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Lance J.M. Steinhart
Attorney At Law
6455 East Johns Crossing
Suite 285
Duluth, Georgia 30097

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Telephone: (770) 232-9200
Facsimile: (770) 232-9208

Also Admitted in New York
and Maryland

July 21, 2000

VIA OVERNIGHT DELIVERY

Mr. William Bullard
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Ave-Pierre, SD 57501-5070
(605) 773-3201

Re: Utility.com, Inc.

Dear Mr. Bullard:

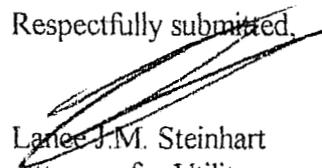
Enclosed please find one original and ten (10) copies of Utility.com, Inc.'s Application for Registration of a Telecommunications Company.

APPLICANT HAS ALSO ENCLOSED ONE COPY OF FINANCIAL STATEMENTS IN A SEPARATE ENVELOPE MARKED "CONFIDENTIAL AND PROPRIETARY" AND RESPECTFULLY REQUESTS CONFIDENTIAL TREATMENT OF THE ENCLOSED FINANCIAL INFORMATION. APPLICANT EXPECTS THAT THIS INFORMATION WILL BE RESTRICTED TO COUNSEL, AGENTS AND EMPLOYEES WHO ARE SPECIFICALLY ASSIGNED TO THIS APPLICATION BY THE COMMISSION.

I have also enclosed a check in the amount of \$250.00 payable to the "South Dakota Public Utilities Commission" for the filing fee, and an extra copy of this cover letter to be date stamped and returned to me in the enclosed self-addressed prepaid envelope.

If you have any questions or if I may provide you with any additional information, please do not hesitate to contact me.

Respectfully submitted,


Lance J.M. Steinhart
Attorney for Utility.com, Inc.

Enclosures

cc: Benjamin T. Reyes, II

APPLICATION FOR REGISTRATION
OF UTILITY.COM, INC.
FILED WITH THE
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE)
APPLICATION OF)
UTILITY.COM, INC.)
)
FOR AN ORDER)
AUTHORIZING THE REGISTRATION)
OF APPLICANT AS A)
TELECOMMUNICATIONS COMPANY)

RECEIVED

JUL 24 2000

Docket No.

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

APPLICATION

Application is hereby made to the South Dakota Public Utilities Commission for an Order authorizing Utility.com, Inc. ("Applicant") to register as a telecommunications company within the State of South Dakota. The following information is furnished in support thereof:

1. Name, Address and Telephone Number of Applicant:

Utility.com, Inc.
5650 Hollis Street
Emeryville, California 94608
Telephone: (510) 740-1700
Toll-Free Customer Service: (888) 365-3700

2. The name under which the Applicant will provide these services if different than in 1. above:

Utility.com

3. Applicant's corporate information:

Applicant was organized in the State of Delaware on November 2, 1999 as WorldWideEnergy, Inc. and changed its name on May 19, 1999. A copy of the Applicant's Certificate of Incorporation, as amended, is attached hereto as Exhibit A. A copy of Applicant's Certificate of Authority to transact business as a foreign corporation in the State of South Dakota is attached hereto as Exhibit B.

The Applicant has no principal office in South Dakota. The name and address of the Applicant's registered agent is:

National Corporate Research, Ltd.
C/O Marilyn Person
819 West Third
Pierre, South Dakota 57501

The names and address of each corporation, association, partnership, cooperative, or individual holding a 20% or greater ownership or management interest in the Applicant corporation and the amount and character of the ownership or management interest are as follows:

Name and Address	Shares Owned	Percentage of all Shares Issued and Outstanding and Voting Control
idealab! Holding, LLC	6,500,447	24%

All of the above can be reached through the company as set forth in Section 1 above.

4. Partnership Information:

Not Applicable.

5. Description of Services Applicant intends to offer:

Applicant is a switch-based reseller which intends to offer 1+ and 101XXXX direct outbound dialing, 800/888 toll-free inbound dialing, travel card service, and prepaid calling card service.

6. Means by which the Applicant intends to provide services:

Applicant does not own or maintain any transmission facilities or switching equipment in the State of South Dakota. The Applicant will initially provide services through MCI WorldCom, its underlying carrier. As a reseller, Applicant has no points of presence in the State of South Dakota, thus Applicant neither owns, leases, nor operates any switching, transmission, or other physical facilities in the State of South Dakota, and no such facilities will be used by Applicant in providing service in the State of South Dakota. Rather, Applicant will be engaged in reselling services provided by facilities-based carriers within the State of South Dakota.

7. Geographic Areas in which services will be offered:

Applicant intends to provide services on a statewide basis.

8. Financial Qualifications:

Applicant is financially qualified to provide intrastate interexchange telecommunications services within South Dakota. In particular, Applicant has adequate access to the capital necessary to fulfill any obligations it may undertake with respect to the provision of intrastate telecommunications services in the State of South Dakota. See Exhibit C, which are marked and filed as "Confidential" under separate cover, Applicant's Balance Sheet & Income Statement for five months ended May 31, 2000, which demonstrates that Applicant has the financial ability to provide the services that it proposes to offer. Applicant hereby respectfully requests a waiver of ARSD 20:10:24:02(8) to the extent it requires applicant to file a current balance sheet, income statement, and cash flow statements.

9. Applicant's complaints and regulatory matters contact and how Applicant handles customer billings and customer service matters.

All inquiries regarding regulatory matters should be addressed to:

Benjamin T. Reyes, II, General Counsel & Secretary
5650 Hollis Street
Emeryville, California 94608
Telephone: (510) 740-1700
Facsimile: (510) 740-1890
E-Mail: breyes@utility.com

All inquiries regarding complaints should be addressed to:

Joseph Mire, Vice President of Customer Service
5650 Hollis Street
Emeryville, California 94608
Telephone: (510) 740-1700; (888) 365-3700 (toll-free)
Facsimile: (510) 740-1890
E-Mail: jmire@utility.com

The Applicant's customers will be direct billed utilizing "real-time" completed call detail information from Applicant's underlying carriers. Applicant's toll-free number will be on all invoices and prepaid calling cards and customer service will be provided in-house by the Applicant.

10. Regulatory Status:

Applicant is currently in the process of obtaining all required authorizations from the state regulatory agencies. Applicant is currently authorized to provide service in Iowa, Michigan, Montana, New Hampshire, New Jersey, Pennsylvania, Texas, Utah and Virginia.

The Applicant is in good standing with the appropriate regulatory agency in the states where it is registered or certified. The Applicant has never been denied registration or certification nor withdrawn its request for registration or certification in any state.

11. Description of Marketing

Applicant intends to market its services to primarily to residential customers and to small to mid-sized businesses. All sales personnel will have telecommunications service experience. Applicant will market through direct sales by employees and agents, and through the internet. Applicant does not intend to engage in multilevel marketing at this time. Applicant's marketing materials are currently being developed and are not available at this time.

12. Cost Support:

Applicant intends to provide services at a price above its cost.

13. Federal Tax Identification Number:

95-4712132

14. The Number and Nature of Complaints filed against the Applicant with any state or federal regulatory commission regarding the unauthorized switching of a customer's telecommunications provider and the act of charging customers for services that have not been ordered:

None

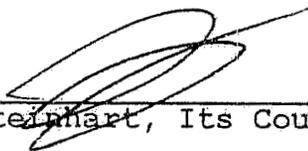
15. Tariff

A copy of Applicant's proposed tariff is attached hereto as Exhibit E.

WHEREFORE, the undersigned Applicant requests that the South Dakota Public Utilities Commission enter an order granting this application.

DATED this 21st day of July, 2000.

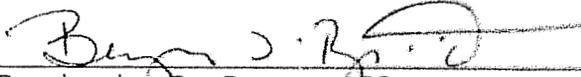
Utility.com, Inc.

By: 
Lance J.M. Steinhart, Its Counsel

6455 East Johns Crossing
Suite 285
Duluth, Georgia 30097
(770) 232-9200

County of Alameda

Benjamin T. Reyes, II, being first duly sworn, deposes and says that he/she is the General Counsel & Secretary of Utility.com, Inc., the Applicant in the proceeding entitled above, that he/she has read the foregoing application and knows the contents thereof; that the same are true of his/her knowledge, except as to matters which are therein stated on information or belief, and to those matters he/she believes them to be true.


Benjamin T. Reyes, II
General Counsel & Secretary

Subscribed and sworn to before this 4th day of July, 2000.


Notary Public

My Commission expires: 02/26/04



MARY OLIVERA
Commissioner of Education
State of California
Office of the State Superintendent of Education



LIST OF EXHIBITS

- A - CERTIFICATE OF INCORPORATION, AS AMENDED,
- B - CERTIFICATE OF AUTHORITY
- C - MARKETING MATERIAL
- D - FINANCIAL INFORMATION
- E - PROPOSED TARIFF

EXHIBIT A - CERTIFICATE OF INCORPORATION, AS AMENDED,

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 AMENDMENT OF "UTILITY.COM, INC.", FILED IN THIS OFFICE ON THE TWENTY-FOURTH DAY OF APRIL, A.D. 2000, AT 12:30 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.



Edward J. Freel

Edward J. Freel, Secretary of State

2962225 8100

AUTHENTICATION:

0397471

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**CERTIFICATE OF AMENDMENT
OF
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
UTILITY.COM, INC.**

Utility.com, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Company"), does hereby certify:

FIRST: That, upon the unanimous written consent of the Board of Directors of the Company in accordance with the provisions of Section 141 of the General Corporation Law of the State of Delaware, a resolution was duly adopted setting forth a proposed amendment to the Amended and Restated Certificate of Incorporation of said Company, declaring said amendment to be advisable. The resolution setting forth the proposed amendment is as follows:

RESOLVED: That, subject to the approval of the stockholders of the Company, the first paragraph of Article FOUR of the Amended and Restated Certificate of Incorporation of the Company is hereby amended to read in its entirety as follows:

"FOUR The corporation is authorized to issue two classes of stock to be designated, respectively, "*Common Stock*" and "*Preferred Stock*." The total number of shares of Common Stock that the corporation is authorized to issue is 45,000,000, with a par value of \$0.001 per share. The total number of shares of Preferred Stock that the corporation is authorized to issue is 21,230,659 with a par value of \$0.001 per share, 4,000,000 of which are designated "*Series A Preferred Stock*," 750,000 of which are designated "*Series B Preferred Stock*," 4,150,977 of which are designated "*Series C Preferred Stock*," and 12,329,682 of which are designated "*Series D Preferred Stock*."

SECOND: That in lieu of a meeting and vote of the stockholders of the Company, (i) the holders of not less than a majority of the outstanding total number of shares of Common Stock, (ii) the holders of not less than a majority of the outstanding total number of shares of Preferred Stock, and (iii) the holders of not less than a majority of the outstanding total number of shares of each series of Preferred Stock, have given written consent to said amendment in accordance with the

provisions of Section 228 of the General Corporation Law of the State of Delaware.

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

IN WITNESS WHEREOF, said Utility.com, Inc. has caused this Certificate to be signed by its duly authorized officer this 24th day of April, 2000.

UTILITY.COM, INC.

By: Chris Kip
Name: Chris Kip
Title: Chief Executive Officer

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 RESTATED CERTIFICATE OF "UTILITY.COM, INC.", FILED IN THIS OFFICE ON THE NINTH DAY OF MARCH, A.D. 2000, AT 1:30 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.



Edward J. Freel

Edward J. Freel, Secretary of State

2962225 8100

001119927

AUTHENTICATION: 0305150

DATE: 03-09-00

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
UTILITY.COM, INC.

(Incorporated November 2, 1998)

Utility.com, Inc. (the "corporation"), a corporation organized and existing under the General Corporation Law of the State of Delaware (the "General Corporation Law") hereby certifies as follows:

1. That the corporation was incorporated on November 2, 1998 under the name WorldWideEnergy, Inc., pursuant to the General Corporation Law.
2. Pursuant to Sections 242 and 245 of the General Corporation Law, this Amended and Restated Certificate of Incorporation restates and integrates and further amends the provisions of the Certificate of Incorporation of the corporation.
3. The text of the Certificate of Incorporation is hereby amended and restated in its entirety as follows:
 - ONE. That the name of the corporation is: Utility.com, Inc.
 - TWO. The address of the corporation's registered office in the State of Delaware is 15 East, North Street, in the City of Dover, County of Kent, Delaware 19901. The name of its registered agent at such address is Incorporating Services, Ltd.
 - THREE. The purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.
 - FOUR. The corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares of Common Stock that the corporation is authorized to issue is 45,000,000, with a par value of \$0.001 per share. The total number of shares of Preferred Stock that the corporation is authorized to issue is 21,181,032 with a par value of \$0.001 per share, 4,000,000 of which are designated "Series A Preferred Stock," 750,000 of which are designated "Series B Preferred Stock," 4,150,977 of which are designated "Series C Preferred Stock," and 12,280,055 of which are designated "Series D Preferred Stock."

The remaining shares of Preferred Stock, if any, may be issued from time to time in one or more series. The board of directors of the corporation (the "Board of Directors") is expressly authorized to provide for the issuance of all or any of the remaining shares of the Preferred Stock in

one or more series, and to fix the number of shares and to determine or alter for each such series, such voting powers, full or limited, or no voting powers, and such designations, preferences, and relative, participating, optional or other rights and such qualifications, limitations, or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issue of such shares and as may be permitted by the General Corporation Law. The Board of Directors is also expressly authorized to decrease (but not below the number of shares of such series then outstanding) the number of shares of any series other than the subsequent to the issue of shares of that series. In case the number of shares of any such series shall be so decreased, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series.

The corporation shall from time to time in accordance with the laws of the State of Delaware increase the authorized amount of its Common Stock if at any time the number of shares of Common Stock remaining unissued and available for issuance upon conversion of the Preferred Stock shall not be sufficient to permit conversion of the Preferred Stock.

The relative rights, preferences, privileges and restrictions granted to or imposed upon the respective classes and series of the shares of capital stock or the holders thereof are as set forth below.

Section 1. Dividends. The holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock shall be entitled to receive on a parity basis, out of any funds legally available therefor, noncumulative dividends in an amount equal to \$0.0012 per share per annum, \$0.016 per share per annum, \$0.075 per share per annum, and \$0.14 per share per annum, respectively, when and if declared by the corporation's Board of Directors. No dividend shall be paid on the Common Stock in any year, other than dividends payable solely in capital stock, until all dividends for such year have been declared and paid on the Preferred Stock, and no dividends on the Common Stock shall be paid unless the amount of such dividend on the Common Stock is also paid on the Preferred Stock on an as-converted to Common Stock basis.

Section 2. Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of the corporation, prior and in preference to any distribution of any of the assets or funds of the corporation to the holders of the Common Stock by reason of their ownership of such stock, (i) the holders of Series A Preferred Stock shall be entitled to receive for each outstanding share of Series A Preferred Stock then held by them an amount equal to \$0.05 plus declared but unpaid dividends on such share (as adjusted for any recapitalizations, stock combinations, stock dividends, stock splits and the like), (ii) the holders of Series B Preferred Stock shall be entitled to receive for each outstanding share of Series B Preferred Stock then held by them an amount equal to \$0.30 plus declared but unpaid dividends on such share (as adjusted for any recapitalizations, stock combinations, stock dividends, stock splits and the like), (iii) the holders of Series C Preferred Stock shall be entitled to receive for each outstanding share of Series C Preferred Stock then held by them an amount equal to \$1.41 plus

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declared but unpaid dividends on such share (as adjusted for any recapitalizations, stock combinations, stock dividends, stock splits and the like) and, (iv) the holders of Series D Preferred Stock shall be entitled to receive for each outstanding share of Series D Preferred Stock then held by them an amount equal to \$2.60 plus declared but unpaid dividends on such share (as adjusted for any recapitalizations, stock combinations, stock dividends, stock splits and the like). The Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock and the Series D Preferred Stock shall rank on parity as to the receipt of the respective preferential amounts for each such series upon the occurrence of such event. If, upon the occurrence of a liquidation, dissolution or winding up, the assets and funds of the corporation legally available for distribution to stockholders by reason of their ownership of stock of the corporation shall be insufficient to permit the payment to such holders of Preferred Stock of the full aforementioned preferential amount, then the entire assets and funds of the corporation legally available for distribution to stockholders by reason of their ownership of stock of the corporation shall be distributed ratably among the holders of Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(b) Upon a liquidation, dissolution or winding up of the corporation, and after payment to the holders of Preferred Stock of the amounts to which they are entitled pursuant to Section 2(a), all assets and funds of the corporation that remain legally available for distribution to stockholders by reason of their ownership of stock of the corporation shall be distributed ratably among the holders of Common Stock and Preferred Stock in proportion to the number of shares of Common Stock held by them or issuable upon the conversion of the Preferred Stock held by them and based on the total number of shares of Common Stock outstanding, or issuable upon conversion of the outstanding Preferred Stock, until such time as each holder of shares of Preferred Stock has received an aggregate liquidation amount under this Section 2(b) equal to 1.5 times the applicable Original Issue Price (as defined in Section 3(a) hereof) (as adjusted for recapitalizations, stock combinations, stock dividends, stock splits and the like). Thereafter, all such assets and funds shall be distributed ratably among the holders of Common Stock.

(c) For the purposes of this Section 2, a liquidation, dissolution or winding up of the Corporation shall be deemed to be occasioned by, and to include, the corporation's sale of all or substantially all of its assets or the acquisition of this corporation by another entity by means of merger or consolidation resulting in the exchange of the outstanding shares of this corporation for securities or consideration issued, or caused to be issued, by the acquiring corporation or its subsidiary, unless the stockholders of the corporation hold at least 50% of the voting power of the surviving corporation in such a transaction.

(d) If any of the assets of this corporation are to be distributed under this Section or for any other purpose, in a form other than cash, then the Board of Directors shall be empowered to, and shall promptly determine the value of the assets to be distributed to the holders of Preferred Stock and Common Stock. This corporation shall, upon receipt of such determination, promptly give written notice of the determination to each holder of shares of Preferred Stock and Common Stock. Any securities shall be valued as follows:

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

(A) If traded on a securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such quotation system over the thirty (30) day period ending three (3) days prior to the closing;

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

(C) If there is no active public market, the value shall be the fair market value thereof, as determined by the Board of Directors.

(ii) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in Section 2(d)(i)(A), (B) or (C) to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors.

Section 3. Conversion.

The holders of Preferred Stock shall have conversion rights as follows:

(a) **Right to Convert.** Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the corporation or any transfer agent for such Preferred Stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the applicable Original Issue Price of such share of Preferred Stock by the Conversion Price (the "Conversion Price") at the time in effect for a share of such series of Preferred Stock. The Original Issue Price per share of Series A Preferred Stock is \$0.05. The Conversion Price per share of Series A Preferred Stock initially shall be \$0.05, subject to adjustment from time to time as provided below. The Original Issue Price per share of the Series B Preferred Stock is \$0.30. The Conversion Price per share of the Series B Preferred Stock initially shall be \$0.30, subject to adjustment from time to time as provided below. The Original Issue Price per share of Series C Preferred Stock is \$1.41. The Conversion Price per share of Series C Preferred Stock initially shall be \$1.41, subject to adjustment from time to time as provided below. The Original Issue Price per share of Series D Preferred Stock is \$2.60. The Conversion Price per share of the Series D Preferred Stock initially shall be \$2.60, subject to adjustment from time to time as provided below.

(b) **Automatic Conversion.** Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Conversion Price upon the earlier of (i) the closing of a firm commitment underwritten public offering pursuant to an effective registration

statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock to the public involving gross proceeds to the Company of not less than \$25,000,000 at a per share offering price of at least \$7.80, net of underwriting discounts and commissions (a "Qualified Initial Public Offering") and (ii) the consent of holders of not less than 50% of the then outstanding shares of each series of Preferred Stock.

(c) **Mechanics of Conversion.** No fractional shares of Common Stock shall be issued upon conversion of 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 of such series of Preferred Stock. Before any holder of Preferred Stock shall be entitled to convert the same into shares of Common Stock pursuant to Section 3(a), such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the corporation or of any transfer agent for such Preferred Stock, and shall give written notice by mail, postage prepaid, to the corporation at its principal corporate office, of the election to convert the same, and such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted. In the event of an automatic conversion pursuant to Section 3(b), the outstanding shares of Preferred Stock shall be converted automatically without any further action by the holder of such shares and whether or not the certificates representing such shares are surrendered to the corporation or the transfer agent for such Preferred Stock; and the corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such automatic conversion unless the certificates evidencing such shares of Preferred Stock are either delivered to the corporation or the transfer agent for such Preferred Stock as provided above, or the holder notifies the corporation or the transfer agent for such Preferred Stock that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the corporation to indemnify the corporation from any loss incurred by it in connection with such certificates. The corporation shall, as soon as practicable thereafter, issue and deliver to such address as the holder may direct, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled. If the conversion is in connection with a public offering of securities described in Section 3(b), the conversion shall be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, and the conversion shall not be deemed to have occurred until immediately prior to the closing of such sale of securities.

(d) **Status of Converted Stock.** In the event any shares of Preferred Stock shall be converted pursuant to this Section 3, the shares so converted shall be canceled and shall not be reissued by the corporation.

(e) **Adjustment of Conversion Price of Preferred Stock.** The Conversion Prices shall be subject to adjustment from time to time as follows:

(i) **Adjustments for Subdivisions or Combinations of Common Stock.** In the event the outstanding shares of Common Stock shall be subdivided by stock split, stock dividend or otherwise, into a greater number of shares of Common Stock, the Conversion Price of

each series of Preferred Stock then in effect shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Common Stock shall be combined or consolidated into a lesser number of shares of Common Stock, the Conversion Price of each series of Preferred Stock then in effect shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.

(ii) **Adjustments for Stock Dividends and Other Distributions.** In the event the corporation makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, any distribution (excluding repurchases of securities by the corporation not made on a pro rata basis) payable in property or in securities of the corporation other than shares of Common Stock, and other than as otherwise adjusted for in this Section 3 or as provided for in Section 1 in connection with a dividend, then and in each such event the holders of Preferred Stock shall receive, at the time of such distribution, the amount of property or the number of securities of the corporation that they would have received had their Preferred Stock been converted into Common Stock on the date of such event.

(iii) **Adjustments for Reorganizations, Reclassifications or Similar Events.** If the Common Stock shall be changed into the same or a different number of shares of any other class or classes of stock or other securities or property, whether by capital reorganization, reclassification or otherwise, then each share of Preferred Stock shall thereafter be convertible into the number 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 shares of Preferred Stock immediately prior to such reorganization, reclassification or other event shall have been entitled upon such reorganization, reclassification or other event.

(iv) **Adjustments for Diluting Issues.** In addition to the adjustment of the Conversion Prices provided above, the Conversion Price of the Series A Preferred Stock, Series B Preferred Stock and the Series C Preferred Stock and the Series D Preferred Stock shall be subject to further adjustment from time to time as follows:

(A) **Special Definitions.**

(1) "Options" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities.

(2) "Original Issue Date" shall mean, for each series of Preferred Stock, the date on which the first share of that series of Preferred Stock was first issued.

(3) "Convertible Securities" shall mean securities convertible into or exchangeable for Common Stock, either directly or indirectly.

(4) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Section 3(e)(iv)(C) deemed to be issued) by the

corporation after the Original Issue Date other than shares of Common Stock issued (or, pursuant to Section 3(e)(iv)(C) deemed to be issued):

i) upon conversion of shares of Preferred Stock;

ii) to employees, consultants or directors pursuant to stock option, stock grant, stock purchase or similar plans or arrangements approved by the Board of Directors (provided that such plans or arrangements are approved by at least two (2) of the directors who are elected by a series of Preferred Stock voting separately as a class (a "Series Director"), including, without limitation, upon the exercise of Options outstanding as of the Original Issue Date;

iii) to equipment lessors, banks, financial institutions or similar entities in transactions approved by the Board of Directors, the principle purpose of which is other than the raising of capital;

iv) as a dividend or other distribution in connection with which an adjustment to the Conversion Price is made pursuant to Section 3(e)(i), (ii) or (iii);

v) in the corporation's Qualified Initial Public Offering;

vi) in a merger or acquisition that is approved by the Board of Directors;

vii) pursuant to any transactions approved by the Board of Directors, provided that at least two of the Series Directors approve such transaction, primarily for the purpose of (A) joint ventures, technology licensing or research and development activities, (B) distribution or manufacture of the corporation's products or services, or (C) any other transactions involving corporate partners that are primarily for purposes other than raising capital, provided that the percentage of shares issued pursuant to any such transaction does not exceed five percent (5%) of the total outstanding shares of stock of the Corporation where the percentage of shares issued pursuant to any such transaction is equal to a fraction, the numerator of which is the number of shares being issued and the denominator is the number of shares of Common Stock outstanding and Preferred Stock outstanding, on an as-converted basis, plus the number of shares reserved for issuance pursuant to the corporation's option plan then in effect; or

viii) if the holders of a majority of the then outstanding shares of each series of Preferred Stock agree in writing that such shares shall not constitute Additional Shares of Common Stock.

(B) No Adjustment of Conversion Price. No adjustment in the Conversion Price shall be made pursuant to Section 3(e)(iv)(D) unless the consideration per share for an Additional Share of Common Stock issued (or, pursuant to Section 3(e)(iv)(C), deemed to be

issued) by the corporation is less than the Conversion Price in effect on the date of, and immediately prior to, such issue, and provided that any such adjustment shall not have the effect of increasing the Conversion Price to an amount that exceeds the Conversion Price existing immediately prior to such adjustment.

(C) Deemed Issue of Additional Shares of Common Stock.

Except as otherwise provided in Section 3(e)(iv)(A) or 3(e)(iv)(B), in the event 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 any holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock 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 in any such case in which additional shares of Common Stock are deemed to be issued:

(1) 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;

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

(3) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price computed upon the original issue thereof or upon the occurrence of a record date with respect thereto, and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:

i) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities, and the consideration received therefor was the consideration actually received by the corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the corporation upon such exercise, or for the issue of all such

Convertible Securities, whether or not converted or exchanged, plus the additional consideration, if any, actually received by the corporation upon such conversion or exchange; and

ii) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options and the consideration received by the corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(4) no readjustment pursuant to Section 3(e)(iv)(C)(2) or (3) above shall have the effect of increasing the Conversion Price to an amount which exceeds the Conversion Price existing immediately prior to the original adjustment with respect to the issuance of such Options or Convertible Securities, as adjusted for any Additional Shares of Common Stock issued (or, pursuant to Section 3(e)(iv)(C), deemed to be issued) between such original adjustment date and such readjustment date;

(5) in the case of any Options which expire by their terms not more than 30 days after the date of issue thereof, no adjustment of the Conversion Price shall be made until the expiration or exercise of all such Options; and

(6) in the case of any Option or Convertible Security with respect to which the maximum number of shares of Common Stock issuable upon exercise or conversion or exchange thereof is not determinable, no adjustment to the Conversion Price shall be made until such number becomes determinable.

(D) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. Subject to the limitation set forth in Section 3(e)(iv)(B), above, if Additional Shares of Common Stock are issued (or, pursuant to Section 3(e)(iv)(C), deemed to be issued) without consideration or for a consideration per share (computed on an as-converted to Common Stock basis) less than a Conversion Price in effect on the date of, and immediately prior to, such issue (a "Dilutive 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, (x) 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 (y) 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. For the purposes of this Section 3(e)(iv)(D), all shares of Common Stock issuable upon exercise of outstanding Options, upon conversion of outstanding Convertible Securities and Preferred Stock, shall be deemed to be outstanding, and immediately after any Additional Shares of Common Stock

are deemed issued pursuant to Section 3(e)(iv)(C), such Additional Shares of Common Stock shall be deemed to be outstanding.

(E) **Determination of Consideration.** For purposes of this Section 3(e)(iv), the consideration received by the corporation for any Additional Shares of Common Stock issued (or, pursuant to Section 3(c)(iv)(C), deemed to be issued) shall be computed as follows:

(1) **Cash and Property.** Such consideration shall:

i) insofar as it consists of cash, be computed at the aggregate amount of cash received by the corporation after deducting any commissions paid by the corporation with respect to such issuance;

ii) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issuance, as determined in good faith by the Board of Directors of the corporation; and

iii) if Additional Shares of Common Stock are issued (or, pursuant to Section 3(c)(iv)(C), deemed to be 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 (A) and (B) above, as determined in good faith by the Board of Directors of the corporation.

(2) **Options and Convertible Securities.** The

consideration received by the corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 3(e)(iv)(C), relating to Options and Convertible Securities, shall be the sum of (x) the total amount, if any, received or receivable by the corporation as consideration for the issue of such Options or Convertible Securities, plus (y) 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.

(f) **Certificate as to Adjustments.** Upon the occurrence of each adjustment or

readjustment of the Conversion Price pursuant to this Section 3, the corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock to which such adjustment pertains a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Prices at the time in effect, and (iii) the number

of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of such holder's Preferred Stock.

Section 4. Voting.

(a) **General.** Except as otherwise required by law, each holder of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which the shares of Preferred Stock so held could be converted at the record date for determination of the stockholders entitled to vote, or, if no such record date is established, at the date such vote is taken or any written consent of stockholders is solicited. Except as required by law or as otherwise set forth herein (including without limitation Sections 4(b) - (f)), all shares of all series of Preferred Stock and all shares of Common Stock shall vote together as a single class. Fractional votes by the holders of Preferred Stock shall not, however, be permitted, and any fractional voting rights shall (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) be rounded down to the nearest whole number.

(b) **Election of Directors.** The authorized number of directors of the corporation shall be set forth in the Bylaws of the corporation and may be increased or decreased by an amendment to such Bylaws in accordance with their provisions. For so long as at least 2,000,000 shares of Series A Preferred Stock remain outstanding (as adjusted for recapitalizations, stock combinations, stock dividends, stock splits and the like), the holders of shares of Series A Preferred Stock, voting separately as a class, shall be entitled to elect one (1) director of the corporation at each annual election of directors (and to fill any vacancies with respect thereto). For so long as at least 175,000 shares of Series B Preferred Stock remain outstanding (as adjusted for recapitalizations, stock combinations, stock dividends, stock splits and the like), the holders of Series B Preferred Stock, voting separately as a class, shall be entitled to elect one (1) director of the corporation at each annual election of directors (and to fill any vacancies with respect thereto). For so long as at least 1,976,064 shares of Series C Preferred Stock remain outstanding (as adjusted for recapitalizations, stock combinations, stock dividends, stock splits and the like), the holders of Series C Preferred Stock, voting separately as a class, shall be entitled to elect one (1) director of the corporation at each annual election of directors (and to fill any vacancies with respect thereto). For so long as at least 6,101,566 shares of Series D Preferred Stock remain outstanding (as adjusted for recapitalizations, stock combinations, stock dividends, stock splits and the like), the holders of Series D Preferred Stock, voting separately as a class, shall be entitled to elect one (1) director of the corporation at each annual election of directors (and to fill any vacancies with respect thereto). The Common Stock and Preferred Stock, voting together as a single class, shall be entitled to elect all remaining directors at each annual election of directors (and to fill any vacancies with respect thereto).

(c) Approval by Class. The corporation shall not, without first obtaining the approval of the holders of not less than a majority of the then outstanding total number of shares of Preferred Stock:

(i) effect a consolidation, reorganization or merger of the corporation with or into any other corporation, which would result in the stockholders of the corporation immediately prior to such consolidation, reorganization or merger owning less than 50% of the voting power of the corporation after such consolidation; or

(ii) effect a sale or other disposition of all or substantially all of the assets of the corporation in one or a series of related transactions of the corporation.

(d) Approval by Preferred Stock. The corporation shall not, without first obtaining the approval of the holders of not less than a majority of the then outstanding total number of shares of each series of Preferred Stock:

(i) increase the number of authorized shares of Preferred Stock or any series of Preferred Stock;

(ii) authorize, create or issue any shares of any class or series of stock having any preference or priority superior to or on parity with any such preference or priority of any outstanding series of Preferred Stock;

(iii) amend or repeal any provision of, or add any provision to, the corporation's Certificate of Incorporation if such action would adversely alter or change in any material respect the rights, preferences, privileges, or restrictions of any outstanding series of Preferred Stock;

(iv) take any action resulting in the repurchase or redemption of shares of Common Stock of the corporation, except as set forth in Section 5 hereof;

(v) pay any dividends on its Common Stock;

(vi) pay any dividends on any series of Preferred Stock unless such dividend is paid on all outstanding series of Preferred Stock; or

(vii) liquidate or dissolve the corporation.

(e) Approval by Series C Preferred Stock. The corporation shall not, without first obtaining the approval of the holders of not less than a majority of the then outstanding total number of shares Series C Preferred Stock effect (i) a consolidation, reorganization or merger of the corporation with or into any other corporation, which would result in the stockholders of the

corporation immediately prior to such consolidation, reorganization or merger owning less than 50% of the voting power of the corporation after such consolidation, or (ii) a sale or other disposition of all or substantially all of the assets of the corporation in one or a series of related transactions of the corporation, provided, however, that the provisions of this Section 4(d) shall only apply if such consolidation, merger, reorganization or sale or other disposition of assets provides for aggregate per share consideration to each holder of Series C Preferred Stock of less than \$2.82.

(f) **Approval by Series D Preferred Stock** The corporation shall not, without first obtaining the approval of the holders of not less two-thirds of the then outstanding total number of shares of Series D Preferred Stock:

- (i) authorize, create or issue any shares of any class or series of stock having any preference or priority superior to or on parity with any such preference or priority of Series D Preferred Stock;
- (ii) increases the authorized number of shares of Series D Preferred;
- (iii) amend or repeal the Company's Certificate of Incorporation or Bylaws in a manner that materially and adversely affects the holders of Series D Preferred; or
- (iv) materially amends the rights, preferences or privileges of the Series D Preferred as a class.

Section 5. Consent to Distributions. Each holder of Preferred Stock shall be deemed to have consented, for purposes of Sections 502, 503 and 506 of the California Corporations Code and Sections 1 and 2 of this Article Four, to distributions made by the corporation in connection with the repurchase of shares of Common Stock from employees, officers, directors or consultants of the corporation in connection with the termination of their employment or services pursuant to agreements or arrangements approved by the Board of Directors of the corporation.

Section 6. Reacquired Shares. Any shares of Preferred Stock purchased or otherwise acquired by the corporation in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board of Directors, subject to the conditions and restrictions on issuance set forth herein, including, without limitation, Article THREE, Section 3(d).

Section 7. Waiver of Rights, Preferences or Privileges. Any right, preference or privilege of the Preferred Stock may be waived by a majority of the outstanding shares of each series of Preferred Stock voting on an as converted to Common Stock basis, and such waiver shall be binding on all holders of Preferred Stock. Notwithstanding the foregoing, any right preference or privilege of the Series D Preferred Stock set forth in Section 4(f) hereof may only be waived by two-

thirds (2/3) of the outstanding shares of Series D Preferred Stock voting on an as converted to Common Stock basis, and such waiver shall be binding on all holders of Series D Preferred Stock.

FIVE. The corporation is to have perpetual existence.

SIX. Except as set forth in Article Four, Section 4(b) hereof, the number of directors which constitute the whole Board of the corporation shall be as specified in the Bylaws of the corporation.

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

EIGHT. Elections of directors need not be by written ballot unless a stockholder demands election by written ballot at the meeting and before voting begins or unless the Bylaws of the corporation shall so provide.

NINE. Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws of the corporation may provide. The books of the corporation may be kept outside of the State of Delaware at such place or places as may be designated from time to time by the Board of Directors of the corporation or in the Bylaws of the corporation.

TEN.

(a) Limitation of Director's Liability. To the fullest extent not prohibited by the General Corporation Law of Delaware as the same exists or as it may hereafter be amended, a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for conduct as a director.

(b) Indemnification of Corporate Agents. The corporation may indemnify to the fullest extent not prohibited by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that such person, such person's testator or intestate is or was a director, officer, employee benefit plan fiduciary, agent or employee of the corporation or any predecessor of the corporation or serves or served at the request of the corporation or any predecessor of the corporation as a director, officer, agent, employee benefit plan fiduciary or employee of another corporation, partnership, limited liability company, joint venture, trust or other entity or enterprise.

(c) Repeal or Modification. Neither any amendment or repeal of this Article Ten, nor the adoption of any provision of the corporation's Certificate of Incorporation inconsistent with this Article Ten, shall eliminate or reduce the effect of this Article Ten, in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article Ten, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision."

4. The foregoing amendment and restatement of the Certificate of Incorporation has been duly approved by the Board of Directors of the corporation in accordance with the provisions of Sections 242 and 245 of the General Corporation Law.

5. The foregoing amendment and restatement of the Certificate of Incorporation has been duly approved by the written consent of the stockholders in accordance with Sections 228 and 245 of the Delaware General Corporation Law. The total number of outstanding shares of Common Stock of the corporation is 593,350. The total number of outstanding shares of Series A Preferred Stock of the corporation is 4,000,000. The total number of outstanding shares of Series B Preferred Stock of the corporation is 500,000. The total number of outstanding shares of Series C Preferred Stock is 3,973,666. The number of shares held by stockholders who consented to this amendment in writing equaled or exceeded the required percentage. Pursuant to Section 228 of the General Corporation Law, prompt written notice of this amendment and restatement has been given to all stockholders who did not consent to this amendment.

IN WITNESS WHEREOF, the corporation has caused this Amended and Restated Certificate of Incorporation to be signed by Chris King, its Chief Executive Officer, and attested to by Timothy E. Morris, its Secretary, this 9 day of March 2000.

UTILITY.COM, INC.



Chris King,
Chief Executive Officer

ATTEST:

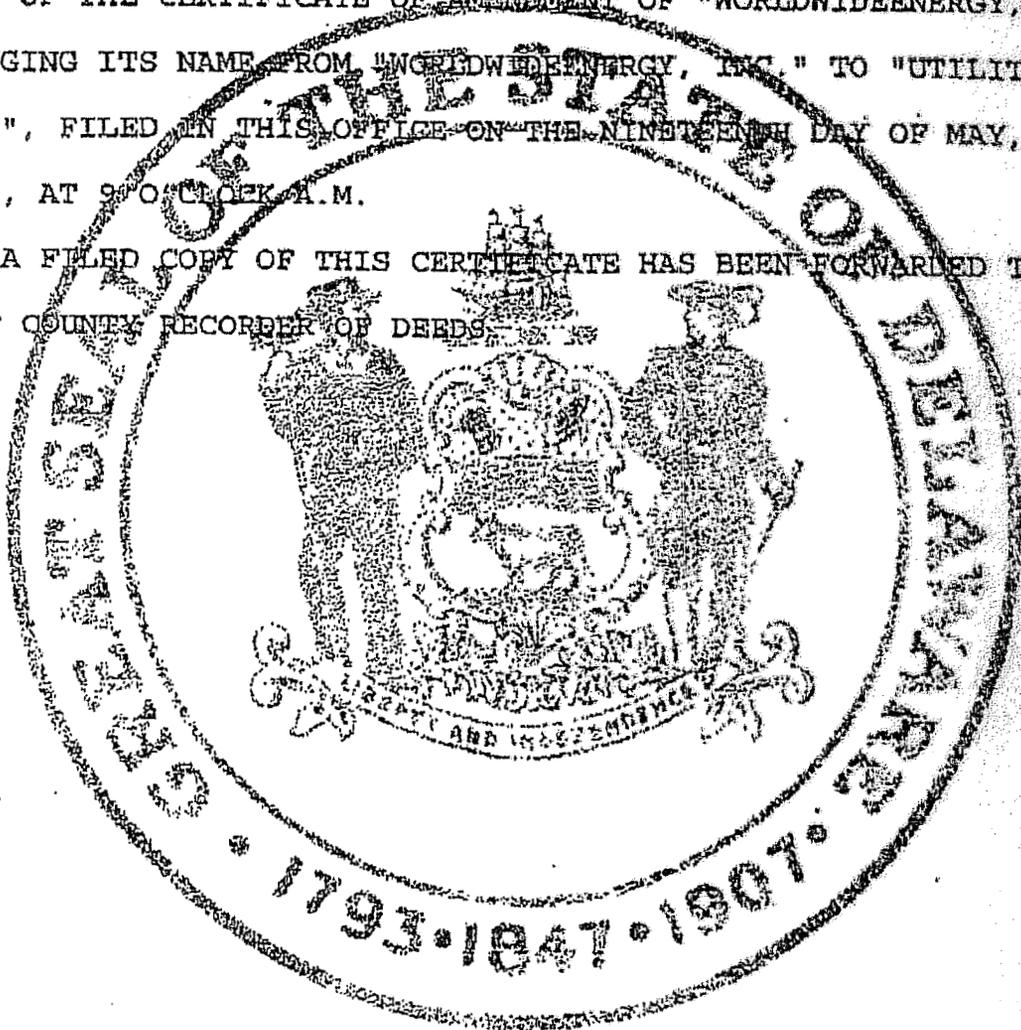


Timothy E. Morris,
Secretary

State of Delaware
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 AMENDMENT OF "WORLDWIDEENERGY, INC.", CHANGING ITS NAME FROM "WORLDWIDEENERGY, INC." TO "UTILITY.COM, INC.", FILED IN THIS OFFICE ON THE NINETEENTH DAY OF MAY, A.D. 1999, AT 9:00 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.



Edward J. Freel

Edward J. Freel, Secretary of State

NEXT

DOCUMENT (S)

BEST IMAGE

POSSIBLE

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 09:00 AM 05/19/1999
991199060 - 2962225

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
WORLDWIDEENERGY, INC.

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

The undersigned, pursuant to the provisions of the General Corporation Law of the State of Delaware, does hereby certify and set forth as follows:

FIRST: The name of the corporation is WorldWideEnergy, Inc.

SECOND: The amendment to the Certificate of Incorporation to be effected hereby is as follows:

Paragraph One of the Certificate of Incorporation, relating to the name of the corporation is amended to read as follows:

"ONE. That the name of the corporation is: "Utility.com, Inc."

IN WITNESS WHEREOF, we have hereunto set our hands and seal this 19th day of May, 1999.

By: 
Junona Jonas, President

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 09:00 AM 11/03/1998
981422234 - 2962275

CERTIFICATE OF INCORPORATION**OF****WORLDWIDEENERGY, INC.
A Delaware Corporation**

FIRST: The name of the corporation is WorldWideEnergy, Inc.

SECOND: The address of the corporation's registered office in the State of Delaware is 15 East North Street, P.O. Box 899, City of Dover, County of Kent, Delaware 19901. The name of its registered agent at such address is Incorporating Services, Ltd.

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

FOURTH: The corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares of Common Stock that the corporation is authorized to issue is 10,000,000, with a par value of \$0.001 per share. The total number of shares of Preferred Stock that the corporation is authorized to issue is 5,000,000 with a par value of \$0.001 per share.

The Preferred Stock may be divided into such number of series as the Board of Directors may determine. The Board of Directors is authorized to determine and alter the rights, preferences, privileges and restrictions granted to and imposed upon any wholly unissued series of Preferred Stock, and to fix the number of shares of any series of Preferred Stock and the designation of any such series of Preferred Stock. The Board of Directors, within the limits and restrictions stated in any resolution or resolutions of the Board of Directors originally fixing the number of shares constituting any series, may increase or decrease (but not below the number of shares of such series then outstanding) the number of shares of any series subsequent to the issue of shares of that series.

FIFTH: The name and mailing address of the incorporator are as follows:

Natasha Fain
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304-1050

SIXTH: The corporation is to have perpetual existence.

SEVENTH: In furtherance and not in limitation of the powers conferred by statute, the Board is expressly authorized to make, alter, amend or repeal the Bylaws of the corporation, subject to the provisions of Article Nine of the Bylaws of the corporation.

EIGHTH: The number of directors which constitute the whole Board of the corporation shall be as specified in the Bylaws of the corporation.

NINTH: Elections of directors need not be by written ballot unless a stockholder demands election by written ballot at the meeting and before voting begins or unless the Bylaws of the corporation shall so provide.

TENTH: Meetings of stockholders may be held within or without the State of Delaware as the Bylaws of the corporation may provide. The books of the corporation may be kept outside of the State of Delaware at such place or places as may be designated from time to time by the Board or in the Bylaws of the corporation.

ELEVENTH:

(a) **Limitation of Director's Liability.** To the fullest extent not prohibited by the General Corporation Law of the State of Delaware as the same exists or as it may hereafter be amended, a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for conduct as a director.

(b) **Indemnification of Corporate Agents.** The corporation may indemnify to the fullest extent not prohibited by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that such person, such person's testator or intestate is or was a director, officer, employee benefit plan fiduciary, or employee of the corporation or any predecessor of the corporation or serves or served at the request of the corporation or any predecessor of the corporation as a director, officer, agent, employee benefit plan fiduciary or employee of another corporation, partnership, limited liability company, joint venture, trust or other entity or enterprise.

(c) **Repeal or Modification.** Neither any amendment or repeal of this Article Eleventh, nor the adoption of any provision of the corporation's Certificate of Incorporation inconsistent with this Article Eleventh, shall eliminate or reduce the effect of this Article Eleventh in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article Eleventh, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

The undersigned incorporator hereby acknowledges that the foregoing Certificate of Incorporation is the act and deed of such incorporator and that the facts stated therein are true.

WORLDWIDEENERGY, INC.



Natasha Fair, Incorporator

EXHIBIT B - CERTIFICATE OF AUTHORITY

State of South Dakota



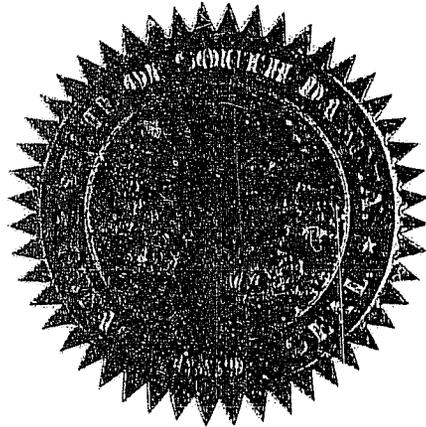
OFFICE OF THE SECRETARY OF STATE

Certificate of Authority

I, **JOYCE HAZELTINE**, Secretary of State of the State of South Dakota, hereby certify that the Application for a Certificate of Authority of **UTILITY.COM, INC. (DE)** to transact business in this state duly signed and verified pursuant to the provisions of the South Dakota Corporation Acts, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I hereby issue this Certificate of Authority and attach hereto a duplicate of the application to transact business in this state.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, at Pierre, the Capital, this July 18, 2000.



Joyce Hazeltine
Secretary of State

EXHIBIT C - MARKETING MATERIAL
Not Available

EXHIBIT D - FINANCIAL INFORMATION

CONFIDENTIAL

[U]

EXHIBIT E - PROPOSED TARIFF

TELECOMMUNICATIONS SERVICES TARIFFTITLE SHEETSOUTH DAKOTA TELECOMMUNICATIONS TARIFF

This tariff contains the descriptions, regulations, and rates applicable to the furnishing of service or facilities for Telecommunications Services furnished by Utility.com, Inc. ("Utility.com"), with principal offices at 5650 Hollis Street, Emeryville, California 94608. This tariff applies for services furnished within the State of South Dakota. This tariff is on file with the South Dakota Public Utilities Commission, and copies may be inspected, during normal business hours, at the company's principal place of business.

ISSUED: July 24, 2000

EFFECTIVE: , 2000

ISSUED BY: Benjamin T. Reyes, II, General Counsel

5650 Hollis Street

Emeryville, California 94608

UTILITY.COM, INC.

ORIGINAL SHEET 2

SOUTH DAKOTA PUC TARIFF NO. 1

TELECOMMUNICATIONS SERVICES TARIFF

RESERVED FOR FUTURE USE

ISSUED: July 24, 2000

EFFECTIVE: , 2000

ISSUED BY: Benjamin T. Reyes, II, General Counsel

5650 Hollis Street

Emeryville, California 94608

TELECOMMUNICATIONS SERVICES TARIFFCHECK SHEET

The Sheets of this tariff are effective as of the date shown at the bottom of the respective sheet(s). Original and revised sheets as named below comprise all changes from the original tariff and are currently in effect as of the date on the bottom of this sheet.

<u>SHEET</u>	<u>REVISION</u>
1	Original
2	Original
3	Original
4	Original
5	Original
6	Original
7	Original
8	Original
9	Original
10	Original
11	Original
12	Original
13	Original
14	Original
15	Original
16	Original
17	Original
18	Original
19	Original
20	Original
21	Original
22	Original
23	Original
24	Original
25	Original
26	Original
27	Original
28	Original
29	Original
30	Original
31	Original
32	Original

* New or Revised Sheet

ISSUED: July 24, 2000

EFFECTIVE: , 2000

ISSUED BY: Benjamin T. Reyes, II, General Counsel
5650 Hollis Street
Emeryville, California 94608

TELECOMMUNICATIONS SERVICES TARIFF

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ISSUED: July 24, 2000

EFFECTIVE: , 2000

ISSUED BY: Benjamin T. Reyes, II, General Counsel

5650 Hollis Street

Emeryville, California 94608

TELECOMMUNICATIONS SERVICES TARIFFTARIFF FORMAT

A. Sheet Numbering: Sheet numbers appear in the upper right corner of the page. Sheets are numbered sequentially. However, new sheets are occasionally added to the tariff. When a new sheet is added between sheets already in effect, a decimal is added. For example, a new sheet added between pages 11 and 12 would be page 11.1.

B. Sheet Revision Numbers: Revision numbers also appear in the upper right corner of each sheet where applicable. These numbers are used to indicate the most current page version on file with the Commission. For example, 4th Revised Sheet 13 cancels 3rd Revised Sheet 13. Consult the Check Sheet for the sheets currently 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).I
 2.1.1.A.1.(a).I.(i)
 2.1.1.A.1.(a).I.(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 sheets contained in the tariff, with a cross reference to the current Revision Number. When new sheets are added, the Check Sheet is changed to reflect the revision. All revisions made in a given filing are designated by an asterisk (*). There will be no other symbols used on this sheet if these are the only changes made to it (i.e., the format, etc. remains the same, just revised revision levels on some sheets). The tariff user should refer to the latest Check Sheet to find out if a particular sheet is the most current filed with the Commission.

ISSUED: July 24, 2000

EFFECTIVE: , 2000

ISSUED BY: Benjamin T. Reyes, II, General Counsel
 5650 Hollis Street
 Emeryville, California 94608

TELECOMMUNICATIONS SERVICES TARIFFSYMBOLS

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

- (C) to signify change in regulation
- (D) to signify a deletion
- (I) to signify a rate increase
- (R) to signify material relocated in the tariff
- (N) to signify a new rate or regulation
- (R) to signify a rate reduction
- (T) to signify a change in text, but no change in rate or regulation

ISSUED: July 24, 2000

EFFECTIVE: , 2000

ISSUED BY: Benjamin T. Reyes, II, General Counsel
5650 Hollis Street
Emeryville, California 94608

TELECOMMUNICATIONS SERVICES TARIFFSECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS

Access Line - An arrangement from a local exchange telephone company or other common carrier, using either dedicated or switched access, which connects a Customer's location to the Company's location or switching center.

Authorization Code - A numerical code, one or more of which may be assigned to a Customer, to enable the Company to identify the origin of the Customer so it may rate and bill the call. Automatic number identification (ANI) is used as the authorization code wherever possible.

Commission - Used throughout this tariff to mean the South Dakota Public Utilities Commission.

Customer - The person, firm, corporation or other legal entity which orders the services of the Company and is responsible for the payment of charges and for compliance with the Company's tariff regulations.

Company or Utility.com - Used throughout this tariff to mean Utility.com, Inc., a Delaware Corporation.

Dedicated Access - The Customer gains entry to the Company's services by a direct path from the Customer's location to the Company's point of presence.

Holiday - New Year's Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. Holidays shall be billed at the evening rate from 8 a.m. to 11 p.m. After 11 p.m., the lower night rate shall go into effect.

Prepaid Account - An inventory of Telecom Units purchased in advance by the Customer, and associated with one and only one Authorization Code as contained in a specific Prepaid Calling Card.

Prepaid Calling Card - A card issued by the Company, containing an Authorization Code which identifies a specific Prepaid Account of Telecom Units, which enables calls to be processed, account activity to be logged, and balances to be maintained, on a prepayment basis.

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Resp. Org - Responsible Organization or entity identified by an 800 service Customer that manages and administers records in the 800 database and management system.

Switched Access - The Customer gains entry to the Company's services by a transmission line that is switched through the local exchange carrier to reach the Company's point of presence.

Telecom Unit - A measurement of telecommunications service equivalent to one minute of usage between any two points within the State of South Dakota.

Telecommunications - The transmission of voice communications or, subject to the transmission capabilities of the services, the transmission of data, facsimile, signaling, metering, or other similar communications.

Underlying Carrier - The telecommunications carrier whose network facilities provide the technical capability and capacity necessary for the transmission and reception of Customer telecommunications traffic.

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TELECOMMUNICATIONS SERVICES TARIFFSECTION 2 - RULES AND REGULATIONS2.1 Undertaking of the Company

This tariff contains the regulations and rates applicable to intrastate interexchange telecommunications services provided by the Company for telecommunications between points within the State of South Dakota. Services are furnished subject to the availability of facilities and subject to the terms and conditions of this tariff in compliance with limitations set forth in the Commission's rules. The Company's services are provided on a statewide basis and are not intended to be limited geographically. The Company offers service to all those who desire to purchase service from the Company consistent with all of the provisions of this tariff. Customers interested in the Company's services shall file a service application with the Company which fully identifies the Customer, the services requested and other information requested by the Company. The Company reserves the right to examine the credit record and check the references of all applicants and Customers. The Company may examine the credit profile/record of any applicant prior to accepting the service order. The service application shall not in itself obligate the Company to provide services or to continue to provide service if a later check of applicant's credit record is, in the opinion of the Company, contrary to the best interest of the Company. The Company may act as the Customer's agent for ordering access connection facilities provided by other carriers or entities when authorized by the Customer, to allow connection of a Customer's location to a service provided by the Company. The Customer shall be responsible for all charges due for such service arrangement.

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- 2.1.1 The services provided by the Company are not part of a joint undertaking with any other entity providing telecommunications channels, facilities, or services, but may involve the resale of the Message Toll Services (MTS) and Wide Area Telecommunications Services (WATS) of underlying common carriers which may be subject to the jurisdiction of this Commission.
- 2.1.2 The rates and regulations contained in this tariff apply only to the 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 carriers for use in accessing the services of the Company.
- 2.1.3 The Company reserves the right to limit the length of communications, to discontinue furnishing services, or limit the use of service necessitated by conditions beyond its control, including, without limitation: lack of satellite or other transmission medium capacity; the revision, alteration or repricing of the Underlying Carrier's tariffed offerings; or when the use of service becomes or is in violation of the law or the provisions of this tariff.

2.2 Use of Services

- 2.2.1 The Company's services may be used for any lawful purpose consistent with the transmission and switching parameters of the telecommunications facilities utilized in the provision of services, subject to any limitations set forth in this Section 2.2.
- 2.2.2 The use of the Company's services to make calls which might reasonably be expected to frighten, abuse, torment, or harass another or in such a way as to unreasonably interfere with use by others is prohibited.

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- 2.2.3 The use of the Company's services without payment for service or attempting to avoid payment for service by fraudulent means or devices, schemes, false or invalid numbers, or false calling or credit cards is prohibited.
- 2.2.4 The Company's services are available for use twenty-four hours per day, seven days per week.
- 2.2.5 The Company does not transmit messages, but the services may be used for that purpose.
- 2.2.6 The Company's services may be denied for nonpayment of charges or for other violations of this tariff.
- 2.2.7 Customers shall not use the service provided under this tariff for any unlawful purpose.
- 2.2.8 The Customer is responsible for notifying the Company immediately of any unauthorized use of services.

2.3 Liability of the Company

- 2.3.1 The Company shall not be liable for any claim, loss, expense or damage for any interruption, delay, error, omission, or defect in any service, facility or transmission provided under this tariff, if caused by the Underlying Carrier, an act of God, fire, war, civil disturbance, act of government, or due to any other causes beyond the Company's control.
- 2.3.2 The Company shall not be liable for, and shall be fully indemnified and held harmless by the Customer against any claim, loss, expense, or damage for defamation, libel, slander, invasion, infringement of copyright or patent, unauthorized use of any trademark, trade name or service mark, proprietary or creative right, or any other injury to any person, property or entity arising out of the material, data or information transmitted.

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- 2.3.3 No agent or employee of any other carrier or entity shall be deemed to be an agent or employee of the Company.
- 2.3.4 Reserved for Future Use
- 2.3.5 Reserved for Future Use
- 2.3.6 Reserved for Future Use

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2.3.7 The remedies set forth herein are exclusive and in lieu of all other warranties and remedies, whether express, implied, or statutory, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

2.4 Responsibilities of the Customer

2.4.1 The Customer is responsible for placing any necessary orders and complying with tariff regulations. The Customer is also responsible for the payment of charges for services provided under this tariff.

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 provision 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.

2.4.5 The Customer shall cause the temperature and relative humidity in the equipment space provided by Customer for the installation of the Company's equipment to be maintained within the range normally provided for the operation of microcomputers.

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- 2.4.6 The Customer shall ensure that the equipment and/or system is properly interfaced with the Company's facilities or services, that the signals emitted into the Company's network are of the proper mode, bandwidth, power and signal level for the intended use of the subscriber and in compliance with criteria set forth in this tariff, and that the signals do not damage equipment, injure personnel, or degrade service to other Customers. If the Federal Communications Commission or some other appropriate certifying body certifies terminal equipment as being technically acceptable for direct electrical connection with interstate communications service, the Company will permit such equipment to be connected with its channels without the use of protective interface devices. If the Customer fails to maintain the equipment and/or the system properly, with resulting imminent harm to Company equipment, personnel or the quality of service to other Customers, the Company may, upon written notice, require the use of protective equipment at the Customer's expense. If this fails to produce satisfactory quality and safety, the Company may, upon written notice, terminate the Customer's service.
- 2.4.7 The Customer must pay the Company for replacement or repair of damage to the equipment or facilities of the Company caused by negligence or willful act of the Customer or others, by improper use of the services, or by use of equipment provided by Customer or others.
- 2.4.8 The Customer must pay for the loss through theft of any Company equipment installed at Customer's premises.
- 2.4.9 If the Company installs equipment at Customer's premises, the Customer shall be responsible for payment of any applicable installation charge.

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2.4.10 The Customer must use the services offered in this tariff in a manner consistent with the terms of this tariff and the policies and regulations of all state, federal and local authorities having jurisdiction over the service.

2.5 Cancellation or Interruption of Services

2.5.1 Without incurring liability, upon five (5) working days' (defined as any day on which the company's business office is open and the U.S. Mail is delivered) written notice to the Customer, the Company may immediately discontinue services to a Customer or may withhold the provision of ordered or contracted services:

2.5.1.A For nonpayment of any sum due the Company for more than thirty (30) days after issuance of the bill for the amount due, unless the charge is in dispute;

2.5.1.B For violation of any of the provisions of this tariff,

2.5.1.C For violation of any law, rule, regulation, policy of any governing authority having jurisdiction over the Company's services, or

2.5.1.D By reason of any order or decision of a court, public service commission or federal regulatory body or other governing authority prohibiting the Company from furnishing its services.

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- 2.5.2 Without incurring liability, the Company may interrupt the provision of services at any time in order to perform tests and inspections to assure compliance with tariff regulations and the proper installation and operation of Customer and the Company's equipment and facilities and may continue such interruption until any items of noncompliance or improper equipment operation so identified are rectified.
- 2.5.3 Service may be discontinued by the Company without notice to the Customer, by blocking traffic to certain countries, cities or NXX exchanges, or by blocking calls using certain Customer authorization codes, when the Company deems it necessary to take such action to prevent unlawful use of its service. The Company will restore service as soon as it can be provided without undue risk, and will, upon request by the Customer affected, assign a new authorization code to replace the one that has been deactivated.
- 2.5.4 The Customer may terminate service upon thirty (30) days written notice for the Company's standard month to month contract. Customer will be liable for all usage on any of the Company's service offerings until the Customer actually leaves the service. Customers will continue to have Company usage until the Customer notifies its local exchange carrier and changes its long distance carrier. Until the Customer so notifies its local exchange carrier, it shall continue to generate and be responsible for long distance usage.

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TELECOMMUNICATIONS SERVICES TARIFF

2.6 Credit Allowance

2.6.1 Credit may be given for disputed calls, on a per call basis.

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TELECOMMUNICATIONS SERVICES TARIFF

2.7 Restoration of Service

The use and restoration of service shall be in accordance with the priority system specified in part 64, Subpart D of the Rules and Regulations of the Federal Communications Commission.

2.8 Deposit

The Company does not require deposits.

2.9 Advance Payments

The Company does not require advance payments.

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TELECOMMUNICATIONS SERVICES TARIFF2.10 Payment and Billing

- 2.10.1 Service is provided and billed on a billing cycle basis, beginning on the date that service becomes effective. Billing is payable upon receipt. A late fee will be assessed on unpaid amounts 30 days after rendition of bills.
- 2.10.2 The customer is responsible for payment of all charges for services furnished to the Customer, as well as to all persons using the Customer's codes, exchange lines, facilities, or equipment, with or without the knowledge or consent of the Customer. The security of the Customer's Authorization Codes, subscribed exchange lines, and direct connect facilities is the responsibility of the Customer. All calls placed using direct connect facilities, subscribed exchange lines, or Authorization Codes will be billed to and must be paid by the Customer. Charges based on actual usage during a month and any accrued interest will be billed monthly in arrears.
- 2.10.3 All bills are presumed accurate, and shall be binding on the customer unless objection is received by the Company in writing within 180 days after such bills are rendered. No credits, refunds, or adjustments shall be granted if demand therefore is not received by the Company in writing within such 180 day period.

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TELECOMMUNICATIONS SERVICES TARIFF2.11 Collection Costs

In the event Company is required to initiate legal proceedings to collect any amounts due to Company, or to enforce any judgment obtained against a Customer, or for the enforcement of any other provision of this tariff or applicable law, Customer shall, in addition to all amounts due, be liable to Company for all reasonable costs incurred by Company in such proceedings and enforcement actions, including reasonable attorneys' fees, collection agency fees or payments, and court costs. In any such proceeding, the amount of collection costs, including attorneys' fees, due to the Company, will be determined by a court of competent jurisdiction or by the Commission.

2.12 Taxes

All federal, state and local taxes, assessments, surcharges, or fees, including sales taxes, use taxes, gross receipts taxes, and municipal utilities taxes, are billed as separate line items and are not included in the rates quoted herein.

2.13 Late Charge

A late fee of 1.5% per month or the amount otherwise authorized by law, whichever is lower, will be charged on any past due balances.

2.14 Returned Check Charge

A fee of \$20.00 will be charged whenever a check or draft presented for payment for service is not accepted by the institution on which it is written.

2.15 Reconnection Charge

A reconnection fee of \$25.00 per occurrence will be charged when service is reestablished for Customers which have been disconnected due to non-payment. Payment of the reconnection fee and any other outstanding amounts will be due in full prior to reconnection of service.

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TELECOMMUNICATIONS SERVICES TARIFFSECTION 3 - DESCRIPTION OF SERVICE3.1 Computation of Charges

3.1.1 The total charge for each completed call may be a variable measured charge dependent on the duration, distance and time of day of the call. The total charge for each completed call may also be dependent only on the duration of the call, i.e. a statewide flat rate per minute charge. The variable measured charge is specified as a rate per minute which is applied to each minute. All calls are measured in increments as set forth in the Rates Section of this tariff. All calls are rounded up to the next whole increment.

3.1.2 Where mileage bands appear in a rate table, rates for all calls are based upon the airline distance between the originating and terminating points of the call, as determined by the vertical and horizontal coordinates associated with the exchange (the area code and three digit central office code) associated with the originating and terminating telephone numbers. If the Customer obtains access to the Company's network by a dedicated access circuit, that circuit will be assigned an exchange for rating purposes based upon the Customer's main telephone number at the location where the dedicated access circuit terminates. The vertical and horizontal (V & H) coordinates for each exchange and the airline distance between them will be determined according to industry standards.

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3.1.3 Timing begins when the called station is answered and two way communication is possible, as determined by standard industry methods generally in use for ascertaining answer, including hardware answer supervision in which the local telephone company sends a signal to the switch or the software utilizing audio tone detection. Recognition of answer supervision is the responsibility of the Underlying Carrier. Timing for each call ends when either party hangs up. The Company will not bill for uncompleted calls.

3.2 Customer Complaints and/or Billing Disputes

Customer inquiries or complaints regarding service or accounting may be made in writing or by telephone to the Company at:

5650 Hollis Street
Emeryville, California 94608
(888) 365-3700

An objection to billed charges should be reported promptly to the Company. Adjustments to Customers' bills shall be made to the extent that records are available and/or circumstances exist which reasonably indicate that such charges are not in accordance with approved rates or that an adjustment may otherwise be appropriate.

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The Company will respond within seventy two (72) hours of receipt of an inquiry. If the Customer is dissatisfied with the Company's response to a complaint or inquiry, the Customer may file a complaint with the Commission for resolution of the conflict. The South Dakota Public Utilities Commission can be reached at:

500 East Capitol
Pierre, SD 57501-5070
(605) 773-3201
(800) 332-1782
TTY through Relay Service South Dakota-
(800) 877-1113

If a Customer accumulates more than One Dollar of undisputed delinquent Company 800 Service charges, the Company Resp. Org. reserves the right not to honor that Customer's request for a Resp. Org. change until such undisputed charges are paid in full.

3.3 Level of Service

A Customer can expect end to end network availability of not less than 99% at all times for all services.

3.4 Billing Entity Conditions

When billing functions on behalf of the Company or its intermediary are performed by local exchange telephone companies or others, the payment of charge conditions and regulations of such companies and any regulations imposed upon these companies by regulatory bodies having jurisdiction apply. The Company's name and toll-free telephone number will appear on the Customer's bill.

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TELECOMMUNICATIONS SERVICES TARIFF3.5 Service Offerings

3.5.1 1+ Dialing

This service permits Customers to originate calls via switched or dedicated access lines, and to terminate intrastate calls. The customer dials "1+" followed by "ten digits" or dials "101XXXX" followed by "1+ ten digits".

3.5.2 Travel Cards

The Customer utilizes an 11 digit "toll-free" access number established by the Company to access a terminal. Upon receiving a voice prompt, the Customer uses push button dialing to enter an identification code assigned by the Company, and the ten digit number of the called party.

3.5.3 800 Service (Toll-Free)

This service is inbound calling only where an 800, 888 or other toll-free prefix number rings into a Customer's premise routed to a specific telephone number or terminated over a dedicated facility.

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3.5.4 Company Prepaid Calling Cards

This service permits use of Prepaid Calling Cards for placing long distance calls. Customers may purchase Company Prepaid Calling Cards at a variety of retail outlets or through other distribution channels. Company Prepaid Calling Cards are available at a variety of face values ranging from five dollars (\$5.00), in one dollar (\$1.00) increments. Company Prepaid Calling Card service is accessed using the Company toll-free number printed on the card. The caller is prompted by an automated voice response system to enter his/her Authorization Code, and then to enter the terminating telephone number. The Company's processor tracks the call duration on a real time basis to determine the number of Telecom Units consumed. The total consumed Telecom Units for each call and applicable taxes are deducted from the remaining Telecom Unit balance on the Customer's Company Prepaid Calling Card.

All calls must be charged against Prepaid Calling Card that has a sufficient Telecom Unit balance. A Customer's call will be interrupted with an announcement when the balance is about to be depleted.

In order to continue the call, the Customer can either call the toll-free number on the back of the Company Prepaid Calling Card and "recharge" the balance on the card using a nationally recognized credit card, or the Customer can throw the card away and purchase a new one. Calls in progress will be terminated by the Company if the balance on the Company Prepaid Calling Card is insufficient to continue the call and the Customer fails to enter the number of another valid Company Prepaid Calling Card prior to termination.

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The expiration date will be printed on all cards. The Company will not refund unused balances.

A credit allowance for Company Prepaid Calling Card Service is applicable to calls that are interrupted due to poor transmission, one-way transmission, or involuntary disconnection of a call. To receive the proper credit, the Customer must notify the Company at the designated toll-free customer service number printed on the Company Prepaid Calling Card and furnish the called number, the trouble experienced (e.g. cut-off, noisy circuit, etc.), and the approximate time that the call was placed.

When a call charged to a Company Prepaid Calling Card is interrupted due to cut-off, one-way transmission, or poor transmission conditions, the Customer will receive a credit equivalent of one Telecom Unit.

Credit allowances for calls pursuant to Company Prepaid Card Service do not apply for interruptions not reported promptly to the Company or interruptions that are due to the failure of power, equipment or systems not provided by the Company.

Credit for failure of service shall be allowed only when such failure is caused by or occurs due to causes within the control of the Company.

The Company will block all calls beginning with the NPA "900" and NXX "976" calls, therefore such calls can not be completed.

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3.5.5 Directory Assistance.

Access to long distance directory assistance is obtained by dialing 1 + 555-1212 for listings within the originating area code and 1 + (area code) + 555-1212 for other listings. When more than one number is requested in a single call, a charge will apply for each number requested. A charge will be applicable for each number requested, whether or not the number is listed or published.

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3.5.6 Specialized Pricing Arrangements.

Customized service packages and competitive pricing packages at negotiated rates may be furnished on a case-by-case basis in response to requests by Customers to the Company for proposals or for competitive bids. Service offered under this tariff provision will be filed with the Commission. Specialized rates or charges will be made available to similarly situated Customers on a non-discriminatory basis. The Company will notify the Commission of such arrangements as required by Commission rules and regulations.

3.5.7 Emergency Call Handling Procedures

Emergency "911" calls are not routed to company, but are completed through the local network at no charge.

3.5.8 Promotional Offerings

The Company may, from time to time, make promotional offerings to enhance the marketing of its services. These offerings may be limited to certain dates, times and locations. The Company will notify the Commission of such offerings as required by Commission rules and regulations.

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TELECOMMUNICATIONS SERVICES TARIFF

SECTION 4 - RATES

4.1 1+ Dialing

\$0.15 per minute

A \$4.95 per month service charge applies.
Billed in one minute increments.

4.2 Travel Cards

\$.199 per minute

A \$.25 per call service charge applies.
Billed in one minute increments.

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4.3 Toll Free

\$0.15 per minute

A \$10 per month per number service charge applies.
Billed in one minute increments.

4.4 Prepaid Calling Cards

Program

A	\$.015	Per Telecom Unit
B	\$.019	Per Telecom Unit
C	\$.025	Per Telecom Unit
D	\$.029	Per Telecom Unit
E	\$.032	Per Telecom Unit
F	\$.035	Per Telecom Unit
G	\$.039	Per Telecom Unit
H	\$.045	Per Telecom Unit
I	\$.05	Per Telecom Unit
J	\$.06	Per Telecom Unit
K	\$.07	Per Telecom Unit
L	\$.08	Per Telecom Unit
M	\$.09	Per Telecom Unit
N	\$.10	Per Telecom Unit
O	\$.11	Per Telecom Unit
P	\$.12	Per Telecom Unit
Q	\$.13	Per Telecom Unit
R	\$.14	Per Telecom Unit
S	\$.15	Per Telecom Unit
T	\$.19	Per Telecom Unit
U	\$.20	Per Telecom Unit
V	\$.25	Per Telecom Unit
W	\$.29	Per Telecom Unit
X	\$.30	Per Telecom Unit
Y	\$.33	Per Telecom Unit
Z	\$.35	Per Telecom Unit
AA	\$.39	Per Telecom Unit
BB	\$.40	Per Telecom Unit
CC	\$.50	Per Telecom Unit

A \$.50 per call service charge applies.

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4.5 Directory Assistance

\$.95

4.6 Returned Check Charge

\$20.00

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4.7 Rate Periods

	Monday - Friday	Sat.	Sun.
8 a.m. to 5 p.m.*	Daytime Rate Period		
5 p.m. to 11 p.m.*	Evening Rate Period		Evening Rate Period
11 p.m. to 8 a.m.*	Night/Weekend Rate Period		

* To, but not including

When a message spans more than one rate period, total charges for the minutes in each rate period are calculated and the results for each rate period are totaled to obtain the total message charge. If the calculation results in a fractional charge, the amount will be rounded down to the lower cent.

4.8 Payphone Dial Around Surcharge

A dial around surcharge of \$.35 per call will be added to any completed INTRASTATE toll access code and subscriber 800/888 type calls placed from a public or semi-public payphone.

4.9 Universal Service Fund Assessment & Presubscribed Interexchange Carrier Charge

The Customer will be assessed a monthly Universal Service Fund Contribution charge on all telecommunications services, which in no event shall be less than the prevailing contribution percentage rate charged the Company on intrastate traffic by any state agency or its administrator. A Presubscribed Interexchange Carrier Charge ("PICC") applies on a monthly basis to all Customer monthly bills at the prevailing rate.

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Emeryville, California 94608

CONTINUATION

27.

LANCE J. M. STEINHART
ATTORNEY AT LAW
770-232-9200
6455 EAST JOHNS CROSSING, SUITE 285
DULUTH, GA 30097

2591

Date 7/21/00

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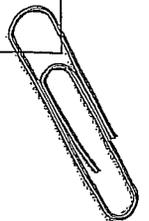
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South Dakota Public Utilities Commission
WEEKLY FILINGS
For the Period of July 20, 2000 through July 26, 2000

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact Delaine Kolbo within five business days of this filing. Phone: 605-773-3705 Fax: 605-773-3809

CONSUMER COMPLAINTS

CT00-089 In the Matter of the Complaint filed by Helen Christensen, Colton, South Dakota, against Sprint Communications Company L.P. and Business Options, Inc., Regarding Unauthorized Switching of Services.

The Complainant alleges that her telecommunication service was switched without her authorization. She began to receive billings from Business Options. She is seeking credit of charges and compensation for her time.

Staff Analyst: Leni Healy
Staff Attorney: Karen Cremer
Date Docketed: 07/25/00
Intervention Deadline: NA

CT00-090 In the Matter of the Complaint filed by Ed and Janice St. Gemme, Dakota Dunes, South Dakota, against AT&T Communications of the Midwest, Inc., Regarding Unauthorized Switching of Services.

The Complainants claim that they did not authorize a switch in service. They received billings from AT&T although AT&T claims that the St. Gemme family is not a customer of AT&T. The Complainants are seeking a final resolution to this issue.

Staff Analyst: Leni Healy
Staff Attorney: Karen Cremer
Date Docketed: 07/25/00
Intervention Deadline: NA

TELECOMMUNICATIONS

TC00-112 In the Matter of the Application of Citizens Telecommunications Company of Minnesota, Inc. for a Certificate of Authority to Provide Local Exchange Services in South Dakota.

Citizens Telecommunications Company of Minnesota, Inc. has filed for a Certificate of Authority to provide local exchange service to subscribers of the Ortonville-Big Stone and Jasper, Minnesota exchanges located within the state of South Dakota. Citizens Minnesota proposes to offer local exchange service and may expand to include cellular, paging and personal communications services.

Staff Analyst: Michele Farris
Date Docketed: 07/19/00
Intervention Date: 08/11/00

TC00-113 In the Matter of the Application of Citizens Telecommunications Company of Nebraska, Inc. for a Certificate of Authority to Provide Local Exchange Services in South Dakota.

Citizens Telecommunications Company of Nebraska, Inc. has filed for a Certificate of Authority to provide local exchange service to subscribers of the Valentine exchange located within the state of South Dakota. Citizens Nebraska proposes to offer local exchange service and may expand to include cellular, paging and personal communications services.

Staff Analyst: Michele Farris
Date Docketed: 07/19/00
Intervention Date: 08/11/00

TC00-114 In the Matter of the Application of S&S Communications/Alternacell for a Certificate of Authority to Provide Telecommunications Services in South Dakota.

S&S Communications/Alternacell (S&S) is seeking a Certificate of Authority to provide reseller and facilities based interexchange telecommunications services in South Dakota. The applicant intends to offer interstate and intrastate long distance, voice mail services, 800 number services, and calling card services. S&S does not intend to provide operator services, which will be provided by S&S's underlying carriers and/or applicable local exchange carriers.

Staff Analyst: Keith Senger
Date Docketed: 07/21/00
Intervention Deadline: 08/11/00

TC00-115 In the Matter of the Application of Utility.com, Inc. for a Certificate of Authority to Provide Telecommunications Services in South Dakota.

Utility.com, Inc. is seeking a Certificate of Authority as a switch-based reseller in South Dakota. The applicant intends to offer 1+ and 101XXXX direct outbound dialing, 800/800 toll-free inbound dialing, travel card service, and prepaid calling card service.

Staff Analyst: Heather Forney
Date Docketed: 07/24/00
Intervention Deadline: 08/11/00

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Lance J.M. Steinhart
Attorney At Law
6455 East Johns Crossing
Suite 285
Duluth, Georgia 30097

Also Admitted in New York
and Maryland

Telephone: (770) 232-9200
Facsimile: (770) 232-9208

July 31, 2000

VIA OVERNIGHT DELIVERY

Mr. William Bullard
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Ave-Pierre, SD 57501-5070
(605) 773-3201

Re: Utility.com, Inc.
Docket No. TC00-115

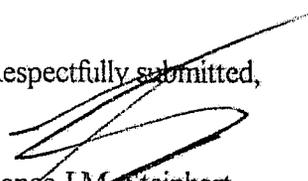
Dear Mr. Bullard:

Pursuant to a letter from Heather Forney dated July 25, 2000, enclosed please find one original and ten (10) copies of Utility.com, Inc.'s Indemnity Bond in the amount of \$25,000.

I have also enclosed an extra copy of this cover letter to be date stamped and returned to me in the enclosed self-addressed prepaid envelope.

If you have any questions or if I may provide you with any additional information, please do not hesitate to contact me.

Respectfully submitted,


Lance J.M. Steinhart
Attorney for Utility.com, Inc.

Enclosures

cc: Benjamin T. Reyes, II

IDEMNITY BOND
TO THE
PEOPLE OF THE STATE OF SOUTH DAKOTA

Bond No. 244893

We, Utility.com, Inc., the principal and applicant for a CERTIFICATE OF AUTHORITY to resell long distance telecommunications services within the State of South Dakota, and Granite State Insurance Company, as an admitted surety insurer, bind ourselves unto the Public Utilities Commission of the State of South Dakota and the consumers of South Dakota as Obligee, in the sum of \$25,000.00.

The conditions of the obligation are such that the principal, having been granted such CERTIFICATE OF AUTHORITY subject to the provision that said principal purchase this Indemnity Bond, and if said principal shall in all respects fully and faithfully comply with all applicable provisions of South Dakota State Law, and reimburse customers of Utility.com, Inc. for any prepayment or deposits they have made which may be unable or unwilling to return to said customers as a result of insolvency or other business failure, then this obligation shall be void, discharged and forever exonerated, otherwise to remain in full force and effect.

This bond shall take effect as of the date hereon and shall remain in force and effect until the surety is released from liability by the written order of the Public Utilities Commission, provided that the surety may cancel this Bond and be relieved of further liability hereunder by delivering thirty (30) days written notice to the Public Utilities Commission. Such cancellation shall not affect any liability incurred or accrued hereunder prior to the termination of said thirty (30) day period.

Dated this 19th day of July, 2000.
To be effective this 19th day of July, 2000.

*Original bond
is in Delaine's
bottom desk drawer*

Utility.com, Inc.

By *Benjamin S. Ropp*

Granite State Insurance Company (Surety)

Countersigned this 30th day of
July, 2000.
Countersigned for South Dakota

By _____

By *Donald E. Boen*
Resident Agent

By *Mark Ropp*
Mark Ropp Attorney in Fact

California All Purpose Acknowledgment

State of California

County of San Mateo

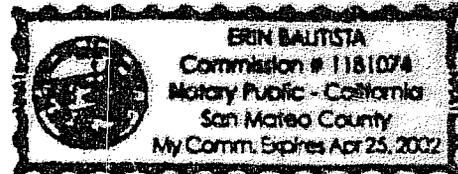
On July 19, 2000, before me, Erin Bautista, Notary Public
Date Name & Title of Officer/Notary

personally appeared Mark Roppo
Names(s) of Signer(s)

personally known to me, ~~or proved to me on the basis of satisfactory evidence~~ to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Erin Bautista
Notary Public



OPTIONAL

(The information below is not required by law)

Description of Attached Document

Title/type of Document _____

Date of Document _____ No. of Pages _____

Other Signer(s) _____

KNOW ALL MEN BY THESE PRESENTS:

That The Granite State Insurance Company, a Pennsylvania corporation, does hereby appoint

---Mark Roppo, Katherine G. Zerounian, Erin Bautista, Jeff Prevost, James B. Shea, Jason Jenkins: of Belmont, California---

its true and lawful Attorney(s)-in-Fact, with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business, and to bind the company thereby.

IN WITNESS WHEREOF, Granite State Insurance Company has executed these presents



this 25th day of April, 2000

Lawrence W. Carlstrom

Lawrence W. Carlstrom, Vice President

STATE OF NEW YORK)
COUNTY OF NEW YORK)ss.

On this 25th day of April, 2000, before me came the above-named officer of Granite State Insurance, to me personally known to be the individual and officer described herein, and acknowledged that he executed the foregoing instrument and affixed the seal of said corporation thereto by authority of his office.

Ulterior by me

Ulterior by me
Notary Public, State of New York
No. 02740036088
Qualified in Bronx County
Commission Expires Feb. 18, 2002

CERTIFICATE

Excerpts of Resolution adopted by the Board of Directors of Granite State Insurance Company, on July 6, 1993:

"RESOLVED, that the Chairman of the Board, the President, or any Vice President be, and hereby is, authorized to appoint Attorneys-in-Fact to represent and act for and on behalf of the Company to execute bonds, undertakings, recognizances and other contracts of indemnity and writing obligatory in the nature thereof, and to attach thereto the corporate seal of the Company, in the transaction of its surety business;

"RESOLVED, that the signatures and attestations of such officers and the seal of the Company may be affixed to any such Power of Attorney or to an certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company when so affixed with respect to any bond, undertaking, recognizance or other contract of indemnity or writing obligatory in the nature thereof;

"RESOLVED, that any such Attorney-in-Fact delivering a secretarial certification that the foregoing resolutions still be in effect may insert in such certification the date thereof, said date to be not later than the date of delivery thereof by such Attorney-in-Fact."

I, Elizabeth M. Tuck, Secretary of Granite Insurance Company, do hereby certify that the foregoing excerpts of Resolution adopted by the Board of Directors of this corporation, and the Power of Attorney issued pursuant thereto, are true and correct, and that both the Resolution and the Power of Attorney are in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the facsimile seal of the corporation

this 19th day of July 2000

Elizabeth M. Tuck
Elizabeth M. Tuck, Secretary



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

IN THE MATTER OF THE APPLICATION OF)
UTILITY.COM, INC. FOR A CERTIFICATE OF)
AUTHORITY TO PROVIDE)
TELECOMMUNICATIONS SERVICES IN)
SOUTH DAKOTA)

ORDER GRANTING
CERTIFICATE OF
AUTHORITY

TC00-115

On July 24, 2000, 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 Utility.com, Inc. (Utility.com).

Utility.com proposes to offer resold interexchange telecommunications services within South Dakota. A proposed tariff was filed by Utility.com. The Commission has classified long distance service as fully competitive.

On July 27, 2000, the Commission electronically transmitted notice of the filing and the intervention deadline of August 11, 2000, to interested individuals and entities. No petitions to intervene or comments were filed and at its August 22, 2000, meeting, the Commission considered Utility.com's request for a certificate of authority. Commission Staff recommended granting a certificate of authority, subject to a continuous \$25,000 surety bond. Commission Staff further recommended a waiver of ARSD 20:10:24:02(8).

The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapter 49-31, specifically 49-31-3 and ARSD 20:10:24:02 and 20:10:24:03. The Commission finds that Utility.com has met the legal requirements established for the granting of a certificate of authority. Utility.com has, in accordance with SDCL 49-31-3, demonstrated sufficient technical, financial and managerial capabilities to offer telecommunications services in South Dakota. Further, the Commission finds that there is good cause to waive ARSD 20:10:24:02(8). The Commission approves Utility.com's application for a certificate of authority, subject to a continuous \$25,000 surety bond. As the Commission's final decision in this matter, it is therefore

ORDERED, that Utility.com's application for a certificate of authority is hereby granted, effective September 24, 2000, subject to a continuous \$25,000 surety bond. It is

FURTHER ORDERED, that the Commission finds good cause to waive ARSD 20:10:24:02(8). It is

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

Dated at Pierre, South Dakota, this 25th day of August, 2000.

CERTIFICATE OF SERVICE	
<small>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.</small>	
By:	<u><i>Aldine Koels</i></u>
Date:	<u>8/29/00</u>
<small>(OFFICIAL SEAL)</small>	

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

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 August 22, 2000, effective September 24, 2000
Docket No. TC00-115

This is to certify that

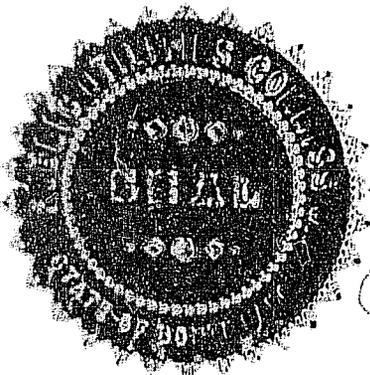
UTILITY.COM, INC.

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 25th day of August, 2000.

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION:



James A. Burg
JAMES A. BURG, Chairman

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner