Outstanding at end of period	<u>1,282,595</u>	<u>\$0.14</u>	<u>2,559,111</u>	<u>\$0.42</u>	<u>4,297,920</u>	<u>\$2.33</u>
Options exercisable at end of period	<u>62,956</u>	<u>\$0.14</u>	<u>838,592</u>	<u>\$0.32</u>	<u>1,559,371</u>	<u>\$0.82</u>

The following table summarizes information about stock options outstanding at December 31, 1999:

Range of Exercise Price	December 31, 1999 Options Outstanding			December 31, 1999 Options Exercisable	
	Number Outstanding	Weighted-Average Remaining Contractual Life (In Years)	Weighted-Average Exercise Price	Number Exercisable	Weighted-Average Exercise Price
Less than \$0.80	2,159,328	8.16	\$0.37	1,317,816	\$0.36
\$0.81 to \$3.20	31,716	7.79	1.58	27,751	1.58
\$3.21 to \$5.60	2,106,876	9.65	4.35	213,804	3.53
	<u>4,297,920</u>	<u>8.89</u>	<u>\$2.33</u>	<u>1,559,371</u>	<u>\$0.82</u>

Had compensation expense related to the stock option plans been determined based on the fair value at the option grant dates consistent with the provisions of SFAS No. 123, the Company's pro forma net loss and earnings per share would have been as follows:

	Year Ended December 31,		
	1997	1998	1999
Net loss available to common shareholders — pro forma	\$(504,453)	\$(22,805,690)	\$(61,384,928)
Pro forma net loss per share	\$ (0.05)	\$ (2.26)	\$ (6.07)

The effect of applying SFAS 123 on the years ended December 31, 1997, 1998 and 1999 pro forma net loss as stated above is not necessarily representative of the effects on reported net loss for future years due to, among other things, the vesting period of the stock options and the fair value of additional stock options granted in future years.

The fair value of each option grant is estimated on the date of grant using the Black-Scholes option-pricing fair value model with the following weighted-average assumptions used for all grants: volatility of 25%; dividend yield of 0%; expected life of five years; and risk-free interest rate of 6.5%. The weighted average fair values of the options granted in 1997 with a stock price equal to the exercise price is \$0.21. The weighted average fair values of the options granted in 1998 with a stock price equal to the exercise price, with a stock price less than the exercise price and with a stock price greater than the exercise price are \$3.40, \$0.51 and \$0.59 per share,

NET2000 COMMUNICATIONS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

respectively. The weighted average fair values of the options granted in 1999 with a stock price equal to the exercise price and with a stock price greater than the exercise price are \$3.40 and \$6.50 per share, respectively.

Shareholder Distributions

During 1997, the Company's board of directors approved and paid an S Corporation distribution to shareholders in the amount of \$845,000.

Accretion to Redemption Value of Class A, Class B, and C Preferred Stock

For the years ended December 31, 1998 and 1999, the Company has accreted its preferred stock to their redemption value based on the fair market value of the Company using the effective interest method. The Company recorded accretion totaling \$8,903,296 and \$21,536,998 for the years ended December 31, 1998 and 1999, respectively.

8. Commitments

Operating Leases

The Company currently leases office space and equipment under non-cancelable operating leases. Rent expense for the years ended December 31, 1997, 1998 and 1999 was \$384,919, \$894,273, and \$2,804,250, respectively.

On May 26, 1999, the Company entered into a facilities lease agreement for new headquarters office space and switch space. The leased premises consists of 126,276 of rentable square feet. The lease term date for the office space leased premises commenced on November 22, 1999. The lease term date for the switch space leased premises begins on the earlier of 30 days after substantial completion of construction on the space or the date the Company has commenced beneficial occupancy of the space; currently anticipated to in late January 2000. The lease term for the office space expires on December 31, 2006. The lease term for the switch space expires on the tenth anniversary of the switch space rent commencement date. Base annual rent for all leased premises is \$2,910,764 for years one through five, and \$3,422,281 for years six through ten, subject to additional rents for the Company's proportional share of real property taxes and common expenses as defined in the lease agreement.

The future minimum lease payments under non-cancelable operating leases at December 31, 1999 are as follows:

<u>Fiscal Year</u>	
2000	\$ 6,629,361
2001	6,488,404
2002	6,113,818
2003	5,964,002
2004	5,590,682
Thereafter	24,505,972
Total	\$55,298,239

The Company has executed employment agreements with certain key executives under which the Company is required to pay base salaries totaling \$1,495,200 for the year ending December 31, 2000.

NET2000 COMMUNICATIONS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

9. Sale of Consulting Division

On October 27, 1997, the Company sold its consulting business to a third-party purchaser in exchange for \$875,000 in cash and a 20% equity interest in the company into which the consulting business was merged. The Company recorded its investment in this company at a nominal value and accounts for it using the cost method. The Company and the purchaser entered into an agreement whereby either party can require the sale of the remaining 20% of the business to the other entity at any date after December 31, 1998. On July 29, 1999, the purchaser exercised its option to acquire the remaining 20% of the business for \$64,448.

10. Related Party Transactions

The Company maintains key-man life insurance policies for each of six officers with aggregate coverage of \$34,000,000. The Company paid \$13,672, \$35,268 and \$36,714 of premiums related to these policies during the year ended December 31, 1997, 1998 and 1999, respectively.

11. Significant Customers and Suppliers

The Company derived a significant portion of its sales from two major customers during 1997 and 1998, and 1999. For the years ended December 31, 1997 and 1998 and 1999, the Company recorded sales of approximately \$2,795,000, \$2,861,000, and \$0 respectively, from these customers. As of December 31, 1998 and 1999 the Company had no accounts receivable resulting from sales to these major customers.

On July 30, 1999, the Company and a major supplier of local telecommunications resale services settled a dispute over claims that certain acts and omissions by the supplier had an adverse impact on the Company's ability to resell and earn revenue from the resale of local telecommunication services. Net settlement proceeds to the Company totaled \$5 million, of which \$1.5 million was utilized to offset impaired accounts receivable due to the dispute and 3.5 million was recorded as a gain. In addition, the Company will be entitled to compensation for future lost usage, which is recognized as earned as the usage is accrued on the supplier's network, and is calculated in accordance with the terms of the agreement, subject to audit by the supplier, and for a period commencing subsequent to the settlement date and for as long as the Company and supplier are engaged in the resale of local telecommunication services.

12. Defined Contribution Plan

The Company maintains a defined contribution plan (401(k) plan) covering all employees who meet certain eligibility requirements. Participants may make contributions to the plan up to 15% of their compensation (as defined) up to the maximum established by law. The Company may make a matching contribution of an amount to be determined by the Board of Directors, but subject to a maximum of 6% of compensation contributed by each participant. Company contributions vest ratably over four years. Company contributions to the plan as of December 31, 1998 and 1999 were \$74,943 and \$171,380, respectively.

13. Pro Forma Adjustments (Unaudited)

The pro forma balance sheet as of December 31, 1999 reflects the conversion of all classes of the Company's preferred stock into common stock as of that date. The pro forma net loss per share reflects the conversion of all classes of the Company's preferred stock as of the respective date of issuance.

NET2000 COMMUNICATIONS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

14. Events Subsequent to Auditors Report (Unaudited)

On February 14, 2000, the Company entered into a non-binding letter of intent with PSINet, Inc. The Company subsequently determined that it is not probable that a definitive agreement will result from the letter of intent.

On February 14, 2000, the Company entered into a non-binding letter of intent with Williams Communications, Inc. (Williams) under which the Company proposes to purchase a minimum of \$128 million of telecommunications services over a 20 year period. These services include services on the Williams fiber optic lines within cities and between cities, advanced data services, and collocation services that will be made available on the Williams fiber optic network. This arrangement will include the purchase by Williams of \$15 million of equity in our company at the fair market value at the signing of the definitive agreement of which \$5 million will be in cash and \$10 million will be in credits for services. This equity will be non-voting and non-transferable for a period of one year.

In February 2000, an officer of the Company exercised 158,982 stock options for \$444,441.

15. Selected Quarterly Information (Unaudited)

	<u>1st Quarter</u>	<u>2nd Quarter</u>	<u>3rd Quarter</u>	<u>4th Quarter</u>
1997				
Revenues	\$ 697,691	\$ 714,178	\$ 956,780	\$ 1,175,580
Operating loss	(18,057)	(243,826)	(207,462)	(848,833)
Net (loss) income	(27,226)	(256,650)	(217,980)	367
1998				
Revenues	\$ 1,652,033	\$ 2,217,693	\$ 2,048,232	\$ 3,500,944
Operating loss	(994,529)	(2,479,382)	(4,832,126)	(5,988,224)
Net loss	(985,860)	(2,398,776)	(4,677,273)	(5,705,203)
1999				
Revenues	\$ 5,056,729	\$ 6,031,126	\$ 7,581,941	\$ 9,023,156
Operating loss	(6,451,190)	(8,647,418)	(10,373,846)	(15,882,145)
Net loss	(6,169,939)	(8,544,731)	(7,318,718)	(16,759,368)

EXHIBIT D

MANAGERIAL AND TECHNICAL QUALIFICATIONS

Net2000 began operations in 1993 as a sales agent for Bell Atlantic. After quickly establishing a reputation for superior service and an expert sales staff, Net2000 became Bell Atlantic's No. 1 authorized distributor from 1995 through 1998. In June 1998, Net2000 became an independent competitive local exchange carrier and integrated communications provider offering a full complement of both local and long-distance services.

Charlie Thomas, Chief Executive Officer

Charlie Thomas has over 15 years of telecommunications industry experience. He spent most of his career in sales and marketing positions with IBM and Bell Atlantic. At Bell Atlantic, Thomas progressed through the ranks and was the #1 salesperson in the company each year between 1989 and 1992. He has worked in various capacities with a variety of markets and products—most recently having directed a team in Bell Atlantic's National Accounts Group. Thomas also co-founded, grew and sold N2N Communications (an Internet services provider).

Thomas is the founder and CEO of Net2000 Communications. He is a graduate of the University of Virginia, with a B.A. and B.S. in Computer Science. He serves on the Board of Directors for the Northern Virginia Technology Council (NVTC) and was a finalist for the Ernst & Young Entrepreneur of the Year in 1997, 1998, and 1999.

Clyde A. Heintzelman, President

Clyde Heintzelman has the day to day responsibility of building Net2000 to ensure success in the competitive marketplace. Clyde has been Net2000's president since November 1999 and a director since March 1997. He is recognized as a telecommunications and Internet leader with over 25 years of experience in management, marketing and sales. Prior to joining Net2000, Clyde served as president and chief executive officer of SAVVIS Communications Corporation, a national Tier I Internet service provider. Before SAVVIS, Clyde served as chief operating officer and president of DIGEX, another Tier I national ISP that was acquired by Intermedia Communications in July 1996. Under Clyde's management, DIGEX expanded its Internet access services into over 150 markets nationwide and increased revenues from \$1.5 million to \$52 million in just three years. Prior to DIGEX, Clyde served as general manager of sales and marketing, for Bell Atlantic Directory Services, where he directed the marketing and sales programs for a division of the company with 2,300 employees and annual revenues of \$1.2 billion. His experience with Bell Atlantic also included vice president of sales and marketing of the C&P Telephone Companies, president and CEO of Bell Atlanticom, and general manager of Bell Atlantic Federal Systems. Clyde earned a BA in Marketing at the University of Delaware, and attended graduate school at Wharton, University of Pittsburgh, and University of Michigan.

Mark Mendes, Chief Operating Officer and Secretary

Mark Mendes has 14 solid years of telecommunications operating experience. Prior to joining Net2000 Communications, he was the chief operating officer for US Watts—a public long distance carrier. From 1995 to 1997, Mendes was the vice president of services and technology at Access Teleconferencing International—which has since become Vialog—a conferencing company based in Reston, Virginia. He served as the vice president of InterNet Communication Services, a prepaid long distance carrier based in Rochester, New York, from 1993 to 1995. He has also been the director of network development and engineering at FiberNet (1992-1993), a competitive access provider in western New York, which was sold to MFS. From 1985 to 1992, Mendes worked for Rochester Telephone (now Frontier) in various management positions, with broad responsibility for all aspects of operations. He received both a B.S. in Industrial Engineering and an MBA in Finance and MIS from Syracuse University.

Don Clarke, Chief Financial Officer & Treasurer

Don Clarke brings over 18 years of executive financial experience to Net2000 Communications. Prior to joining Net2000, he was the president and chief financial officer of Plexsys International—a provider of wireless infrastructure equipment, primarily to developing countries. At Plexsys, Clarke was responsible for all financial functions, as well as overseeing the day to day operations of engineering, manufacturing, development, program management, customer service and field engineering. Clarke also served as vice president and chief financial officer to Intelicom Solutions—which has since become CSC Intelicom, a subsidiary of Computer Sciences Corporation—a worldwide provider of specialized software solutions, primarily to local telecommunication providers. He was a key player in the successful creation and execution of Intelicom's business strategy—which yielded a tripling of revenues in three years. He was also instrumental in the sale of Intelicom to Computer Sciences Corporation. Clarke began his career at Price Waterhouse, where he worked on their largest telecommunications client—MCI Communications. He is a CPA and holds a B.S. degree in Accounting from Virginia Tech.

Christine Ramsey, Executive Vice President, Sales and Marketing Communications

Christine is focused on revenue growth, expansion and development of the sales force and building brand and market awareness of Net2000. Christine brings over 15 years of sales and marketing experience in fast growth and technology industries. Prior to joining Net2000 she was SVP Sales/Marketing at Statoil Energy, an energy solution provider in a highly competitive, deregulating environment. Under Christine's management Statoil developed a consultative sales force, introduced innovative products and increased customer focus resulting in a 300% increase in profitability from the direct sales organization. Before Statoil, Christine was the Director of Market Management for

SkyTel Corporation, directing the development and implementation of market strategy and new product launch for competitive positioning in the Fortune 1000 marketplace. During this time Skytel launched the first two-way narrowband PCS network, more than doubled the subscriber base representing 25 million in revenue growth and established solid brand awareness in the targeted market.

Christine's career spans from top producing sales rep to branch and operations manager to senior positions in business and market development. She attended Brockport State University where she studied Business Administration. She also holds a Masters degree in Business Administration from George Mason University.

Lee Weiner, General Counsel

As chief legal officer, Lee Weiner is responsible for guiding Net2000's legal policy, assuring compliance with legal requirements and supervising Net2000's regulatory activities.

Lee Weiner has been Net2000's senior vice president and general counsel since October 1999. From June 1998 to June 1999, Lee served as vice president and acting general counsel, and senior associate general counsel and assistant secretary for Qwest Communications International Inc., after its merger with LCI International, Inc. in June 1998. From September 1994 to June 1998, he served as vice president and general counsel at LCI International, Inc. Lee has also held several managerial positions at MCI Telecommunications Corporation, including director of legal affairs for MCI Business Services Division.

Peter B. Callowhill, Senior Vice President of Sales

Peter Callowhill brings more than 22 years of telecommunications and information systems experience to Net2000 Communications. Before he co-founded both Net2000 and N2N Communications, Callowhill had spent 12 years in sales and marketing with Nortel Communications. As a national account manager with Nortel, he consistently achieved the top ranking nationwide—having lead teams that produced annual sales in excess of \$10 million. Callowhill managed the top commercial clients for Nortel, including Marriott and Westinghouse. He then joined Bell Atlantic after it acquired Nortel's mid-Atlantic sales and operations groups.

At Bell Atlantic, Callowhill quickly became ranked among the top three sales producers, and managed a team which served Bell Atlantic's largest commercial clients. Throughout his career, Callowhill has consistently built effective teams, developed customer loyalty, and negotiated outstanding business deals. He earned his B.S. degree for the College of William and Mary in Williamsburg, Virginia.

Jeff Campbell, Vice President of Network Implementation

Jeff Campbell has 20 years of telecommunications experience. The majority of his career has been in operations & engineering positions. From December 1996 to July

1998, Jeff was regional director of operations at Frontier Cellular, a wireless carrier company. From February 1991 to September 1996, Jeff held several positions at MFS Communications Company, including vice president of upstate New York, vice president of sales and regional director of operation. He has constructed and implemented several network operations centers and has been responsible for operations groups in the cellular, long distance, and Sonet fiber optic network arenas. Campbell was instrumental in the development of the first competitive access provider in Upstate New York (which was later sold to MFS Communications). He received his initial training in the United States Air Force as a telecommunications specialist. Campbell studied telecommunications systems management at the College of St. Mary's in Omaha, Nebraska and computer science and psychology at Brockport State University in New York.

Kathy Dickerson, Vice President of Human Resources and Administration

Kathy Dickerson comes to Net2000 with twelve years of progressive executive level experience in Organizational Effectiveness, Human Resources, Facilities, and Training and Development. Kathy joined Net2000 from MA BioServices, where she served as the Vice President of Administration. From 1995 to 1997, she held the title of VP of administration for IGEN International, Inc. In 1986 through 1995 she served Marriott International in several capacities, including director of training and development. Dickerson guided these organizations through culture change, reengineering and into team environments. She earned her B.S. and M.A. degrees in Education from Ball State University in Muncie, Indiana.



Net2000 Communications

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1-800-825-2000

May 12, 2000

DEPOSIT

DATE

D294

MAY 16 2000

Ms. Blanca S. Bayo
Florida Public Service Commission
Division of Records and Reporting
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

000583-TX

Re: Application of Net2000 Communications Services, Inc. for Certificate to Become a Telecommunications Carrier

Dear Ms. Bayo:

On behalf of Net2000 Communications Services, Inc. ("Net2000"), enclosed for filing are an original and six (6) copies of Net2000's application for a certificate of authority to provide local exchange services in the State of Florida. Also enclosed is a check in the amount of \$250 for the requisite application fee.

Please date-stamp the enclosed extra copy of this filing and return it in the self-addressed postage paid envelope provided. Should you have questions regarding this filing, please do not hesitate to contact me at (703) 654-2028.

Very truly yours,

Anthony Hansel
Net2000 Communications Services, Inc.

Revolution™



Leading a Telecommunications Revolution™
NET2000 COMMUNICATIONS SERVICES, INC.
2180 FOX MILL ROAD
HERNDON, VA 20171
(703) 654-2000

RIGGS BANK, N.A.
19-3640

No. 006759

PAYMENT DATE	DOCUMENT #	CHECK AMOUNT
02-MAY-00	6759	*****250.00

PAY Two Hundred Fifty Dollars And 00/100 Cents*****

TO THE ORDER OF Florida Public Service Commission
2540 Shumard Oak Blvd
Tallahassee, FL 32399
United States

TWO SIGNATURES REQUIRED

⑈006759⑈