

TC98-110

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NEW DELHI, INDIA
TOKYO, JAPAN

May 27, 1998

VIA OVERNIGHT COURIER

Mr. William Bullard, Jr., Executive Director
South Dakota Public Utilities Commission
State Capitol Building
500 East Capitol Avenue
Pierre, South Dakota 57501-5070

RECEIVED

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MAY 01 1998
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Re: Application of Net2000 Group, Inc.

Dear Mr. Bullard:

Enclosed herewith for filing with South Dakota Public Utilities Commission please find one original and ten copies of Net2000 Group, Inc.'s ("Net2000") application for authority to provide intrastate interexchange telecommunication services on a resale basis. Also included is a check for the requisite \$250.00 filing fee.

In addition, a duplicate copy of this filing and a self addressed, postage-paid envelope is enclosed. Please date-stamp the duplicate and return it in the envelope provided.

Should you have any questions regarding this filing, please contact me at the above telephone number.

Respectfully submitted,

Ross A. Buntrock, Esq.

Enclosures

TC 98-110

ORIGINAL

Before the
STATE OF SOUTH DAKOTA
PUBLIC UTILITIES COMMISSION

RECEIVED
June
~~May~~ 01 1998
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Application of)
)
NET2000 GROUP, INC.)
)
for a Certificate of Public)
Convenience and Necessity to)
Provide Intrastate Interexchange)
Services in the State of South Dakota)

Docket No. _____

APPLICATION OF
NET2000 GROUP, INC.

Net2000 Group, Inc. ("Net2000" or "Applicant"), by its attorneys, hereby respectfully requests that the South Dakota Public Utilities Commission ("Commission") grant it a Certificate of Public Convenience and Necessity, pursuant to S.D. Codified Laws § 49-31-3 and S.D. Admin. R. §§ 20:10:24:02 and 20:10:24:05, to transact the business of an interexchange telecommunications reseller in the State of South Dakota. In addition, Net2000 respectfully requests that the Commission approve its initial tariff pursuant to S.D. Codified Laws § 49-31-3 and S.D. Admin. R. §§ 20:10:24:02 and 20:10:24:05, effective as of the date of the order granting Net2000 a Certificate of Public Convenience and Necessity.

In support of its Application, Net2000 submits the following information:

I. **The Applicant**

1. Net2000 is a privately-held Delaware corporation that is headquartered at 8614 Westwood Center Drive, Suite 700, Vienna, Virginia 22182. A copy of Net2000's Articles of Incorporation and Certificate of Good Standing is attached hereto as **Exhibit A**.

2. Net2000 is qualified to conduct business within the State of South Dakota as a foreign business entity. A copy of the qualifying document is attached hereto as **Exhibit B** (to be late-filed).

II. **Designated Contacts**

3. The designated contacts for this application are:

Brad E. Mutschelknaus
Steven A. Augustino
Andrea D. Pruitt
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036
phone: (202) 955-9600
fax: (202) 955-9792

4. Copies of all correspondence, notices, inquiries and orders also should be sent to:

Christine Gistaro
Director, Long Distance Services
NET2000 GROUP, INC.
8614 Westwood Center Drive
Suite 700
Vienna, Virginia 22182
phone: (703) 610-1207
fax: (703) 848-8847

III. *Proposed Services*

5. Net2000 seeks authority to operate as a reseller of intraLATA and interLATA intrastate telecommunications services to the public throughout the State of South Dakota . Net2000 proposes to offer a full range of 1+ interexchange services, including, but not limited to, MTS, private line, WATS, calling card, prepaid calling card, toll free, ISDN, and frame relay service products.

6. All of Net2000's services will be provided pursuant to the terms and conditions set forth in Net2000's proposed intrastate services tariff, which is attached hereto as *Exhibit C*. Net2000 will abide by all rules governing telecommunications resellers that the Commission has promulgated or may promulgate in the future, unless application of such rules is specifically waived by the Commission or preempted by the Federal Communications Commission ("FCC") or under federal statute.

IV. *Description and Fitness of the Applicant*

7. Net2000 is well-qualified, financially, technically and managerially, to provide the services for which authority is requested in this Application. Net2000 currently provides telecommunications network design and engineering services to customers in the Mid-Atlantic states. The company is Bell Atlantic's leading volume distributor of local exchange network services and one of the top RBOC agents in the United States. Since its inception in 1993, Net2000 has grown its customer base to over 1,200 clients which represent more than \$100 million in underlying annual local and long distance revenues. Although Net2000 will be reselling the end-to-end services of other interexchange carriers and therefore must, in most instances, rely upon the technical quality of its underlying service providers, Net2000 will be

managed by persons with extensive experience in the telecommunications industry. The biographies of the key management and operational personnel responsible for Net2000's services are appended hereto as *Exhibit D*.

8. Net2000 has access to ample capital to compete effectively in the market for interexchange services in South Dakota. Copies of Net2000's most recent audited financial statements are attached as *Exhibit E*.¹

V. Public Interest Considerations

9. Net2000's entry into the South Dakota market for telecommunications services clearly will serve the public interest. Net2000 will offer high quality, innovative services to South Dakota consumers at competitive rates. Further, Net2000's entry into the South Dakota marketplace will increase competition, leading over time to better service and more options for South Dakota consumers.

VI. Requested Regulatory Treatment

10. Net2000 will be a nondominant reseller of interexchange telecommunications services. As such, Net2000 requests that it be subject to the same regulatory treatment afforded to similarly situated nondominant interexchange resellers.

¹ Net2000 is in the process of completing its 1997 audited financial statements. A copy of the completed 1997 audited financial statements will be forwarded to the Commission upon request.

VII. **Proposed Tariff**

11. As mentioned above, Net2000 proposes to offer telecommunications services in South Dakota at the rates, and pursuant to the terms and conditions, set forth in its proposed tariff, which is attached hereto as **Exhibit C**. Net2000 respectfully requests that the Commission approve its tariff effective as of the date of the order granting Net2000 a Certificate of Public Convenience and Necessity.

WHEREFORE, Net2000 respectfully requests that the Commission grant it a Certificate of Public Convenience and Necessity and approve its proposed tariff as of the date of the order granting that certificate.

Respectfully submitted,

NET2000 GROUP, INC.

By: 

Brad E. Mutschelknaus
Steven A. Augustino
Andrea D. Pruitt
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036
(202) 955-9600

Its Attorneys

Dated: May 27, 1998

EXHIBIT A

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 "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 TWENTY-SEVENTH DAY OF OCTOBER, A.D. 1997.

AND I DO HEREBY FURTHER CERTIFY THAT THE FRANCHISE TAXES HAVE NOT BEEN ASSESSED TO DATE.




Edward J. Freel, Secretary of State

Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "NET2000 GROUP, INC.", FILED IN THIS OFFICE ON THE FIRST DAY OF OCTOBER, A.D. 1997, AT 4:30 O'CLOCK P.M.

A CERTIFIED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS FOR RECORDING.



Edward J. Freel

Edward J. Freel, Secretary of State

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.

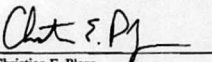
Indemnification may include payment by the corporation of expenses in defending an action or proceeding in advance of the final disposition of such action or proceeding upon receipt of an undertaking by the person indemnified to repay such payment if it is ultimately determined that such person is not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

State of Delaware

PAGE 1

Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF DESIGNATION OF "NET2000 GROUP, INC.", FILED IN THIS OFFICE ON THE THIRTIETH DAY OF OCTOBER, A.D. 1997, AT 4:36 O'CLOCK P.M.

A CERTIFIED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS FOR RECORDING.



Edward J. Freel

Edward J. Freel, Secretary of State

2801600 8100

971369680

AUTHENTICATION:

8733339

DATE:

10-31-97

**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

(as 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 therefore 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 with 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.

(i) 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;

(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 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 1 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

adjustment in the applicable Conversion Price thereof: (a) unless the consideration per share (determined pursuant to Subsection 4(G)(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) **Issuance of Securities Deemed Issue of Additional Shares of Common Stock.**

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(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(G)(x) 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 adjustment based thereon, shall, upon any such increase or decrease becoming effective, be reconputed 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,

OCT 08 '97 17:22 FR #

TO 662810825749348 P.17/17

18-30-1997 4:58PM FROM NET2000 7838488847

P. 2

IN WITNESS WHEREOF, Net2000 Group, Inc. has caused this Certificate of Designation to be executed in its name and on its behalf by its President on October 30 1997.

NET2000 GROUP, INC.

By: 

Clayton A. Thomas, President

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EXHIBIT B

STATE QUALIFICATION DOCUMENTS
(TO BE LATE-FILED)

EXHIBIT C

TARIFF

NET2000 GROUP, INC.

**8614 Westwood Center Drive, Suite 700
Vienna, Virginia 22182**

RESOLD INTEREXCHANGE SERVICES TARIFF

Rules and regulations applicable for furnishing of Resold Interexchange Services by Net2000 Group, Inc. between one or more points in the State of South Dakota as authorized by the South Dakota Public Service Commission. This tariff is on file with the South Dakota Public Utilities Commission and may be inspected during regular business hours. Copies also may be inspected during regular business hours at Net2000 Group, Inc.'s principal place of business, 8614 Westwood Center Drive, Suite 700, Vienna, Virginia 22182.

Issued:

Effective:

Christine Gistaro
Net2000 Group, Inc.
8614 Westwood Center Drive, Suite 700
Vienna, Virginia 22182

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Net2000 Group, Inc.

South Dakota Public Utilities Commission Tariff No. 1
Original Page No. 3

CHECK SHEET

Pages 1-30 inclusive of this tariff are effective as of the date shown. Original and revised pages, as named below, comprise all changes from the original tariff in effect on the date indicated.

<u>Page</u>	<u>Revision</u>
1	Original
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23	Original
24	Original
25	Original
26	Original
27	Original
28	Original
29	Original
30	Original

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Vienna, Virginia 22182

SYMBOLS

The following are the only symbols used for the purposes indicated below:

- (C) To signify changed regulation
- (D) To signify discontinued material
- (I) To signify rate or charge increase
- (M) To signify material relocated without change in text or rate
- (N) To signify new material
- (R) To signify reduction
- (S) To signify reissued material
- (T) To signify a change in text, but no change in rate or regulation
- (Z) To signify a correction

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TARIFF FORMAT

- A. Page Numbering - Page numbers appear in the upper right corner of the page. Pages are numbered sequentially. However, new pages occasionally are added to the tariff. When a new page is added between pages already in effect, a decimal is added to the page number. For example, a new page added between pages 14 and 15 would be 14.1.
- B. Page Revision Numbers - Revision numbers also appear in the upper right corner of each page. These numbers are used to determine the most current page version on file with the Commission. For example, the 4th revised Page 14 cancels the 3rd revised Page 14. Because of various suspension periods, deferrals, etc. the Commission follows in its tariff approval process, the most current page number on file with the Commission is not always the tariff page in effect.
- C. Paragraph Numbering Sequence - There are nine levels of paragraph coding. Each level of coding is subservient to its next higher level:
- 2.
 - 2.1.
 - 2.1.1.
 - 2.1.1.A.
 - 2.1.1.A.1.
 - 2.1.1.A.1.(a).
 - 2.1.1.A.1.(a).1.
 - 2.1.1.A.1.(a).1.(i).
 - 2.1.1.A.1.(a).1.(i).1.
- D. Check Sheets - When a tariff filing is made with the Commission an updated check sheet accompanies the tariff filing. The check sheet lists the pages contained in the tariff, with a cross reference to the current revision number. When new pages are added, the check sheet is changed to reflect the revision. All revisions made in a given filing are designated on the check sheet by an asterisk(*). There will be no other symbols used on the check sheet if these are the only changes made to it. The tariff user should refer to the latest check sheet to find out if a particular page is the most current on file with the Commission.

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Net2000 Group, Inc.
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Vienna, Virginia 22182

SECTION 1. DEFINITIONS

Authorized User - Any person, firm, Public Service or other entity accessing or utilizing the services furnished by the Company to the Customer.

Billed Party - The person or entity responsible for payment of the Company's service. The Billed Party is the Customer associated with the Calling Station used to place the call, with the following exceptions:

- (a) in the case of a calling card or credit card call, the Billed Party is the holder of the calling card or credit card used by the User; and
- (b) in the case of a collect or third party call, the Billed Party is the person responsible for the local telephone service at the telephone number that agrees to accept charges for the Call.

Call - A completed connection between the Calling and Called station.

Calling Station - The telephone number from which a Call originates.

Called Station - The telephone number called.

Commission - South Dakota Public Utilities Commission

Issued:

Effective:

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Net2000 Group, Inc.
8614 Westwood Center Drive, Suite 700
Vienna, Virginia 22182

SECTION 1. DEFINITIONS (Cont'd)

Common Carrier - A company or entity providing telecommunications services to the public.

Company - Net2000 Group, Inc.

Customer - A person, firm, Public Service, partnership or other entity, including affiliates or divisions of the Customer, in whose name the telephone number of the Calling Station is registered with the underlying local exchange company. The Customer is responsible for payment of charges to the Company and compliance with all terms and conditions of this tariff.

Day - The period of time from 8:00 a.m. to (but not including) 5:00 p.m., Monday through Friday, as measured by local time at the location from which the Call is originated.

Evening - The period of time from 5:00 p.m. to (but not including) 11:00 p.m., Sunday through Friday and any time during a Holiday, as measured by local time at the location from which the Call is originated.

Holiday - New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

Incomplete - Any Call where voice transmission between the Calling and Called station is not established.

Night/Weekend ("N/Wkd") - The period of time from 11:00 p.m. to (but not including) 8:00 a.m., Monday through Friday, any time on Saturday and all day Sunday, except 5:00 p.m. to (but not including) 11:00 p.m., as measured by local time at the location from which the Call is originated.

Prepaid Calling Card - A calling card or other tangible item which (i) contains an Access Number or an access code, (ii) is supplied by the Company or its agent and (iii) permits a User to use the Company's services up to an amount prepaid to the Company. Calls charged to a Prepaid Calling Card will be debited against the amount the User has prepaid.

User - Customer or any Authorized User.

Issued:

Effective:

Christine Gistaro
Net2000 Group, Inc.
8614 Westwood Center Drive, Suite 700
Vienna, Virginia 22182

SECTION 2. TERMS AND CONDITIONS

2.1 Application of Tariff

- 2.1.1 This tariff contains the regulations and rates applicable to intrastate interexchange services provided by the Company. The Company's services are furnished subject to the availability of facilities and the terms and conditions of this tariff.

- 2.1.2 The rates and regulations contained in this tariff apply only to the interexchange services furnished by the Company and do not apply, unless otherwise specified, to the lines, facilities, or services provided by a local exchange telephone company or other Common Carrier for use in accessing the services of the Company.

Issued:

Effective:

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Vienna, Virginia 22182

SECTION 2. TERMS AND CONDITIONS (Cont'd)

2.2 Use and Availability of Service

- 2.2.1 Service is furnished to the User for any lawful purpose. Service shall not be used for any unlawful purpose, nor used in such a manner as to interfere unreasonably with the use of service by any other Users.
- 2.2.2 The use of the Company's services without payment for service or attempting to avoid payment for service by fraudulent means or devices, false or invalid numbers, or false calling or credit cards is prohibited.
- 2.2.3 The Company's services may be denied for nonpayment of charges or for other violations of the terms and conditions set forth in this tariff.
- 2.2.4 The use of the Company's services to make calls which might reasonably be expected to frighten, abuse, torment, or harass another is prohibited.
- 2.2.5 Service temporarily may be refused or limited because of system capacity limitations.
- 2.2.6 Service is subject to transmission limitations caused by natural (including atmospheric, geographic or topographic) or artificial conditions adversely affecting transmission.
- 2.2.7 Service to any or all Customers may be temporarily interrupted or curtailed due to equipment modifications, upgrades, relocations, repairs and similar activities necessary for proper or improved operations.

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SECTION 2. TERMS AND CONDITIONS (Cont'd)

2.3 Limitation of Liability

- 2.3.1 Because the Company has no control of communications content transmitted over its system, and because of the possibility of errors incident to the provision and use of its service, service furnished by the Company is subject to the terms, conditions and limitations herein specified.
- 2.3.2 The Company is not liable to Users for interruptions in service except as set forth in Section 2.5 of this tariff.
- 2.3.3 The liability of the Company for errors in billing that result in overpayment by the Customer shall be limited to a credit equal to the dollar amount erroneously billed or, in the event that payment has been made and service has been discontinued, to a refund of the amount erroneously billed.
- 2.3.4 The Company shall not be liable for and the User shall indemnify and hold the Company harmless against any claims for loss or damages involving:
 - 2.3.4.A Any act or omission of: (i) the User; or (ii) any other entity furnishing service, equipment or facilities for use in conjunction with services or facilities provided by the Company;
 - 2.3.4.B Interruptions or delays in transmission, or errors or defects in transmission, or failure to transmit when caused by or as a result of acts of God, fire, war, riots, government authorities or causes beyond the Company's control;
 - 2.3.4.C Any unlawful or unauthorized use of the Company's facilities and services;

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SECTION 2. TERMS AND CONDITIONS (Cont'd)

2.3 Limitation of Liability (Cont'd)

- 2.3.4.D Libel, slander or infringement of copyright arising directly or indirectly from the material transmitted over facilities provided by the Company;
- 2.3.4.E Infringement of patents arising from combining apparatus and systems of the User with facilities provided by the Company;
- 2.3.4.F Claims arising out of any act or omission of the User in connection with service provided by the Company.
- 2.3.4.G Breach in the privacy or security of communications transmitted over the Company's facilities;
- 2.3.4.H Changes in any of the facilities, operations or procedures of the Company that: (1) render any equipment, facilities or services provided or utilized by the User obsolete; (2) require modification or alteration of such equipment, facilities or services; or (3) otherwise affect use or performance of such equipment, facilities or services except where reasonable notice is required by the Company and is not provided to the Customer.
- 2.3.4.I Defacement of or damage to the Customer's premises or personal property resulting from the furnishing of services or equipment on such premises or the installation or removal thereof.

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SECTION 2. TERMS AND CONDITIONS (Cont'd)

2.3 Limitation of Liability (Cont'd)

- 2.3.4.J Any wrongful act of a Company employee where such act is not authorized by the Company and is not within the scope of the employee's responsibilities for the Company;
 - 2.3.4.K Any representations made by a Company employee that do not comport, or that are inconsistent, with the provisions of this tariff.
 - 2.3.4.L Any noncompleted calls due to network busy conditions; and
 - 2.3.4.M Any calls not actually attempted to be completed during any period that service is unavailable.
- 2.3.5 The User shall reimburse the Company for all costs, expenses and fees (including reasonable attorneys' fees and costs) incurred by the Company in its defense against claims set forth in Section 2.3.4.

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SECTION 2. TERMS AND CONDITIONS (Cont'd)

2.3 Limitation of Liability (Cont'd)

- 2.3.6 The Company assumes no responsibility for the availability or performance of any cable or satellite systems or related facilities under the control of other entities that are used to provide service to the User, even if the Company has acted as the User's agent in arranging for such facilities or services.
- 2.3.7 Any claim against the Company shall be deemed waived unless presented in writing to the Company within thirty (30) days after the date of the occurrence that gave rise to the claim.
- 2.3.8 The Company makes no express representations or warranties regarding the service and disclaims any implied warranties, including, but not limited to, warranties of title or implied warranties of merchantability or fitness for a particular purpose. The Company does not authorize anyone to make a warranty of any kind on its behalf and the User should not rely on any such statement.
- 2.3.9 Any liability of the Company for loss or damages arising out of mistakes, omissions, interruptions, delays, errors or defects in the service, the transmission of the service, or failures or defects in facilities furnished by the Company, occurring in the course of furnishing service shall in no event exceed an amount equivalent to the proportionate fixed monthly charge to the Customer for service, during the period of time in which such mistakes, omissions, interruptions, delays, errors or defects in the service, its transmission or failure or defect in facilities furnished by the Company occurred.

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SECTION 2. TERMS AND CONDITIONS (Cont'd)

2.4 Responsibilities of the Customer

- 2.4.1 The Customer is responsible for placing any necessary orders, complying with tariff regulations and assuring that Users comply with tariff regulations. The Customer shall ensure compliance with any applicable laws, regulations, orders or other requirements of any governmental entity relating to services provided to the Customer or made available by the Customer to another User. The Customer is also responsible for the payment of charges for all calls originated at the Customer's numbers which are not collect, third party, calling card, or credit card calls.
- 2.4.2 The Customer is responsible for charges incurred for special construction and/or special facilities which the Customer requests and which are ordered by the Company on the Customer's behalf.
- 2.4.3 If required for the provisioning of the Company's services, the Customer must provide any equipment space, supporting structure, conduit and electrical power without charge to the Company.
- 2.4.4 The Customer is responsible for arranging access to its premises at times mutually agreeable to the Company and the Customer when required for Company personnel to install, repair, maintain, program, inspect or remove equipment associated with the provision of the Company's services.

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SECTION 2. TERMS AND CONDITIONS (Cont'd)

2.4 Responsibilities of the Customer (Cont'd)

- 2.4.5 The Customer must pay the Company for replacement or repair of damage to the Company's equipment or facilities caused by negligent or improper use on the part of the Customer, Users, or others.
- 2.4.6 The Customer must indemnify the Company for the theft of any Company equipment or facilities installed at the Customer's premises.
- 2.4.7 The Customer agrees, except where the events, incidents or eventualities set forth in this sentence are the result of the Company's gross negligence or willful misconduct, to release, indemnify and hold harmless the Company against any and all loss, claims, demands, suits or other action or any liability whatsoever, whether suffered, made, instituted or asserted by the Customer or by any other party or person, for any personal injury to or death of any person or persons, or for any loss of or damage to any property, whether owned by the Customer or others. The Customer shall reimburse the Company for all costs, expenses and fees (including reasonable attorneys' fees and costs) incurred by the Company in its defense against such actions.

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SECTION 2. TERMS AND CONDITIONS (Cont'd)

2.5 Allowances for Interruptions in Service

2.5.1 General

2.5.1.A A service is interrupted when it becomes unusable to the User, e.g., the User is unable to transmit or receive, because of a failure of a component furnished by the Company under this tariff.

2.5.1.B An interruption period begins when the User reports a service, facility or circuit to be inoperative and releases it for testing and repair. An interruption period ends when the service, facility or circuit is operative.

2.5.1.C If the User reports a service, facility or circuit to be inoperative but declines to release it for testing and repair, the service, facility or circuit is considered to be impaired but not interrupted. No credit allowances will be made for a service facility or circuit considered by the Company to be impaired.

2.5.2 Limitations on Allowances

2.5.2.A No credit allowance will be made for any interruption of service:

2.5.2.A.1 due to the negligence of, or noncompliance with the provisions of this tariff by, any person or entity other than the Company, including but not limited to the Customer or other Common Carriers connected to the service of the Company;

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SECTION 2. TERMS AND CONDITIONS (Cont'd)

2.5 Allowances for Interruptions in Service (Cont'd)

2.5.2 Limitations on Allowances (Cont'd)

- 2.5.2.A.2 due to the failure of power, equipment, systems or services not provided by the Company;
- 2.5.2.A.3 due to circumstances or causes beyond the control of the Company;
- 2.5.2.A.4 during any period in which the Company is not given full and free access to the Customer's or Company's facilities and equipment for the purpose of investigating and correcting the interruption;
- 2.5.2.A.5 during any period in which the User continues to use the service on an impaired basis;
- 2.5.2.A.6 during any period in which the Customer has released service to the Company for maintenance purposes or for implementation of a Customer order for a change in service arrangements;
- 2.5.2.A.7 that occurs or continues due to the Customer's failure to authorize replacement of any element of special construction; and
- 2.5.2.A.8 that was not reported to the Company within thirty (30) days of the date that service was affected.

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SECTION 2. TERMS AND CONDITIONS (Cont'd)

2.5 Allowances for Interruptions in Service (Cont'd)

2.5.3 Application of Credits for Interrupted Services

- 2.5.3.A At the Customer's request, a credit allowance for a continuous interruption of service for more than twenty-four (24) hours will be made in an amount determined by the Company on a case-by-case basis.
- 2.5.3.B Any such interruption will be measured from the time it is reported to or detected by the Company, whichever occurs first.
- 2.5.3.C In the event the User is affected by such interruption for a period of less than twenty-four (24) hours, no adjustment will be made. No adjustments will be earned by accumulating non-continuous periods of interruption.
- 2.5.3.D When an interruption exceeds twenty-four (24) hours, the length of the interruption will be measured in twenty-four (24) hour days. A fraction of a day consisting of less than twelve (12) hours will not be credited and a period of twelve (12) hours or more will be considered an additional day.
- 2.5.3.E A credit allowance will not be given for interruptions caused by the negligence or willful act of the User or interruptions caused by failure of equipment or service not provided by the Company.

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SECTION 2. TERMS AND CONDITIONS (Cont'd)

2.6 Payment of Charges

- 2.6.1 The Customer is responsible for payment of all charges for service furnished to the User.
- 2.6.2 The Company reserves the right to assess late payment charges for Customers whose account(s) carries principal owing from the prior billing period. Any charges not paid in full by the due date indicated on the billing statement may be subject to a late fee of 1.5% per month.
- 2.6.3 The Company reserves the right to assess a fee for any check or other negotiable instrument returned to the Company for any reason.
- 2.6.4 Recurring monthly charges may be invoiced one month in advance. Invoicing cycles are approximately 30 days in length.
- 2.6.5 Customers must notify the Company in writing of any disputed charges within fifteen (15) days of the billing date, otherwise all charges on the invoice will be deemed accepted. All charges remain due and payable at the due date, although a Customer does not have to pay disputed charges while the Company conducts its investigation into the matter.

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SECTION 2. TERMS AND CONDITIONS (Cont'd)

2.8 Deposits

- 2.8.1 The Company will not require deposits from Customers.

2.9 Contested Charges

- 2.9.1 All bills are presumed accurate, and shall be binding on the Customer unless objection is received by the Company no more than fifteen (15) days after such bills are rendered. In the case of a billing dispute between the Customer and the Company for service furnished to the Customer, which cannot be settled with mutual satisfaction, the Customer may take the following course of action no more than fifteen (15) days after the billing date:

2.9.1.A First, the Customer may request, and the Company will provide, an in-depth review of the disputed amount. (The undisputed portion and subsequent bills must be paid on a timely basis or the service may be subject to disconnection.)

2.9.1.B Second, if there is still a disagreement about the disputed amount after investigation and review by the Company, the Customer may file an appropriate complaint with the South Dakota Public Utilities Commission. The address of the Commission is:

South Dakota Public Utilities Commission
State Capitol Building
500 East Capitol Avenue
Pierre, SD 57501-5070

- 2.10.2 Billing inquiries may be directed to the Company at its toll free number: 1-800-220-6382.

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SECTION 2. TERMS AND CONDITIONS (Cont'd)

2.10 Billing Entity Conditions

2.10.1 When billing functions on behalf of the Company are performed by the local exchange telephone company, or others, the payment conditions and regulations of such companies apply, including any applicable interest and/or late payment charge conditions.

2.11 Taxes

2.11.1 All federal excise taxes, and state and local sales, use and similar taxes are billed as separate items and are not included in the quoted rates.

2.12 Promotions

2.12.1 Upon thirty (30) days prior written notice to the Commission, the Company may from time to time offer services or waive or vary service rates for promotional, market research or other similar business purposes. The varying rates will not exceed those in this tariff for the same services.

2.13 Incomplete Calls/Wrong Number

2.13.1 The Company will not knowingly charge for Incomplete Calls or wrong numbers. Upon the Customer's request and proper verification, the Company shall promptly adjust or credit the Customer's account for charges or payments for any unanswered call inadvertently billed due to the unavailability of Feature Group D or due to another carrier's failure to provide answer supervision. Where answer supervision is not available, any Call for which the duration exceeds one (1) minute shall be presumed to have been answered.

2.14 Directory Assistance

2.14.1 The Company does not provide local directory assistance.

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SECTION 2. TERMS AND CONDITIONS (Cont'd)

2.15 Operator Services

2.15.1 The Company does not provide operator services. All operator assisted calls, including collect calls, calling cards, credit card calls, person-to-person calls, third party calls, and other related operator services will be routed to the Company's underlying carrier.

2.16 Termination of Service

2.16.1 A Customer may terminate service, with or without cause, by giving the Company notice. The Company may terminate service with cause without giving the Customer notice.

2.16.2 The Customer is responsible for all charges incurred to the Access Number regardless of which party terminates the service. The Customer shall reimburse the Company for all costs, expenses and fees (including reasonable attorneys' fees and costs) incurred by the Company in collecting such charges.

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SECTION 3. EXPLANATION OF RATES

The regulations set forth in this section explain how to apply the rate table associated with the various services offerings described in Section 4.

3.1 Timing of Calls

- 3.1.1 Billing for Calls placed over the Company's underlying carrier's network is based on the duration of the Call. Timing begins when the Called Station is answered, as determined by standard industry methods generally in use for ascertaining answers, including answer supervision hardware by which the local telephone company sends a signal to the switch or the software utilizing audio tone detection. Timing ends when either party hangs up.

3.2 Computation of Charges

- 3.2.1 As set forth in Section 4, calls will be billed in increments of either: (i) an initial eighteen (18) second period and additional six (6) second periods; (ii) an initial thirty (30) second period and additional six (6) second periods; (iii) an initial sixty (60) second period and additional thirty (30) second periods; or (iv) an initial one (1) minute period and additional one (1) minute periods.

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SECTION 4. RATE SCHEDULES

4.1 1+ Long Distance

4.1.1 Description of Service

1+ Long Distance Service is a dedicated or switched long distance message telecommunications service provided between points located within the State.

4.1.2 Billing Increments

Dedicated 1+ Long Distance calls are billed in initial 18 second increments and additional increments of 6 seconds. Switched 1+ Long Distance calls are billed in initial 30 second increments and additional increments of 6 seconds.

4.1.3 Rates

A. Dedicated 1+ Long Distance

Outbound Rates/per minute	\$0.1505
Inbound Rates/per minute	\$0.1505

B. Switched 1+ Long Distance

Outbound Rates/per minute	\$0.2080
Inbound Rates/per minute	\$0.2080

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SECTION 4. RATES SCHEDULES (Cont'd)

4.2 ISDN BRI

4.2.1 Description

ISDN BRI is an optional arrangement that allows for the integration of voice and non-voice (data) transmission on a single telephone transmission access line and provides access as a digital gateway which will allow for the introduction of additional services.

4.2.2 Billing Increments

ISDN BRI is billed in initial increments of one minute and additional increments of one minute.

4.2.3 Rates

Per B Channel/per minute \$0.2438

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SECTION 4. RATE SCHEDULES (Cont'd)

4.3 Post-Paid Calling Card Service

4.3.1 Description of Service

Post-Paid Calling Card Service enables Customers to make Calls through the use of a long distance calling card. Charges incurred are billed to the Customer's account.

4.3.2 Billing Increments

Post-Paid Calling Card Service is billed in initial one minute increments and additional increments of one minute.

4.3.3 Rates

Per minute charge	\$0.35
No per call surcharge	

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SECTION 4. RATE SCHEDULES (Cont'd)

4.4 Prepaid Calling Card Service

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SECTION 4. RATE SCHEDULES (Cont'd)

4.5 Toll Free Service

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SECTION 4. RATE SCHEDULES (Cont'd)

4.6 Frame Relay Service

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SECTION 5. MISCELLANEOUS

5.1. **Discounts**

5.1.1 Term discounts as listed below are available on all services listed in Section 4 of this tariff. Only customers with a minimum usage commitment of \$1,000 per month are eligible for term discounts.

12 month commitment receives a 5% discount off base rate

24 month commitment receives a 10% discount off base rate

36 month commitment receives a 15% discount off base rate

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EXHIBIT D

MANAGEMENT BIOGRAPHIES

MANAGEMENT

The Net2000 management team is anchored by four founding partners who collectively own 100% of the Company's capital stock. While they have diverse backgrounds, each member of the group has sold and managed the delivery of a wide variety of telecommunications products, particularly local services, to businesses.

Charlie Thomas, President

Mr. Thomas has over 14 years of telecommunications industry experience. He spent most of his career in sales and marketing positions with IBM and Bell Atlantic. During his career at Bell Atlantic he progressed through the ranks and was the #1 sales person in the company every year between 1989 and 1992. He has worked in various capacities with a variety of markets and products, most recently directing a team in Bell Atlantic's National Accounts Group. Mr. Thomas also co-founded and subsequently sold an Internet service provider N2N Communications. He is the founding and managing partner of Net2000 Group. Mr. Thomas graduated from the University of Virginia with a B.A. and B.S. in Computer Science. Mr. Thomas serves as President and CEO of the Company and will assume overall responsibility for the Company's thrust into the local resale market.

Bruce Bednarski, Vice President Operations

With a diverse telecommunications background spanning more than 17 years, Mr. Bednarski provides the company with a solid technical foundation. His career has focused on business systems design and systems integration activities. Bednarski began his career as an engineer for Nortel Communications, where he installed and engineered Central Office switching platforms supporting thousands of lines. He then served as a member of the systems design and implementation team for the U.S. Senate where he managed the Senate's telecommunications infrastructure. His technical expertise developed further at Bell Atlantic as a member of the marketing technical support group for the engineering staff. He achieved the highest engineering and technical support designation in the company. Bednarski holds a B.A. in Business Administration and an MBA from the University of New Haven, Connecticut. He also served as an adjunct professor there.

Peter B. Callowhill, Vice President Marketing

Peter Callowhill brings more than 22 years experience in telecommunications and information systems to Net2000 Group. Prior to co-founding Net2000 and N2N Communications, Mr. Callowhill spent 12 years in sales and marketing with Nortel. As a national account manager with Nortel, he consistently achieved the top ranking in the entire U.S. including leading teams that produced annual sales in excess of \$10 million. He managed the top commercial clients for Nortel including Marriott and Westinghouse. Callowhill joined Bell Atlantic after it acquired Nortel's mid-Atlantic sales and operations groups. He quickly achieved ranking as one of the top 3 sales producers, and managed a team serving Bell Atlantic's largest commercial clients. Throughout his career, Callowhill has consistently built effective teams, developed customer loyalty, and negotiated favorable business deals. Callowhill received his B.S. from the College of William and Mary in Williamsburg, Virginia.

Cory Marsan, Vice President Sales

Having worked for industry leaders such as AT&T, Control Data and Bell Atlantic, Ms. Marsan has over 18 years experience in the communications industry. Prior to joining Net2000 Group, she served as Sales Manager for Bell Atlantic's top 1000 accounts with responsibility for multiple industry segments including state and local government, universities, professional services, media and associations. In this capacity, she was responsible for managing a revenue base of \$35 million as well as a \$5 million budget. She holds a B.A. in Marketing from University of South Florida and an MBA from George Washington University. Ms. Marsan is responsible for the recruiting, training and management of the field sales force and local offices.

Christopher Bennett, Director Local Services

Mr. Bennett recently joined the Company after 13 years with MCI, Deloitte & Touche, and BellSouth with progressive management responsibilities at each organization. He most recently served at MCI as Senior Manager - Business Markets and local market assessment where he was charged with creating/identifying competitive, market trend and regulatory/law opportunities relative to entry into the U.S. local Telecom markets. He has finance, regulatory, law, marketing and sales experience. He holds a B.A. from Morehead State University, an MBA from The Wharton School and a J.D. from Georgetown University Law Center. Mr. Bennett will be responsible for mapping the legal, regulatory and marketing strategies for entry into the local resale market.

Christine Gistaro, Director Long Distance Services

Ms. Gistaro has been in increasingly responsible positions within the sales and marketing group in Cable & Wireless since 1987. She was consistently ranked as the #1 revenue producer in the U.S. Most recently, she was a Major Account Manager selling long distance and data services to major accounts in the Washington metropolitan area. She received her B.S. in Languages from Georgetown University. Ms. Gistaro will be an important member of the team that plans introduction of bundled services to the local market. Her extensive experience in sales of telecommunications products will be invaluable to the planning and marketing of both long distance and local services.

Michael Hamm, Director Information Systems

Mr. Hamm has 14 years experience in all phases of software development with emphasis on telecommunications billing platforms. He most recently managed the implementation of a convergent customer care and billing platform at Cable & Wireless. Prior to that he managed software and billing development projects for Freddie Mac and MCI, as well as Satellite Business Systems. Mr. Hamm holds a B.A. in Mathematics and a B.A. in Computer Science from Lycoming College. He will lead the deployment of Net2000's customer care, billing and information systems.

EXHIBIT E

FINANCIAL INFORMATION

Net2000 Group, Inc.
Profit and Loss

January through September 1997

12/29/97

Jan - Sep '97

Ordinary Income/Expense

Income	1,542,556.94
4000 - Commissions - Bell Atlantic	142,495.00
4001 - Commissions - Nynex	4,095.00
4005 - Commissions - Other ABOC	9,161.19
4010 - Commissions - Long Distance	33,309.00
4050 - Commissions - Internet	478,768.16
4100 - Consulting	2,813.98
4200 - Audit Income	129,003.22
4300 - Account Management	5,807.24
4400 - CPE Sales	19,218.14
4800 - Private Line Income	6,750.00
4700 - Installations - Lucent	-5,339.17
4888 - Client rebata/re/funds	480.31
4900 - Interest Income	5,112.95
4999 - Uncategorized Income	2,374,241.96
Total Income	2,374,241.96
Cost of Goods Sold	17,721.86
5600 - Private Line Expense	17,721.86
Total COGS	17,721.86
Gross Profit	2,356,520.10
Expense	3,120.85
8100 - Customer CPE Purchases	1,399,600.14
6000 - Wages	148,896.00
6005 - Referral Fees	51,606.80
6006 - Recruiting costs	128,932.68
6007 - Consulting Subcontractors	12,875.00
6107 - TMS Subcontractors	49,846.89
6110 - Automobile Expense	750.00
6150 - Amortization expense	6,709.23
6155 - Copier expense	18,000.00
6180 - Depreciation Expense	9,354.28
6190 - Dues & Subscriptions	28,577.24
6190 - Training and Staff Development	6,542.34
6200 - Insurance	45,445.66
6220 - Employee Insurance	30,613.50
6260 - Internet Expense	77,486.02
6276 - Travel & Ent	12,752.86
6286 - Company Entertainment	45,337.08
6281 - Professional Fees	15,738.67
6285 - Miscellaneous	192,944.72
6310 - Outside Services	5,403.68
6340 - Postage and Delivery	86,312.05
6345 - Rentals	150,853.88
6360 - Office Rent	42,000.59
6440 - Office Supplies	28,230.99
6445 - Software and Computer Supplies	2,147.00
6450 - Repairs and Maintenance	81,694.15
6500 - Telephone	23,200.90
6620 - Printing and Reproduction	1,322.50
6666 - Pension expense	71,655.50
6700 - Marketing	4,697.14
6820 - Taxes Other	5,100.00
7000 - Charitable Contributions	0.00
7001 - Uncategorized Expenses	1,000.00
7500 - Director fees	2,784,592.34
Total Expense	4,280,072.24
Net Ordinary Income	-428,072.24
Net Income	-428,072.24

Net2000 Group, Inc.
Balance Sheet
As of September 30, 1997

12/29/97

Sep 30, '97

ASSETS	
Current Assets	
Checking/Savings	9,622.13
1000 - Checking	103,218.31
1001 - Riggs Checking	112,840.44
Total Checking/Savings	225,480.88
Accounts Receivable	748,510.27
1200 - Accounts Receivable	17,100.00
1205 - Commission Draw	4,751.70
1240 - Loan to Principals	318.55
1250 - Other	772.44
1300 - Due From 3-D Net Access Inc.	771,452.96
Total Accounts Receivable	748,510.27
Other Current Assets	30,187.03
1988 - Undeposited Funds	30,187.03
Total Other Current Assets	30,187.03
Total Current Assets	914,480.43
Fixed Assets	
1400 - Fixed Assets	85,561.77
1500 - Other Asset	53,903.30
Total Fixed Assets	139,465.07
TOTAL ASSETS	1,053,945.50
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	316,123.09
2000 - Accounts Payable	316,123.09
Total Accounts Payable	316,123.09
Other Current Liabilities	7,727.79
2200 - Payroll Liabilities	1,171.68
2200 - Sales Tax Payable	6,556.11
Total Other Current Liabilities	8,898.97
Total Current Liabilities	325,021.96
Long Term Liabilities	911,699.55
2300 - Loan Payable	911,699.55
Total Long Term Liabilities	911,699.55
Total Liabilities	1,236,721.51
Equity	
3000 - Opening Bal Equity	64,974.61
3040 - Retained Earnings	180,321.82
Net Income	-428,072.24
Total Equity	-182,776.01
TOTAL LIABILITIES & EQUITY	1,053,945.50



Financial Statements

Net2000 Group, Inc.

*Year ended December 31, 1996
with Report of Independent Auditors*



Net2000 Group, Inc.

Financial Statements

Year ended December 31, 1996

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Report of Independent Auditors

Board of Directors
Net2000 Group, Inc.

We have audited the accompanying balance sheet of Net2000 Group, Inc. as of December 31, 1996 and the related statements of income, stockholders' equity and cash flows for the year then ended. 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 audit.

We conducted our audit in accordance with generally accepted auditing standards. 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 audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Net2000 Group, Inc. at December 31, 1996 and the results of its operations and its cash flows for the year then ended in conformity with generally accepted accounting principles.

Ernst & Young LLP

July 2, 1997

Net2000 Group, Inc.

Balance Sheet

	December 31, 1996
Assets	
Current assets:	
Cash	\$ 2,691
Accounts receivable	429,344
Prepaid expenses	16,060
Total current assets	<u>448,095</u>
Property and equipment, net of accumulated depreciation	146,500
Other	8,869
Total assets	<u>\$603,464</u>
Liabilities and stockholders' equity	
Current liabilities:	
Accounts payable and accrued expenses	\$148,927
Notes payable - officers	100,000
Current maturities of capital lease obligations	32,500
Total current liabilities	<u>281,427</u>
Capital lease obligations, less current maturities	63,033
Stockholders' equity:	
Common stock, \$1 par value; 5,000 shares authorized, 4,000 shares issued and outstanding	4,000
Retained earnings	255,004
Total stockholders' equity	<u>259,004</u>
Total liabilities and stockholders' equity	<u>\$603,464</u>

See accompanying notes.

Net2000 Group, Inc.

Statement of Income

	<u>December 31, 1996</u>
Revenues:	
Commissions	\$1,441,424
Consulting	423,062
Other	77,611
Total revenues	<u>1,942,097</u>
Cost of revenue	<u>361,956</u>
Gross margin	1,580,141
Selling, general and administrative expenses	<u>1,501,007</u>
income from operations	79,134
Interest expense	<u>11,464</u>
Net income	<u><u>\$ 67,670</u></u>

See accompanying notes.

Net2000 Group, Inc.
Statement of Stockholders' Equity

	<u>Common Stock</u>		<u>Retained Earnings</u>	<u>Total Stockholders' Equity</u>
	<u>Shares</u>	<u>Amount</u>		
Balance, December 31, 1995	4,000	\$4,000	\$187,334	\$191,334
Net income	-	-	67,670	67,670
Balance, December 31, 1996	<u>4,000</u>	<u>\$4,000</u>	<u>\$255,004</u>	<u>\$259,004</u>

See accompanying notes.

Net2000 Group, Inc.
Statement of Cash Flows

	December 31, 1996
Operating activities	
Net income	\$ 67,670
Adjustments to reconcile net income to net cash provided by operating activities:	
Depreciation and amortization	26,758
Changes in operating assets and liabilities:	
Accounts receivable	(173,040)
Other current assets	4,116
Prepaid and other assets	12,967
Accounts payable and accrued expenses	62,936
Net cash provided by operating activities	1,407
Investing activities	
Acquisition of property and equipment	(33,861)
Net cash used in investing activities	(33,861)
Financing activities	
Net proceeds from notes payable - officers	20,000
Repayment of capital leases	(17,654)
Net cash provided by financing activities	2,346
Net decrease in cash	(30,108)
Cash at the beginning of period	32,799
Cash at the end of period	\$ 2,691

See accompanying notes.

Net2000 Group, Inc.
Notes to Financial Statements
December 31, 1996

1. Organization and Significant Accounting Policies

Net2000 Group, Inc. "the Company" was formed on June 23, 1993 under the laws of the State of Virginia. The Company's principal line of business is the resale of local telecommunications services which include the installation of voice, data and video services for businesses. The Company also provides telecommunications consulting services.

Property and Equipment

Property and equipment are stated at cost and depreciated using the straight-line method over the estimated useful life of the asset, ranging from three to seven years. Leasehold improvements are depreciated over the lesser of the useful life of the addition or the lease term.

Revenue Recognition

The Company recognizes commission revenues on all agency services when the product has been installed. 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, accounts receivable, capital lease obligations and notes payable - officers to approximate the fair value of the respective assets and liabilities at December 31, 1996.

Use of Estimates

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

Net2000 Group, Inc.

Notes to Financial Statements (continued)

1. Organization and Significant Accounting Policies (continued)

Income Taxes

The Company has elected to be taxed under the Subchapter-S provisions of the Internal Revenue Code. Accordingly, the Company's income passes through to its shareholders for inclusion in their individual income tax returns.

2. Property and Equipment

Property and equipment consist of the following:

	December 31, 1996
Software	\$ 1,651
Equipment	155,778
Furniture	11,371
Leasehold improvements	8,568
	<u>177,368</u>
Less accumulated depreciation and amortization	<u>(30,868)</u>
	<u>\$146,500</u>

3. Notes Payable - Officers

At December 31, 1996 the Company had unsecured notes payable of \$100,000 payable on demand to officers of the Company. These notes accrue interest at a rate of prime plus 1.5 percent per annum.

The Company paid interest of \$11,464 related to the notes payable - officers and capital leases during the year ended December 31, 1996.

Net2000 Group, Inc.

Notes to Financial Statements (continued)

4. Leases

The Company currently leases office space and equipment under non-cancelable operating leases. The future minimum lease payments under non-cancelable operating leases at December 31, 1996 are as follow:

<u>Fiscal Year</u>	
1997	\$ 63,879
1998	59,986
1999	61,490
2000	49,500
2001	-
Total	<u>\$234,855</u>

The Company currently leases equipment under non-cancelable capital leases. The future minimum lease payments under non-cancelable capital leases at December 31, 1996 are as follow:

<u>Fiscal Year</u>	
1997	\$ 42,147
1998	34,393
1999	20,732
2000	7,464
2001	6,842
Total minimum lease payments	<u>111,578</u>
Less amount representing interest	<u>16,045</u>
Present value of minimum lease payments	95,533
Less current portion of capital lease obligation	<u>32,500</u>
Long term portion of capital lease obligation	<u>\$ 63,033</u>

Rent expense for the year ended December 31, 1996 was approximately \$85,000.

Net2000 Group, Inc.

Notes to Financial Statements (continued)

5. Significant Customers

The Company derives a significant portion of its sales from one major customer. For the year ended December 31, 1996 the Company recorded sales of approximately \$1.4 million from this customer. At December 31, 1996 the Company had accounts receivable of approximately \$310,000 from this customer.

6. Subsequent Events

Subsequent to year end the Company entered in several non-cancelable operating and capital leases. Minimum payments related to the non-cancelable operating leases are \$185,415 and \$135,216 for 1997 and 1998 respectively and \$282,732 thereafter. Approximately 60% of the payments in 1997 and 100% of the payments thereafter relate to a new office lease for the Company's corporate headquarters. Minimum payments related to the non-cancelable capital leases are \$52,570 and \$68,604 for 1997 and 1998 respectively and \$88,250 thereafter.

In addition, in March 1997 the Company obtained a \$750,000 line of credit with a bank. The line is secured by substantially all of the assets of the Company and accrues interest at a rate of prime plus .5 percent per annum. Under the line of credit agreement the Company's borrowings are limited to a percent of its accounts receivable balance, and the Company must meet certain financial covenants.

FIRST UNION NATIONAL BANK
OF WASHINGTON, D.C.
WASHINGTON, DC

04887

15-122/543
00480

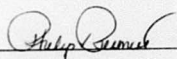
May 22, 1998

KELLEY DRYE & WARREN LLP
1200 19TH STREET, N.W.
WASHINGTON, DC 20036

PAY TO THE ORDER OF South Dakota Public Utilities Commission \$ 250.00

Two-Hundred and Fifty-----00/100-----DOLLAR

MEMO Filing fee 046770.001



⑈004887⑈ ⑆054001220⑆2000034690853⑈

TC98-111

Dakota Telecom, Inc. is requesting that the Commission designate it as an Eligible Telecommunications Company, as that term is used in 47 USC 214(e)(1), for the following South Dakota exchanges: Centerville (552) and Viborg (786), Fort Randall Telephone Company is currently designated as an Eligible Telecommunications Company in the Centerville and Viborg exchanges. (Staff: HB/KC)

06/04/98

06/19/98

You may receive this listing and other PUC publications via our website or via internet e-mail. You may subscribe to the PUC mailing list at <http://www.state.sd.us/state/execute/puc/puc.htm>

PAGE 2 OF 2

DOCKET NUMBER	TITLE/STAFF/SYNOPSIS	DATE FILED	INTERVENTION DEADLINE
TELECOMMUNICATIONS SERVICE FILINGS These are the telecommunications service filings that the Commission has received for the period of: 05/29/98 through 06/04/98 If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact Delaine Kolbo within five days of this filing.			
REQUEST FOR PUBLIC COMMENTS			
TC98-109	At its April 22, 1998, regularly scheduled meeting, the Public Utilities Commission (Commission) voted to open a docket concerning the Federal Communications Commission's (FCC) Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 Report and Order (Report and Order) of September 20, 1996, which required the Commission to establish a policy on public interest payphones by September 20, 1998. The FCC concluded that the primary responsibility for administering and funding of public interest payphone programs should be left to the states. The FCC's definition of a "public interest telephone" is a payphone which: (1) fulfills a public policy objective in health, safety, or public welfare; (2) is not provided for a location provider with an existing contract for the provision of a payphone, and (3) would not otherwise exist as a result of the operation of the competitive marketplace. Report and Order, FCC 96-388, ¶ 282. To initiate this procedure, the Commission is requesting written comments from telecommunications companies and other interested persons and entities on whether the Commission needs to take any measures to ensure that payphones serving important public interests will continue to exist in light of the elimination of subsidies and other competitive provisions, established pursuant to Section 276 of the 1996 Act. Written comments shall be filed with the Commission on or before June 19, 1998. Following the filing of comments, the Commission will determine what action, if any, needs to be taken. (Staff: HB/KC)	Opened 06/01/98	Comments By 06/19/98
REQUEST FOR CERTIFICATE OF AUTHORITY			
TC98-110	Application by Net2000 Group, Inc. for a Certificate of Authority to operate as a telecommunications company within the state of South Dakota. (Staff: TS/EM) "Net2000 proposes to offer a full range of 1+ interexchange services, including, but not limited to, MTS, private line, WATS, calling card, prepaid calling card, toll free, ISDN, and frame relay service products."	06/01/98	06/19/98
NONCOMPETITIVE TELECOMMUNICATIONS FILINGS			
TC98-090	In The Matter Of The Establishment Of Switched Access Rates For The Local Exchange Carrier Association (LECA). (Staff: HB/KC) On behalf of its member companies, LECA submitted revised tariff pages implementing the cost study revenue requirement that was filed by each member company. This revision includes the revenue requirements of Beresford Municipal Telephone Company, Union Telephone Company, Baltic Telecom Cooperative and Golden West Telecom Cooperative.	05/29/98	06/19/98
REQUEST FOR ELIGIBLE TELECOMMUNICATIONS COMPANY STATUS			

PAGE 1 OF 2

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS

1200 19TH STREET, N.W.
SUITE 500

WASHINGTON, D. C. 20036

(202) 955-9600

NEW YORK, N. Y.
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NEW DELHI, INDIA
TOKYO, JAPAN

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AUG 03 1998

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

(202) 955-9792

WRITER'S DIRECT LINE
(202) 887-1248

WRITER'S E-MAIL
rbuntrock@kelleydrye.com

July 30, 1998

VIA OVERNIGHT COURIER

Ms. Tammi Stangohr, Utility Analyst
South Dakota Public Utilities Commission
State Capitol Building
500 East Capitol Avenue
Pierre, South Dakota 57501-5070

Re: Application of Net2000 Group, Inc. Docket TC 98-110.

Dear Ms. Stangohr:

Enclosed herewith please find one original and ten copies of Net2000 Group, Inc.'s ("Net2000") application for authority to provide intrastate interexchange telecommunication services on a resale basis. The tariff has been revised to reflect the changes requested in your letter of June 16, 1998.

Should you have any questions, please contact me at the above telephone number.

Sincerely,



Ross A. Buntrock

Enclosures

Before the
STATE OF SOUTH DAKOTA
PUBLIC UTILITIES COMMISSION

RECEIVED

AUG 03 1996

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Application of)
)
NET2000 GROUP, INC.)
) Docket No. TC 98-110
)
for a Certificate of Public)
Convenience and Necessity to)
Provide Intrastate Interexchange)
Services in the State of South Dakota)

**APPLICATION OF
NET2000 GROUP, INC.**

Net2000 Group, Inc. ("Net2000" or "Applicant"), by its attorneys, hereby respectfully requests that the South Dakota Public Utilities Commission ("Commission") grant it a Certificate of Public Convenience and Necessity, pursuant to S.D. Codified Laws § 49-31-3 and S.D. Admin. R. §§ 20:10:24:02 and 20:10:24:05, to transact the business of an interexchange telecommunications reseller in the State of South Dakota. In addition, Net2000 respectfully requests that the Commission approve its initial tariff pursuant to S.D. Codified Laws § 49-31-3 and S.D. Admin. R. §§ 20:10:24:02 and 20:10:24:05, effective as of the date of the order granting Net2000 a Certificate of Public Convenience and Necessity.

In support of its Application, Net2000 submits the following information:

I. ***The Applicant***

1. Net2000 is a privately-held Delaware corporation that is headquartered at 8614 Westwood Center Drive, Suite 700, Vienna, Virginia 22182, telephone: (703) 848-8800. A copy of Net2000's Articles of Incorporation and Certificate of Good Standing is attached hereto as ***Exhibit A***. No entity holds a 20 percent or greater interest in the Applicant, nor does the Applicant own or control any subsidiaries.

2. Net2000 is registered or in the process of obtaining authorizations in: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming. The Applicant has not been denied registration in any state.

3. Net2000 is qualified to conduct business within the State of South Dakota as a foreign business entity. A copy of the qualifying document is attached hereto as ***Exhibit B*** (to be late-filed). Net2000's registered agent in South Dakota is Corporation Service Company, 503 S. Pierre Street, Pierre, South Dakota 57501.

II. *Designated Contacts*

4. The designated contacts for this application are:

Brad E. Mutschelknaus
Steven A. Augustino
Andrea D. Pruitt
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036
phone: (202) 955-9600
fax: (202) 955-9792

5. Copies of all correspondence, notices, inquiries and orders also should be sent to:

Christine Gistaro
Director, Long Distance Services
NET2000 GROUP, INC.
8614 Westwood Center Drive
Suite 700
Vienna, Virginia 22182
phone: (703) 610-1207
fax: (703) 848-8847

6. Inquiries regarding complaints and regulatory matters should be directed to Jeff Karp, Net2000 Group, Inc., 8614 Westwood Center Drive, Suite 700, Vienna, Virginia 22182 telephone: (703) 848-8800, fax: (703) 848-8847. Customers with complaints or billing inquiries may contact the Applicant at (800) 220-6282, its toll free billing number.

III. *Proposed Services*

7. Net2000 seeks authority to operate as a reseller of intraLATA and interLATA intrastate telecommunications services to the public throughout the State of South Dakota. Net2000 proposes to offer a full range of 1+ interexchange services, including, but not limited to, MTS, private line, WATS, calling card, prepaid calling card, toll free, ISDN, and frame relay service products.

8. All of Net2000's services will be provided pursuant to the terms and conditions set forth in Net2000's proposed intrastate services tariff, which is attached hereto as *Exhibit C*. Net2000 will abide by all rules governing telecommunications resellers that the Commission has promulgated or may promulgate in the future, unless application of such rules is specifically waived by the Commission or preempted by the Federal Communications Commission ("FCC") or under federal statute.

9. Net2000 will market its services using in-person sales calls, direct mail, print, radio and media advertising. Net2000 utilizes independent marketing agents to market its products and services. Marketing agents are of two types—direct and referral. Direct agents, though independent, solicit customers directly. Referral agents refer potential customers to Net2000, but do not solicit the customers directly. Net2000 will not engage in multilevel or telemarketing in the State of South Dakota.

IV. *Description and Fitness of the Applicant*

10. Net2000 is well-qualified, financially, technically and managerially, to provide the services for which authority is requested in this Application. Net2000 currently provides telecommunications network design and engineering services to customers in the Mid-Atlantic

states. The company is Bell Atlantic's leading volume distributor of local exchange network services and one of the top RBOC agents in the United States. Since its inception in 1993, Net2000 has grown its customer base to over 1,200 clients which represent more than \$100 million in underlying annual local and long distance revenues. Although Net2000 will be reselling the end-to-end services of other interexchange carriers and therefore must, in most instances, rely upon the technical quality of its underlying service providers, Net2000 will be managed by persons with extensive experience in the telecommunications industry. The biographies of the key management and operational personnel responsible for Net2000's services are appended hereto as *Exhibit D*.

11. Net2000 has access to ample capital to compete effectively in the market for interexchange services in South Dakota. Copies of Net2000's most recent audited financial statements are attached as *Exhibit E*.¹

V. **Public Interest Considerations**

12. Net2000's entry into the South Dakota market for telecommunications services clearly will serve the public interest. Net2000 will offer high quality, innovative services to South Dakota consumers at competitive rates. Further, Net2000's entry into the South Dakota marketplace will increase competition, leading over time to better service and more options for South Dakota consumers.

¹ Net2000 is in the process of completing its 1997 audited financial statements. A copy of the completed 1997 audited financial statements will be forwarded to the Commission upon request.

VI. **Requested Regulatory Treatment**

13. Net2000 will be a nondominant reseller of interexchange telecommunications services. As such, Net2000 requests that it be subject to the same regulatory treatment afforded to similarly situated nondominant interexchange resellers.

VII. **Proposed Tariff**

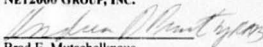
14. As mentioned above, Net2000 proposes to offer telecommunications services in South Dakota at the rates, and pursuant to the terms and conditions, set forth in its proposed tariff, which is attached hereto as **Exhibit C**. Net2000 respectfully requests that the Commission approve its tariff effective as of the date of the order granting Net2000 a Certificate of Public Convenience and Necessity.

WHEREFORE, Net2000 respectfully requests that the Commission grant it a Certificate of Public Convenience and Necessity and approve its proposed tariff as of the date of the order granting that certificate.

Respectfully submitted,

NET2000 GROUP, INC.

By:


Brad E. Mutschelknaus
Steven A. Augustino
Andrea D. Pruitt
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036
(202) 955-9600

Its Attorneys

Dated: July 30, 1998

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE APPLICATION OF)	ORDER GRANTING
NET2000 GROUP, INC. FOR A CERTIFICATE)	CERTIFICATE OF
OF AUTHORITY TO PROVIDE)	AUTHORITY
TELECOMMUNICATIONS SERVICES IN)	
SOUTH DAKOTA)	TC98-110

On June 1, 1998, the Public Utilities Commission (Commission), in accordance with SDCL 49-31-3 and ARSD 20 10.24.02, received an application for a certificate of authority from Net2000 Group, Inc. (Net2000).

Net2000 seeks authority to operate as a reseller of intraLATA and interLATA intrastate telecommunications services throughout South Dakota and offer such services as 1+ interexchange services, including MTS, private line, WATS, calling card, prepaid calling card, toll free, ISDN and frame relay service products. A proposed tariff was filed by Net2000. The Commission has classified long distance service as fully competitive.

On June 4, 1998, the Commission electronically transmitted notice of the filing and the intervention deadline of June 19, 1998, to interested individuals and entities. No petitions to intervene or comments were filed and at its regularly scheduled October 15, 1998, meeting, the Commission considered Net2000's request for a certificate of authority. Commission Staff recommended granting a certificate of authority, subject to the condition that Net2000 not offer a prepaid calling card or require deposits or advance payments without prior approval of the Commission.

The Commission finds that it has jurisdiction over this matter pursuant to Chapter 49-31, specifically 49-31-3 and ARSD 20 10.24.02 and 20 10.24.03. The Commission finds that Net2000 has met the legal requirements established for the granting of a certificate of authority. Net2000 has, in accordance with SDCL 49-31-3, demonstrated sufficient technical, financial and managerial capabilities to offer telecommunications services in South Dakota. The Commission approves Net2000's application for a certificate of authority, subject to the condition that Net2000 not offer a prepaid calling card or require deposits or advance payments without prior approval of the Commission. As the Commission's final decision in this matter, it is therefore

ORDERED that Net2000's application for a certificate of authority is hereby granted, subject to the condition that Net2000 not offer a prepaid calling card or require deposits or advance payments without prior approval of the Commission. It is

FURTHER ORDERED, that Net2000 shall file informational copies of tariff changes with the Commission as the changes occur.

Dated at Pierre, South Dakota, this 21st day of October, 1998.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By Melanie Kales

Date 10/22/98

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

CERTIFICATE OF AUTHORITY

To Conduct Business As A Telecommunications Company
Within The State Of South Dakota

Authority was Granted October 15, 1998
Docket No. TC98-110

This is to certify that

NET2000 GROUP, INC.

is authorized to provide telecommunications services in South Dakota.

This certificate is issued in accordance with SDCL 49-31-3 and ARSD 20 10 24.02, and is subject to all of the conditions and limitations contained in the rules and statutes governing its conduct of offering telecommunications services

Dated at Pierre, South Dakota, this 21st day of October, 1998

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION:**



James A. Burg

JAMES A. BURG, Chairman

Pam Nelson

PAM NELSON, Commissioner

Laska Schoenfelder

LASKA SCHOENFELDER, Commissioner