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EARLY, LENNON, PETERS & CROCKER, P.L.C.

ATTORNEYS AT LAW
900 COMERICA BUILDING
KALAMAZOO, MICHIGAN 49007-4752
TELEPHONE (616) 381-8844
FAX (616) 349-8525

GEORGE H. LENNON
DAVID G. CROCKER
HAROLD E. FISCHER, JR.
LAWRENCE M. BRENTON
GORDON C. MILLER
BLAKE D. CROCKER
ROBERT M. TAYLOR
PATRICK D. CROCKER
ANDREW J. VORBRICHT
ROBERT G. LENNON††

† Also admitted in Iowa
†† Also admitted in New York, Illinois and Washington, D.C.

OF COUNSEL
VINCENT T. EARLY
THOMPSON BENNETT
JOHN T. PETERS, JR.
JOSEPH J. BURGIE
(1926 - 1992)

December 11, 2000

Florida Public Service Commission
Division of Administration
2540 Shumard Oak Blvd.
Gunter Building
Tallahassee, Florida 32399-0850

001787-TI

Re: METSTREAM COMMUNICATIONS, INC.

Dear Sir:

Enclosed herewith for filing with the Commission, please find an original and 6 copies of the above captioned corporation's APPLICATION FOR AUTHORITY TO PROVIDE INTEREXCHANGE TELECOMMUNICATIONS SERVICES WITHIN THE STATE OF FLORIDA, along with a check in the amount of \$250.00 to cover filing fees relating to same.

Also enclosed is an exact duplicate of this filing. Please stamp the duplicate received and return same in the self-addressed stamped envelope attached thereto.

Please contact me if you have additional questions or concerns.

Very truly yours,

EARLY, LENNON, PETERS & CROCKER, P.L.C.

Patrick D. Crocker
PDC/pas

DOCUMENT NUMBER-DATE

15945 DEC 13 8

FPSC-RECORDS/REPORTING

FLORIDA PUBLIC SERVICE COMMISSION

METSTREAM COMMUNICATIONS, INC.)
APPLICATION FOR AUTHORITY TO PROVIDE) Case No: _____
INTEREXCHANGE TELECOMMUNICATIONS)
SERVICES WITHIN THE STATE OF FLORIDA)

APPLICATION

1. Select what type of business your company will be conducting (check all that apply):
- (X) **Facilities based carrier** - company owns and operates or plans to own and operate telecommunications switches and transmission facilities in Florida.
 - () **Operator Service Provider** - company provides or plans to provide alternative operator services for IXCs; or toll operator services to call aggregator locations; or clearinghouse services to bill such calls.
 - () **Reseller** - company has or plans to have one or more switches but primarily leases the transmission facilities of other carriers. Bills its own customer base for services used.
 - () **Switchless Rebiller** - company has no switch or transmission facilities but may have a billing computer. Aggregates traffic to obtain bulk discounts from underlying carriers. Rebills end users at a rate above its discount but generally below the rate end users would pay for unaggregated traffic.
 - () **Multi-Location Discount Aggregator** - company contracts with unaffiliated entities to obtain bulk/volume discount plans from certain underlying carriers. Then offers the resold service by enrolling unaffiliated customers.
 - () **Prepaid Debit Card Provider** - any person or entity that purchases 800 access from an underlying carrier or unaffiliated entity for use with prepaid debit card service and/or encodes the cards with personal identification numbers.

2. This is an application for (check one):
- Original Authority (New Company)**
 - Approval of Transfer (To another certified company).**
 - Approval of Assignment of existing certificate (To an uncertificated company).**
 - Approval for transfer of control (To another certificated company).**

3. Name of corporation, partnership, cooperative, joint venture or sole proprietorship.

METSTREAM COMMUNICATIONS, INC.

4. Name under which the applicant will do business (fictions name, etc.):

METSTREAM COMMUNICATIONS, INC.

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

**1815 NW 169th Place, Suite 4060
Beaverton, OR 97006**

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

NOT APPLICABLE

7. Structure of organization:

- | | |
|---|--|
| <input type="checkbox"/> Individual | <input type="checkbox"/> Corporation |
| <input checked="" type="checkbox"/> Foreign Corporation | <input type="checkbox"/> Foreign Partnership |
| <input type="checkbox"/> General Partnership | <input type="checkbox"/> Limited Partnership |
| <input type="checkbox"/> Other _____ | |

8. If applicant is an individual or partnership, please give name, title and address of sole proprietor or partners.

- (a) Provide proof of compliance with the foreign limited partnership statute (Chapter 620.169.FS) if applicable.

NOT APPLICABLE

(b) Indicate if the individual or any of the partners have previously been:

(1) adjudged bankrupt, mentally incompetent, or found guilty of any felony or of any crime, or whether such actions may result from pending proceedings.

NOT APPLICABLE

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

NOT APPLICABLE

9. If incorporated, please give:

(a) Proof from the Florida Secretary of State that the applicant has authority to operate in Florida.

Corporate charter number: **F00000006405**

Applicant has the authority to transact business within the state of Florida. A copy of Applicant's Articles of Incorporation, and Certificate of Authority to transact business within Florida appears as Exhibit A.

(b) Name and address of the company's Florida registered agent.

**Edwin F. Blanton
825 Thomasville Road
Tallahassee, FL 32303**

(c) Provide proof of compliance with the fictitious name statute (Chapter 865.09 FS), if applicable.

Fictitious name registration number: _____

(d) Indicate if any of the officers, directors, or any of the officers, directors, or any of the ten largest stockholders have previously been:

(1) adjudged bankrupt, mentally incompetent, or found guilty of any felony or of any crime, or whether such actions may result from pending proceedings.

NOT APPLICABLE

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

NOT APPLICABLE

10. Who will serve as liaison with the Commission in regard to (please give name, title, address and telephone number):

- (a) The application:

**Patrick D. Crocker, Attorney
EARLY, LENNON, PETERS & CROCKER, P.L.C.
900 Comerica Building
Kalamazoo, Michigan 49007
(616) 381-8844**

- (b) Official Point of Contact for the ongoing operations of the company:

**Charles Frans
METSTREAM COMMUNICATIONS, INC.
1815 NW 169th Place, Suite 4060
Beaverton, OR 97006
(503) 645-5585**

- (c) Tariff:

**Patrick D. Crocker, Attorney
EARLY, LENNON, PETERS & CROCKER, P.L.C.
900 Comerica Building
Kalamazoo, Michigan 49007
(616) 381-8844**

- (d) Complaints/Inquiries from customers:

**METSTREAM COMMUNICATIONS, INC.
1815 NW 169th Place, Suite 4060
Beaverton, OR 97006
(503) 645-5585**

11. List the states in which the applicant:

(a) Has operated as an interexchange carrier.

Applicant has not currently operated as an interexchange carrier in any state.

(b) Has applications pending to be certified as an interexchange carrier.

Applicant has applications pending in California, Arizona, Georgia, Nevada, Texas, and Utah.

(c) Is certificated to operate as an interexchange carrier.

Applicant is certificated to operate as an interexchange carrier in Oregon and Washington.

(d) Has been denied authority to operate as an interexchange carrier and the circumstances involved.

Applicant has never been denied authority to operate as an interexchange carrier.

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

Applicant has never had regulatory penalties imposed for violations of any telecommunications statutes.

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

Applicant has never been involved in Civil court proceedings with an interexchange carrier, local exchange company, or other telecommunications entity.

12. What services will the applicant offer to other certified telephone companies:

- | | |
|--|-------------------------------------|
| <input type="checkbox"/> Facilities. | <input type="checkbox"/> Operators. |
| <input type="checkbox"/> Billing and Collection. | <input type="checkbox"/> Sales. |
| <input type="checkbox"/> Maintenance. | |
| <input type="checkbox"/> Other: _____ | |

Applicant will not offer services to other certified telephone companies.

13. Do you have a marketing program?

Yes.

14. Will your marketing program:

- Pay commissions?
- Offer sales franchise?
- Offer multi-level sales incentives?
- Offer other sales incentives?

15. Explain any of the offers checked in question 14 (To whom, what amount, type of franchise, etc.).

Leasing agents market service generates new business. Sales incentives and commissions offered. Customer Service upsells, commissions paid. Royalty program for customer - gain points for

16. Who will receive the bills for your services (Check all that apply)?

- | | |
|--|--|
| <input checked="" type="checkbox"/> Residential customers. | <input checked="" type="checkbox"/> Business customers. |
| <input type="checkbox"/> PATS providers. | <input type="checkbox"/> PATS station end-users. |
| <input type="checkbox"/> Hotels & motels. | <input type="checkbox"/> Hotel & motel guests. |
| <input type="checkbox"/> Universities. | <input type="checkbox"/> University dormitory residents. |
| <input type="checkbox"/> Other: (specify)_____. | |

17. Please provide the following (if applicable):

(a) Will the name of your company appear on the bill for your services, and if not who will the billed party contact to ask questions about the bill (provide the name and phone number) and how is this information provided?

Yes.

(b) Name and address of the firm who will bill for your service.

Applicant will do its own billing.

18. Please provide all available documentation demonstrating that the applicant has the following capabilities to provide interexchange telecommunications service in Florida.

A. Financial capability.

Regarding the showing of financial capability, the following applies:

The application should contain the applicant's financial statements for the most recent 3 years, including:

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

Applicant attaches financial statements as Exhibit B.

Further, a written explanation, which can include supporting documentation, regarding the following should be provided to show financial capability.

1. Please provide documentation that the applicant has sufficient financial capability to provide the requested service in the geographic area proposed to be served.

Applicant has sufficient financial capability to provide the requested service in the geographic areas proposed to be served. Applicant's operating revenue will provide Applicant with sufficient financial resources to provide service in the proposed areas.

2. Please provide documentation that the applicant has sufficient financial capability to maintain the requested service.

Applicant has sufficient financial capability to provide the requested service in the geographic areas proposed to be served. Applicant's operating revenue will provide Applicant with sufficient financial resources to provide service in the proposed areas.

3. Please provide documentation that the applicant has sufficient financial capability to meet its lease or ownership obligations.

Applicant will operate as facilities based and resold.

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

If available, the financial statements should be audited financial statements.

If the applicant does not have audited financial statements, it shall be so stated. The unaudited financial statements should then be signed by the applicant's chief executive officer and chief financial officer. The signatures should affirm that the financial statements are true and correct.

- B. Managerial capability.

Resumes of Applicant's officers appear as Exhibit C.

- C. Technical capability.

As a facilities based and resold carrier, Applicant will rely upon its own facilities. Applicant's underlying facilities have the technical capability to provide the proposed services.

19. Please submit the proposed tariff under which the company plans to begin operation. Use the format required by Commission Rule 25024.485 (example enclosed).

Applicant's proposed Tariff is attached hereto as Exhibit D.

20. The applicant will provide the following interexchange carrier services (Check all that apply):

- MTS with distance sensitive per minutes rates
- Method of access is FGA
- Method of access is FGB
- Method of access is FGD
- Method of access is 800

- MTS with route specific rates per minute
- Method of access is FGA
- Method of access if FGB
- Method of access is FGB
- Method of access is 800

- MTS with statewide flat rates per minute (i.e. not distance sensitive)
- Method of access is FGA
- Method of access is FGB
- Method of access is FGD
- Method of access is 800

- MTS for pay telephone service providers

- Block-of-time calling plan (Reach out Florida, Ring America, etc.)

- 800 Service (Toll free)

- WATS type service (Bulk or volume discount)
- Method of access is via dedicated facilities
- Method of access is via switched facilities

- Private Line services (Channel Services)
(For ex. 1.544 ms., DS-3, etc)

- Travel Service
- Method of access is 950
- Method of access is 800

- 900 service

- Operator Services
- Available to presubscribed customers
- Available to non presubscribed customers (for example to patrons of hotels, students in Universities, patients in hospitals)
- Available to inmates

Services included are:

- Station assistance
- Person to Person assistance
- Directory Assistance
- Operator verify and interrupt
- Conference Calling

21. What does the end user dial for each of the interexchange carrier services that were checked in services included (above)?

1+ / O+ for Operator Assistance O- / 411 Directory Assistance

22. _____ Other:

****APPLICANT ACKNOWLEDGMENT STATEMENT****

1. **REGULATORY ASSESSMENT FEE:** I understand that all telephone companies must pay a regulatory assessment fee in the amount of .15 of one percent of its gross operating revenue derived from intrastate business. Regardless of the gross revenue of a company, a minimum annual assessment fee of \$50 is required.
2. **GROSS RECEIPTS TAX:** I understand that all telephone companies must pay a gross receipts tax of one and one-half percent of all intra and interstate business.
3. **SALES TAX:** I understand that a seven percent sales tax must be paid on intra and interstate revenues.
4. **APPLICATION FEE:** A non-refundable application fee of \$250.00 must be submitted with the application.
5. **LEC BYPASS RESTRICTIONS:** I acknowledge the Commission's policy that interexchange carriers shall not construct facilities to bypass the LEC's without first demonstrating to the Commission that the LEC cannot offer the needed facilities at a competitive price and in a timely manner.
6. **RECEIPT AND UNDERSTANDING OF RULES:** I acknowledge receipt and understanding of the Florida Public Service Commission's Rules and Orders relating to may provision of interexchange telephone service in Florida. I also understand that it is my responsibility to comply with all current and future Commission requirements regarding interexchange telephone service.
7. **ACCURACY OF APPLICATION:** By my signature below, I attest to the accuracy of the information contained in this application and associated attachments.

12.7.00
DATE



G. Scott Smith, President

****APPENDIX B****

CUSTOMER DEPOSITS AND ADVANCE PAYMENTS

A statement of how the Commission can be assured of the security of the customer's deposits and advance payments may be responded to in one of the following ways (applicant please check one):

- (X) The applicant will not collect deposits nor will it collect payments for service more than one month in advance.
- () The applicant will file with the Commission and maintain a surety bond in an amount equal to the current balance of deposits and advance payments in excess of one month. (Bond must accompany application.)



G. Scott Smith, President
METSTREAM COMMUNICATIONS, INC.

1.2/14/00
Date

EXHIBIT A

Articles of Incorporation

and

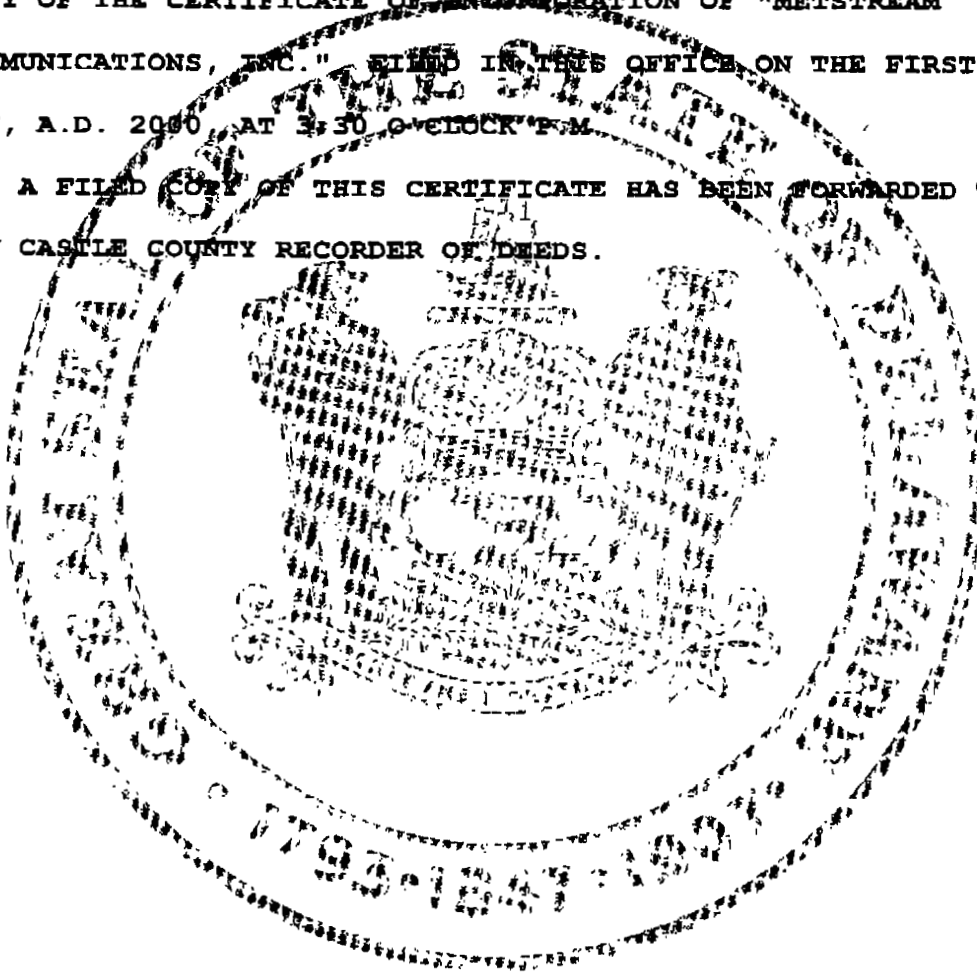
Certificate of Authority to Transact Business

State of Delaware
Office of the Secretary of State

PAGE 1

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "METSTREAM COMMUNICATIONS, INC." FILED IN THIS OFFICE ON THE FIRST DAY OF MAY, A.D. 2000 AT 3:30 O'CLOCK P.M.

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



Edward J. Freel

Edward J. Freel, Secretary of State

3220944 8100

001221251

AUTHENTICATION: 0414766

DATE: 05-02-00

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 RESTATED CERTIFICATE OF "METSTREAM COMMUNICATIONS, INC.", FILED IN THIS OFFICE ON THE TWENTY-SECOND DAY OF AUGUST, A.D. 2000, AT 5:30 O'CLOCK P.M.

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



Edward J. Freel

Edward J. Freel, Secretary of State

3220944 8100

AUTHENTICATION: 0633068

001425072

DATE: 08-22-00

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION OF
METSTREAM COMMUNICATIONS, INC.**

MetStream Communications, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "*General Corporation Law*"),

DOES HEREBY CERTIFY THAT.

The name of this corporation is MetStream Communications, Inc. and that the corporation was originally incorporated on May 1, 2000, pursuant to the General Corporation Law.

The following resolution amending and restating the corporation's Certificate of Incorporation was approved by written action in lieu of a meeting in accordance with the provisions of Sections 245 and 242 of the General Corporation Law.

RESOLVED, that the Amended and Restated Certificate of Incorporation of the corporation be and it hereby is amended and restated to read in its entirety as follows:

I.

The name of this corporation is MetStream Communications, Inc. (the "*Corporation*" or the "*Company*").

II.

The street and mailing address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, Wilmington, Delaware 19801, located in New Castle County; and the name of the registered agent of the Corporation in the State of Delaware at such address is the Corporation Trust Company.

III.

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

IV.

A. This Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares that the Corporation is authorized to issue is Thirty-Five Million (35,000,000) shares, Twenty-Seven Million (27,000,000) shares of which shall be Common Stock (the "*Common Stock*"), and Eight Million (8,000,000) shares of which shall be Preferred Stock (the "*Preferred Stock*"). The Preferred Stock shall have a par value of one hundredth of one cent (\$0.0001) per share and the Common Stock shall have a par value of one hundredth of one cent (\$0.0001) per share.

B. Eight Million (8,000,000) of the authorized shares of Preferred Stock are hereby designated "Series A Preferred Stock" (the "*Series A Preferred*").

C. The rights, preferences, privileges, restrictions and other matters relating to the Series A Preferred are as follows:

1. DIVIDEND RIGHTS.

a. Holders of Series A Preferred, in preference to the holders of the Common Stock of the Company, shall be entitled to receive, when, as and if declared by the Board of Directors, but only out of funds that are legally available therefor, cash dividends at the rate of \$0.0625 per annum on each outstanding share of

Series A Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares). Such dividends shall be payable only when, as and if declared by the Board of Directors and shall be non-cumulative from the date the first share of Series A Preferred, as applicable, is issued. The holders of the outstanding Series A Preferred can waive any dividend preference that such holders shall be entitled to receive under this Section 1 upon the affirmative vote or written consent of the holders of at least fifty percent (50%) of the Series A Preferred outstanding.

b. In the event any dividend is paid on any share of Common Stock, no dividend shall be paid on the Common Stock at a rate greater than the rate at which dividends are paid on the Series A Preferred on an as-converted basis.

2. VOTING RIGHTS.

a. Except as otherwise provided herein or as required by law, the Series A Preferred shall vote together with the shares of the Common Stock of the Company and not as a separate class, at any annual or special meeting of stockholders of the Company, and may act by written consent in the same manner as the Common Stock, in either case upon the following basis: each holder of shares of Series A Preferred shall be entitled to one vote per share of Common Stock into which such Series A Preferred held by such holder could then be converted. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Series A Preferred held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

b. For so long as at least 1,000,000 shares of Series A Preferred remain outstanding (subject to adjustment for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares), in addition to any other vote or consent required herein or by law, the vote or written consent of a majority of the outstanding shares of Series A Preferred, voting together as a separate class, shall be necessary for effecting or validating the following actions:

- (i) The repurchase of any Series A Preferred other than pursuant to the redemption provisions of Article IV(c)(5);
- (ii) The amendment, alteration, or repeal of any provision of the Certificate of Incorporation or the Bylaws of the Company (including any filing of a Certificate of Designation), that affects the powers, preferences, or other special rights or privileges, or any qualifications, limitations, or restrictions provided for the benefit of the Series A Preferred;
- (iii) The repurchase of shares of Common Stock except upon termination of employment pursuant to an existing agreement that provides for the repurchase of shares of Common Stock at cost upon termination;
- (iv) The declaration or payment of any dividend or distribution;
- (v) The authorization or issuance of any security that is senior to or pari passu with the Series A Preferred;
- (vi) The sale of all or substantially all of the Company's assets or a merger, consolidation or reorganization that results in the holders of the Company's capital stock prior to such merger, consolidation or reorganization owning less than two-thirds of the voting power of the Company's capital stock immediately after such merger, consolidation or reorganization;
- (vii) The reclassification of any capital stock;
- (viii) The transfer or grant of any rights in the Company's intellectual property other than pursuant to licensing of such in conjunction with sales of the Company's products or services in the ordinary course of business;

- (ix) The liquidation or dissolution of the Company;
- (x) Any change in the authorized number of members of the Company's Board of Director; and
- (xi) Any amendment of the Company's Certificate of Incorporation.

3. BOARD OF DIRECTORS

a. The authorized size of the Company's Board of Directors is five (5). For so long as at least 1,000,000 shares of Series A Preferred remain outstanding (subject to adjustment for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares, the holders of Series A Preferred, voting separately as a class, shall be entitled to elect one (1) member of the Company's Board of Directors (the "Series A Director") at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such director. The holders of the Common Stock and the holders of the Series A Preferred, voting together as a single class, shall be entitled to elect the remaining four (4) members of the Board of Directors and to remove from office such directors. Any vacancy (other than a vacancy caused by removal) in the office of a director occurring among the directors elected by the holders of a class or series of stock pursuant to this Section 2(d), may be filled by, and only by, the affirmative vote of the holders of the shares of the class or series of stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of the stockholders.

b. A quorum of the Board of Directors shall consist of three (3) or more directors, one of whom must be either the Series A Director or the director elected as a representative of Vertex Technology Fund (III) Ltd.

4. LIQUIDATION RIGHTS.

a. Upon any liquidation, dissolution, or winding up of the Company, whether voluntary or involuntary, before any distribution or payment shall be made to the holders of Common Stock, the holders of Series A Preferred shall be entitled to be paid out of the assets of the Company an amount per share of Series A Preferred equal to the Series A Original Issuance Price (as defined below) (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) plus all declared and unpaid dividends on the Series A Preferred for each share of Series A Preferred held by them. The "Series A Original Issuance Price" shall be equal to Sixty-two and One-half Cents (\$0.625). If, upon any liquidation, distribution, or winding up, the assets of the Company shall be insufficient to make payment in full to all holders of Series A Preferred of the liquidation preference set forth in this Section 4(a), then such assets shall be distributed among the holders of Series A Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

b. After the payment of the full liquidation preference of the Series A Preferred as set forth in Section 4(a) above, the remaining assets of the Company legally available for distribution, if any, shall be distributed to the holders of the Common Stock and the holders of Series A Preferred according to the number of shares of Common Stock and Series A Preferred then held by each holder (on an as-converted basis).

c. The following events shall be considered a liquidation under this Section (unless the holders of at least a majority of the Series A Preferred then outstanding shall determine otherwise):

(1) any consolidation or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization, in which the stockholders of the Company immediately prior to such consolidation, merger or reorganization own less than fifty percent (50%) of the Company's voting power immediately after such consolidation, merger or reorganization, or any transaction or series of related transactions in which in excess of fifty percent (50%) of the Company's voting power is transferred (an "Acquisition"); or

(if) a sale, lease or other disposition of all or substantially all of the assets of the Company and its subsidiaries (an "Asset Transfer").

d. If the consideration to be paid or distributed to the stockholders of the Company by reason of a liquidation, dissolution or winding up of the Company, including by reason of an Acquisition or Asset Transfer, is other than cash, its value will be deemed its fair market value as determined in good faith by the Board of Directors. Any securities shall be valued as follows:

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

(A) If traded on a securities exchange 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 of such liquidation, dissolution or winding up of the Company;

(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 of such liquidation, dissolution or winding up of the Company; and

(C) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the Board of Directors and the holders of at least a majority of the voting power of all then outstanding shares of Series A Preferred.

(ii) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (i)(A), (B) or (C) to reflect the approximate fair market value thereof, as mutually determined by the Board of Directors and the holders of at least majority of the voting power of all then outstanding shares of Series A Preferred.

e. Upon (i) any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or (ii) any Acquisition or Asset Transfer, or any voluntary or involuntary dissolution, liquidation or winding up of the Company, the Company shall mail to each holder of Series A Preferred at least twenty (20) days prior to the record date specified therein a notice specifying (1) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (2) the date on which any such Acquisition, Asset Transfer, dissolution, liquidation or winding up is expected to become effective, and (3) the date, if any, that is to be fixed as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such Acquisition, Asset Transfer, dissolution, liquidation or winding up.

5. CONVERSION RIGHTS.

The holders of the Series A Preferred shall have the following rights with respect to the conversion of the Series A Preferred into shares of Common Stock:

a. **Optional Conversion.** Subject to and in compliance with the provisions of this Section 5, any shares of Series A Preferred may, at the option of the holder, be converted at any time after the date of issuance into fully paid and nonassessable shares of Common Stock.

b. **Conversion Rates.** The conversion rate in effect at any time for conversion of the Series A Preferred shall be the quotient obtained by dividing the Series A Original Issuance Price by the "Series A Preferred Price," calculated as provided in Section 5(c)

c. **Conversion Price.** The conversion price for the Series A Preferred shall initially be equal to the Series A Original Issuance Price (the "*Series A Preferred Price*"). The Series A Preferred Price shall be adjusted from time to time in accordance with this Section 5. All references to the Series A Preferred Price herein shall mean the Series A Preferred Price as so adjusted.

d. **Mechanics of Conversion.** Each holder of Series A Preferred who desires to convert the same into shares of Common Stock pursuant to this Section 5 shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or any transfer agent for the Series A Preferred, and shall give written notice to the Company at such office that such holder elects to convert the same. Such notice shall state the number of shares of Series A Preferred being converted. Thereupon, the Company shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and shall promptly pay in cash or, to the extent sufficient funds are not then legally available therefor, in Common Stock (at the Common Stock's fair market value determined by the Board of Directors as of the date of such conversion) any declared and unpaid dividends on the shares of Series A Preferred being converted. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificates representing the shares of Series A Preferred to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date.

e. **Adjustment for Stock Splits and Combinations.** If the Company shall at any time or from time to time after the date the first share of Series A Preferred is issued (the "*Series A Original Issue Date*") effect a subdivision of the outstanding Common Stock without a corresponding subdivision of the Series A Preferred, the Series A Preferred Price in effect immediately before the subdivision shall be proportionately decreased so that the number of shares of Common Stock issuable on conversion of each share of Series A Preferred shall be increased in proportion to such increase of the aggregate number of shares of Common Stock outstanding and those issuable with respect to securities convertible into Common Stock. Conversely, if the Company shall at any time or from time to time after the Series A Original Issue Date combine the outstanding shares of Common Stock into a smaller number of shares without a corresponding combination of the Series A Preferred, the Series A Preferred Price in effect immediately before the combination shall be proportionately increased so that the number of shares of Common Stock issuable on conversion of each share of Series A Preferred shall be decreased in proportion to such decrease of the aggregate number of shares of Common Stock outstanding and those issuable with respect to securities convertible into Common Stock. Any adjustment under this Section 5(c) shall become effective at the close of business on the date the subdivision or combination becomes effective.

f. **Adjustment for Common Stock Dividends and Distributions.** If the Company at any time or from time to time after the Series A Original Issue Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, in each such event the Series A Preferred Price that is then in effect shall be decreased as of the time of such issuance or, in the event such record date is fixed, as of the close of business on such record date, by multiplying the Series A Preferred Price then in effect by a fraction (1) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and (2) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution; *provided, however,* that if such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series A Preferred Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series A Preferred Price shall be adjusted pursuant to this Section 5(f) to reflect the actual payment of such dividend or distribution.

g. **Adjustments for Other Dividends and Distributions.** If the Company at any time or from time to time after the Series A Original Issue Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Company other than shares of Common Stock, in each such event provision shall be made so that the holders of the Series A Preferred shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of other securities of the Company which they would have received had their Series A

Preferred been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 5 with respect to the rights of the holders of the Series A Preferred or with respect to such other securities by their terms.

h. Adjustment for Reclassification, Exchange and Substitution. If at any time or from time to time after the Series A Original Issue Date, the Common Stock issuable upon the conversion of the Series A Preferred is changed into the same or a different number of shares of any class or classes of stock, or other securities or property, whether by recapitalization, reclassification or otherwise (other than an Acquisition or Asset Transfer or a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 5), in any such event each holder of Series A Preferred shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change based on the number of shares of Common Stock into which such shares of Series A Preferred could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

i. Reorganizations, Mergers, Consolidations or Sales of Assets. If at any time or from time to time after the Series A Original Issue Date, there is a capital reorganization of the Common Stock (other than an Acquisition or Asset Transfer or a recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this Section 5), as a part of such capital reorganization, provision shall be made so that the holders of the Series A Preferred shall thereafter be entitled to receive upon conversion of the Series A Preferred the number of shares of stock or other securities or property of the Company to which a holder of the number of shares of Common Stock deliverable upon conversion would have been entitled on such capital reorganization, subject to adjustment in respect of such stock or securities by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 5 with respect to the rights of the holders of Series A Preferred after the capital reorganization to the end that the provisions of this Section 5 (including adjustment of the Series A Preferred Price then in effect and the number of shares issuable upon conversion of the Series A Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

j. Sale of Shares Below Effective Series A Preferred Price.

(i) If at any time or from time to time after the Series A Original Issue Date, the Company issues or sells, or is deemed by the express provisions of this subsection (j) to have issued or sold Additional Shares of Common Stock (as defined in subsection (j)(iv) below), other than as a dividend or other distribution on any class of stock as provided in Section 5(f) above, and other than a subdivision or combination of shares of Common Stock as provided in Section 5(e) above, for an Effective Price (as defined in subsection (j)(iv) below) less than the then effective Series A Preferred Price (hereinafter referred to as an "*Effective Series A Preferred Price*" for the purposes of this subsection (j)), then and in each such case the then existing Effective Series A Preferred Price shall be reduced, as of the opening of business on the date of such issue or sale, to a price determined by multiplying the Effective Series A Preferred Price by a fraction (i) the numerator of which shall be (A) the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale, plus (B) the number of shares of Common Stock which the aggregate consideration received (as defined in subsection (j)(ii) below) by the Company for the total number of Additional Shares of Common Stock so issued would purchase at such Effective Series A Preferred Price, and (ii) the denominator of which shall be the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale plus the total number of Additional Shares of Common Stock so issued. For the purposes of the preceding sentence, the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (A) the number of shares of Common Stock actually outstanding, (B) the number of shares of Common Stock into which the then outstanding shares of Series A Preferred could be converted if fully converted on the day immediately preceding the given date and (C) the number of shares of Common Stock issuable upon conversion of outstanding options or warrants.

(ii) For the purpose of making any adjustment required under this Section 5(j), the consideration received by the Company for any issue or sale of securities shall (A) to the extent it consists

of cash, be computed at the net amount of cash received by the Company after deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Company in connection with such issue or sale but without deduction of any expenses payable by the Company, (B) to the extent it consists of property other than cash, be computed at the fair value of that property as determined in good faith by the Board of Directors, and (C) if Additional Shares of Common Stock, Convertible Securities (as defined in subsection (j)(iii)) or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Company for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board of Directors to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

(iii) For the purpose of the adjustment required under this Section 5(j), if the Company issues or sells any rights or options for the purchase of, or stock or other securities convertible into, Additional Shares of Common Stock (such convertible stock or securities being herein referred to as "*Convertible Securities*") and if the Effective Price of such Additional Shares of Common Stock is less than the Series A Preferred Price, in each case the Company shall be deemed to have issued at the time of the issuance of such rights or options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration for the issuance of such shares an amount equal to the total amount of the consideration, if any, received by the Company for the issuance of such rights or options or Convertible Securities, plus, in the case of such rights or options, the minimum amounts of consideration, if any, payable to the Company upon the exercise of such rights or options, plus, in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion thereof; *provided* that if in the case of Convertible Securities the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, the Company shall be deemed to have received the minimum amounts of consideration without reference to such clauses; *provided further* that if the minimum amount of consideration payable to the Company upon the exercise or conversion of rights, options or Convertible Securities is reduced over time or on the occurrence or non-occurrence of specified events other than by reason of antidilution adjustments, the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced and *provided further* that if the minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities is subsequently increased, the Effective Price shall be again recalculated using the increased minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities. No further adjustment of the Series A Preferred Price, as adjusted upon the issuance of such rights, options or Convertible Securities, shall be made as a result of the actual issuance of Additional Shares of Common Stock on the exercise of any such rights or options or the conversion of any such Convertible Securities. If any such rights or options or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, the Effective Series A Preferred Price as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the Effective Series A Preferred Price which would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such rights or options or rights of conversion of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the Company upon such exercise, plus the consideration, if any, actually received by the Company for the granting of all such rights or options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted, plus the consideration, if any, actually received by the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities, provided that such readjustment shall not apply to prior conversions of Series A Preferred.

(iv) "*Additional Shares of Common Stock*" shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 5(j), whether or not subsequently reacquired or retired by the Company other than (1) shares of Common Stock issued upon conversion of the Series A Preferred; (2) shares of Common Stock and/or options, warrants or other Common Stock purchase rights, and the Common Stock issued pursuant to such options, warrants or other rights (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) after the Series A Original Issue Date to employees, officers, directors or strategic allies of, or consultants or advisors to the Company or any subsidiary pursuant to

the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent, provided, however, that the Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Series A Preferred are either delivered to the Company or its transfer agent as provided below, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Series A Preferred, the holders of Series A Preferred shall surrender the certificates representing such shares at the office of the Company or any transfer agent for the Series A Preferred. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Series A Preferred surrendered were convertible on the date on which such automatic conversion occurred, and any declared and unpaid dividends shall be paid in accordance with the provisions of Section 5(d).

n. **Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of Series A Preferred. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series A Preferred by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of any fractional share, the Company shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the Common Stock's fair market value (as determined by the Board of Directors) on the date of conversion.

o. **Reservation of Stock Issuable Upon Conversion.** The Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A Preferred, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred, the Company will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

p. **Notices.** Any notice required by the provisions of this Section 5 shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed telex or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices shall be addressed to each holder of record at the address of such holder appearing on the books of the Company.

q. **Payment of Taxes.** The Company will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Series A Preferred, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Series A Preferred so converted were registered.

6. REDEMPTION.

a. The Company shall be obligated to redeem the Series A Preferred as follows:

(i) If a Qualified Public Offering is not closed within four (4) years after the Series A Original Issue Date, then at the individual option of each Series A Preferred holder, such holder may from time to time give notice and require the Company, to the extent it may lawfully do so, to redeem all or any portion of such holder's shares of Series A Preferred (the "*Redemption Request*"). The date on which the Redemption Request is delivered to the Company shall be referred to as the "*Redemption Request Date*."

(ii) The Company shall redeem from each holder of Series A Preferred who has elected to have any of such holder's shares redeemed such shares of Series A Preferred held by such holder at a price per share equal to \$0.625 per share of Series A Preferred (as adjusted for stock splits, stock combinations, stock dividends, recapitalizations and the like), plus an amount equal to the sum of any declared but unpaid dividends on the Series A Preferred (such amounts to be paid on redemption referred to herein as the "Redemption Price"). The Company shall have a period of one (1) year after the Redemption Request Date to pay the Redemption Price; provided, however, that the Redemption Price received by the holders of Series A Preferred shall accrue interest at ten percent (10%) per annum during such one-year period.

b. On or after the Redemption Request Date, the holder of shares of Series A Preferred to be redeemed shall surrender such holder's certificates representing such shares to the Company in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. In the event less than all the shares represented by such certificates are redeemed, a new certificate shall be issued representing the unredeemed shares. From and after the Redemption Request Date, unless there shall have been a default in payment of the Redemption Price or the Company is unable to pay the Redemption Price due to not having sufficient legally available funds, all rights of the holder of such shares as holder of Series A Preferred (except the right to receive the Redemption Price upon surrender of their certificates), shall cease and terminate with respect to such shares, provided that in the event that shares of Series A Preferred are not redeemed due to a default in payment by the Company or because the Company does not have sufficient legally available funds, such shares of Series A Preferred shall remain outstanding and shall be entitled to all of the rights and preferences provided herein.

7 NO REISSUANCE OF SERIES A PREFERRED.

No share or shares of Series A Preferred acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued.

D. The rights, preferences, privileges, restrictions and other matters relating to the Common Stock are as follows:

1. **DIVIDEND RIGHTS.** Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of the Company legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. **LIQUIDATION RIGHTS.** Upon the liquidation, dissolution or winding up of the Company, the assets of the Company shall be distributed as provided in Section C(3) of Article IV hereof.

3. **REDEMPTION.** The Common Stock is not redeemable.

4. **VOTING RIGHTS.** The holder of each share of Common Stock shall have the right to one vote for each such share, and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Company, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

V.

A. A director of the corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit. If the General Corporation Law is amended after approval by the stockholders of this Article to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director shall be eliminated or limited to the fullest extent permitted by the General Corporation Law, as so amended.

B. Any repeal or modification of this Article V shall only be prospective and shall not effect the rights under this Article V in effect at the time of the alleged occurrence of any action or omission to act giving rise to liability.

VI

For the management of the business and for the conduct of the affairs of the Corporation, and in further definition, limitation and regulation of the powers of the Corporation, of its directors and of its stockholders or any class thereof, as the case may be, it is further provided that:

A. The management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors.

B. The Board of Directors may from time to time make, amend, supplement or repeal the Bylaws; provided, however, that the stockholders may change or repeal any Bylaw adopted by the Board of Directors by the affirmative vote of the holders of a majority of the voting power of all of the then outstanding shares of the capital stock of the Corporation; and, provided further, that no amendment or supplement to the Bylaws adopted by the Board of Directors shall vary or conflict with any amendment or supplement thus adopted by the stockholders.

C. The directors of the Corporation need not be elected by written ballot unless the Bylaws so provide.

VII

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

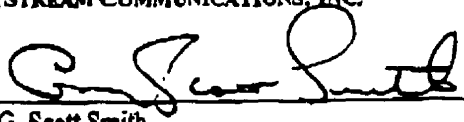
VIII

A. To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) agents of the Corporation (and any other persons to which General Corporation Law permits this Corporation to provide indemnification) through bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law, subject only to limits created by applicable General Corporation Law (statutory or non-statutory), with respect to actions for breach of duty to this Corporation, its stockholders, and others.

B. Any repeal or modification of this Article VIII shall only be prospective and shall not affect the rights under this Article VIII in effect at the time of the alleged occurrence of any action or omission to act giving rise to indemnification.

IN WITNESS WHEREOF, MetStream Communications, Inc. has caused this AMENDED AND RESTATED CERTIFICATE OF INCORPORATION to be signed by the President in Portland, Oregon, this 22 day of August, 2000.

METSTREAM COMMUNICATIONS, INC.

By: 
G. Scott Smith
President

1 215 633 6160 P.07

State of Florida



Department of State

I certify from the records of this office that METSTREAM COMMUNICATIONS, INC., is a corporation organized under the laws of Delaware, authorized to transact business in the State of Florida, qualified on November 14, 2000.

The document number of this corporation is F00000006405.

I further certify that said corporation has paid all fees due this office through December 31, 2000, and its status is active.

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

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capitol, this the
Seventeenth day of November, 2000



CH2FC22 (1-99)

Katherine Harris

Katherine Harris
Secretary of State

APPLICATION BY FOREIGN CORPORATION FOR AUTHORIZATION TO TRANSACT BUSINESS IN FLORIDA

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

- 1. METSTREAM COMMUNICATIONS, INC.
(Name of corporation: must include the word "INCORPORATED", "COMPANY", "CORPORATION" or words or abbreviations of like import in language as will clearly indicate that it is a corporation instead of a natural person or partnership if not so contained in the name at present.)
- 2. DELAWARE
(State or country under the law of which it is incorporated)
- 3. 93-1293436
(FEI number, if applicable)
- 4. 5/1/2000
(Date of Incorporation)
- 5. PERPETUAL
(Duration: Year corp. will cease to exist or "perpetual")
- 6. UPON QUALIFICATION
(Date first transacted business in Florida. (SEE SECTIONS 607.1501, 607.1502, AND 817.155, F.S.))
- 7. 1815 NW 169TH PLACE, SUITE 4060, BEAVERTON, OR 97006

(Current mailing address)

- 8. TO PROVIDE COMPETITIVE TELECOMMUNICATION SERVICES/OPTIONS TO RESIDENTIAL CUSTOMERS
(Purpose(s) of corporation authorized in home state or country to be carried out in the state of Florida)

- 9. Name and street address of Florida registered agent: (P.O. Box or Mail Drop Box NOT acceptable)

Name: EDWIN F. BLANTON, ESQ.

Office Address: 825 THOMASVILLE ROAD

TALLAHASSEE, Florida, 32303
(Zip Code)

- 10. Registered agent's acceptance:

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



(Registered agent's signature)

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

RECEIVED
NOV 14 PM 9:26
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

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

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

Chairman: G. SCOTT SMITH

Address: 1815 NW 169TH PLACE, SUITE 4060
BEAVERTON, OR 97006

Vice Chairman: _____

Address: _____

Director: _____

Address: _____

Director: _____

Address: _____

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

President: G. SCOTT SMITH

Address: 1815 NW 169TH PLACE, SUITE 4060
BEAVERTON, OR 97006

Vice President: _____

Address: _____

Secretary: G. SCOTT SMITH

Address: 1815 NW 169TH PLACE, SUITE 4060
BEAVERTON, OR 97006

Treasurer: TODD HENNE

Address: 1815 NW 169TH PLACE, SUITE 4060
BEAVERTON, OR 97006

FILED
NOV 14 PM 9:26
SECRETARY OF STATE
TALLAHASSEE FLORIDA

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

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

14. G. Scott Smith
(Typed or printed name and capacity of person signing application)

EXHIBIT B

Financial Statements

METSTREAM COMMUNICATIONS, INC.
Balance Sheet
October 31, 2000

ASSETS	
Current Assets	
Cash	\$ 4,194,987
Accounts Receivable	-
Other Current Assets	7,500
Other Assets	5,766
Total Current Assets	4,208,253
Fixed Assets	
Fixed Assets	458,043
Accumulated Depreciation	(6,724)
Fixed Assets – Net	451,319
TOTAL ASSETS	\$ 4,659,572
LIABILITIES AND SHAREHOLDERS' EQUITY	
Current Liabilities	
Accounts Payable	\$ 75,956
Accrued Payroll and Payroll Taxes	186,298
Current Portion of Notes Payable	152,349
Other Liabilities	80
Total Current Liabilities	414,683
Long Term Debt	
Notes Payable	-
TOTAL LIABILITIES	414,683
Shareholders' Equity	
Equity	4,928,700
Retained Earnings	(683,811)
Total Shareholders' Equity	4,244,889
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	\$ 4,659,572

Unaudited – for Internal Use Only

METSTREAM COMMUNICATIONS, INC.
Income Statement
For the Period Ending October 31, 2000

	October 2000	Year to Date 2000
Revenues	\$ -	-
Cost of Sales	-	-
Gross Margin	-	-
Selling General and Administrative Expenses		
Salaries and Wages	236,584	391,973
Taxes and Benefits	43,395	64,624
Travel and Entertainment	18,398	25,442
Training, Dues and Licenses	8,436	12,463
Legal and Professional	29,956	129,939
Advertising and Promotion	11,593	23,825
Utilities	4,974	8,823
Office Rent	705	14,092
Equipment Rent	1,050	1,575
Shipping and Maintenance	320	382
Printing and Supplies	9,236	13,528
Insurance	461	1,363
Other	614	1,456
EBITDA	(365,722)	(689,485)
Interest Expense (Income)	(10,728)	(12,399)
Depreciation and Amortization	3,969	6,724
Earnings (Loss) Before Income Taxes	(358,963)	(683,811)
Income Taxes	-	-
Net Income (Loss)	\$ (358,963)	\$ (683,811)

Unaudited – for Internal Use Only

METSTREAM COMMUNICATIONS, INC.
Statement of Cash Flows
For the Period Ending October 31, 2000

	October 2000	Year to Date 2000
Net Income (Loss)	\$ (358,963)	\$ (683,811)
Items not affecting cash:		
Depreciation & amortization	3,969	6,724
Deferred income taxes	-	-
Net (gain)/loss on sale of assets	-	-
FUNDS FLOW FROM OPERATIONS	(354,994)	(677,086)
Working Capital Changes:		
Receivables	-	-
Payables	39,253	75,956
Other	225,723	173,112
TOTAL WORKING CAPITAL CHANGES	264,976	249,068
CASH FROM OPERATING ACTIVITIES	(90,017)	(428,018)
CASH FLOWS FROM INVESTING		
Capital Expenditures	(153,479)	(458,043)
Equity Investments	-	-
Cash paid for Business Acquisitions	-	-
Other	-	-
CASH FLOWS FROM INVESTING	(153,479)	(458,043)
NET CASH FLOW	(243,496)	(886,062)
CASH FLOWS FROM FINANCING		
Third party debt increase/(decrease)	(67,033)	152,349
Stock (purchases) issuances	1,100,000	4,928,700
Dividends Paid to Outside	-	-
Other	-	-
CASH FLOWS FROM FINANCING	1,032,967	5,081,049
(INCREASE)/DECREASE IN CASH	789,471	4,194,987
CASH AND CASH EQUIVALENTS, BEGINNING	3,405,517	-
CASH AND CASH EQUIVALENTS, ENDING	\$ 4,194,987	\$ 4,194,987
INTEREST ON OBLIGATIONS	\$ 5,576	\$ 5,576
INTEREST ON CASH BALANCE	\$ 16,304	\$ 17,975

Unaudited – for Internal Use Only

EXHIBIT C

Resumes of the Management Team

- **Statement of managerial and technical competence:**

Scott Smith

Chief Executive Officer, Founder

Mr. Smith was trained as a software developer with Andersen Consulting and then went on to join the General Electric Company within the Technical Leadership Program. Scott spent five years with GE working in various aspects of Product Development and Manufacturing. His work culminated in a 'greenfield' start-up – leading the plant from \$5MM to \$25MM in revenues within the first year of operation. Scott then transitioned to Marketing and Product Development first with SCT, a high-tech wireless receiver manufacturer, then with US West !NTERPRISE Services. Scott was the Director of Product Development for Enron Broadband Services, overseeing the development of all products and services within the company. Mr. Smith has a B.S. in Electrical and Computer Engineering from the University of Tennessee, Knoxville, and is completing his Masters Thesis in Telecommunications Engineering from the University of Colorado, Boulder.

Todd Henne

Chief Financial Officer

Mr. Henne has been the Controller of Enron Broadband Services (formerly Enron Communications, Inc.) from June 1998 to present where he is in charge of all Accounting, cash management, financial systems and the primary liaison for the external Big 5 accounting firm. He has played a crucial role in establishing and managing the startup back office systems for Enron Broadband Services and ensuring compliance with corporate policies and procedures. Prior to joining EBS, he has held similar Controller positions for over five years. These companies included a large mechanical contractor with annual revenues in excess of \$100 MM. Prior to the Controller positions, he has held various Analytical and Accounting positions and became a Certified Public Accountant in July 1987. He holds a B.S. in Accounting and Minors in Computer Science and Mathematics from Oregon State University, graduating in June 1985.

Rob Hinnen

Vice President, Business Development

Prior to joining MetStream, Mr. Hinnen was a local partner for Trammell Crow Residential, in charge of the Oregon and Southwest Washington development operations. While there, he was involved in the management of development and financing issues for more than 2,000 high end apartment units in Portland and Seattle. Prior to joining TCR, Mr. Hinnen was a real estate attorney for Ball Janik LLP, and subsequently Stoel Rives LLP. Mr. Hinnen graduated cum laude from Harvard Law School and received his undergraduate degree from Whitman College.

Charles R. Frans**Vice President, Operations**

Charles Frans has nine years experience in telecommunications systems and more than 25 years in the development of software systems. Most recently, as a charter member of Group Telecom (a Canadian CLEC), he was responsible for the procurement, selection, and implementation of the OSS solutions, Fraud Management, and an Interconnection Gateway system. He developed a nationwide IT Operations Support organization and a state-of-the-art software development group. Lastly, he designed and implemented a nationwide (Canadian) multi-media (voice, video, MS NetMeeting data) conferencing solution (17 cities) that provide simultaneous multi-point conferences using H.323 (IP) technology. Prior to Group Telecom, Mr. Frans served with several firms to include Cap Gemini, Beechwood, SECOR, and Titan Client/Server Technologies. While there, he served as Software Tester, Developer, Architect, Project Manager, and Vice President of Operations, and served on several Industry (ATIS/ECIC/OBF) sub-committees and wrote a patent application for an interconnection gateway.

Jim Williams**Vice President, Engineering**

Mr. Williams has an established nine year track record of providing network design and technology consulting services. From July 1998 to present, he has been with EBS where he has held Director level positions within the product and network engineering organizations. Prior to EBS, he spent two years at OPTEC Inc. as a senior network consulting engineer providing network design services for government organizations within the State of Oregon. From 1991 to 1995, he provided network engineering design services for Boeing Co. supporting the IASL, integrated aircraft systems laboratory. Our candidate holds a B.S. in Electrical and Computer Engineering from Washington State University.

Doug Foster**Vice President, Network Development**

Mr. Foster was one of the first employees at Lattice Semiconductor, where he was first responsible for bringing up all aspects of Manufacturing, including vendor selection and qualification, as well as launching the product groups. He was instrumental in building the quality system from scratch and achieving ISO9000 qualification. Headed up the following areas while at Lattice – Product Engineering, Manufacturing Engineering, Test Engineering, Quality / Reliability Engineering. Prior to joining Lattice, Mr. Foster spent 8 years at Intel primarily in the Product Development Engineering group.

Stephen Sunshine**Vice President, Sales**

Stephen Sunshine has most recently held Director positions at Enron Broadband Services as Director of Sales and Director of Channel Marketing, where he was responsible for jumpstarting Enron's Broadband Deliver Program. While at Enron, he established and developed new business relationships with Tier 1 Network Service Providers, Internet Service Providers (ISP's), Regional Bell Operating Companies (RBOC's), and Competitive Local Exchange Carriers (CLEC's) for Enron's broadband content delivery network. Prior to joining Enron, he worked for over 5 years in sales positions for Texas-based companies, including BMC Software, and BindView Development. Mr. Sunshine graduated with a Master of Science from Lesley College, Cambridge, MA. and a Bachelor of Arts undergraduate degree from the University of Texas, Austin, TX.

EXHIBIT D

Proposed Tariff

TITLE SHEET

FLORIDA TELECOMMUNICATIONS TARIFF

This Tariff contains the descriptions, regulations, and rates applicable to the furnishing of service and facilities for telecommunications services within the State of Florida by Metstream Communications, Inc. This tariff is on file with the Florida Public Service Commission, and copies may also be inspected, during normal business hours, at the following location: 1815 NW 169th Place, Suite 4060, Beaverton, OR 97006.

Issued: December 12, 2000

Effective:

Issued by: Heather Qualey, Tariff Manager
Metstream Communications, Inc.
1815 NW 169th Place, Suite 4060
Beaverton, OR 97006

CHECK SHEET

The pages inclusive of this Tariff are effective as of the date shown. Original and revised sheets, as named below, comprise all changes from the original Tariff in effect on the date indicated.

SHEET REVISION

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

SHEET REVISION

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

* New or Revised Sheets

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TABLE OF CONTENTS

	<u>Sheet</u>
TITLE SHEET	1
CHECK SHEET.....	2
TABLE OF CONTENTS.....	3
SYMBOLS	4
TARIFF FORMAT	5
1. <u>TECHNICAL TERMS AND ABBREVIATIONS</u>	6
2. <u>RULES AND REGULATIONS</u>	10
3. <u>DESCRIPTION OF SERVICES</u>	22
4. <u>RATES AND CHARGES</u>	23

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SYMBOLS

- (D) Delete or Discontinue
- (I) Change Resulting In An Increase to A Customer's Bill
- (M) Moved From Another Tariff Location
- (N) New
- (R) Change Resulting In A Reduction To A Customer's Bill
- (T) Change in Text or Regulation But No Change In Rate or Charge

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TARIFF FORMAT

Sheet Numbering - Sheet numbers appear in the upper right hand corner of the page. Sheets are numbered sequentially and from time to time new pages may be added to the Tariff. When a new page is added between existing pages, a decimal is added to the preceding page number. For example, a new page added between Sheets 3 and 4 would be numbered 3.1.

Sheet Revision Numbers - Revision numbers also appear in the upper right corner of each page. These numbers are used to determine the most current sheet version on file with the Commission. For example, the 4th revised Sheet 14 cancels the 3rd revised Sheet 14. Because of various suspension periods, deferrals, etc. the Commission follows in the tariff approval process, the most current sheet number on file with the Commission is not always the tariff page in effect. Consult the Check Sheet for the sheet currently in effect.

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).

Check Sheets - When a Tariff filing is made with the FPSC, an updated check sheet accompanies the Tariff filing. The check sheet lists the pages contained in the Tariff, with a cross reference to the current revision number. When new pages are added, the check sheet is changed to reflect the revision, all revisions made in a given filing are designated by an asterisk (*). There will be no other symbols used on this page if these are the only changes made to it. The Tariff user should refer to the latest check sheet to find out if a particular page is the most current on file with the FPSC.

1. TECHNICAL TERMS AND ABBREVIATIONS

For the purpose of this Tariff, the following definitions will apply:

Access Coordination

Provides for the design, ordering, installation, coordination, pre-service testing, service turn-on and maintenance on a Company or Customer provided Local Access Channel.

Administrative Change

A change in Customer billing address or contact name.

Application for Service

A standard Company order form which includes all pertinent billing, technical and other descriptive information which will enable the Company to provide a communication Service as required.

ASR

ASR (Access Service Request) means an order placed with a Local Access Provider for Local Access.

Authorized User

A person, firm, corporation or other entity that either is authorized by the Customer to receive or send communications or is placed in a position by the Customer to send or receive communications.

Cancellation of Order

A Customer initiated request to discontinue processing a Service order, either in part or in its entirety, prior to its completion. Cancellation charges will be assessed for each Circuit-end or Dedicated Access line canceled from an order prior to its completion by the Company, under the following circumstances: (1) if the LEC has confirmed in writing to the Company that the Circuit-end or Dedicated Access line will be installed; or (2) if the Company has already submitted facilities orders to an interconnecting telephone company.

Company

Metstream Communications, Inc.

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Company Recognized National Holidays

The following are Company Recognized National Holidays determined at the location of the originator of the Call: New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day.

The evening rate is used unless a lower rate would normally apply.

Customer

The person, firm, corporation or governmental unit which orders Service and which is responsible for the payment of charges and for compliance with the Company's Tariff regulations. A Customer is considered to be an account for billing purposes. The term Customer also includes an entity that remains presubscribed to the Company Service after its account(s) are removed from the Company's billing system, subsequently continues to use Company's network, and is billed by a local exchange carrier for such use, or otherwise uses Service for which no other Customer is obligated to compensate Company.

Customer Premises/Customer's Premises

Locations designated by a Customer where Service is originated/terminated whether for its own communications needs or for the use of its resale customers.

Expedite

A Service order initiated at the request of the Customer that is processed in a time period shorter than the Company's standard Service interval.

FCC

Federal Communications Commission

FPSC

Florida Public Service Commission

Installation

The connection of a Circuit, Dedicated Access line, or port for new, changed or an additional Service.

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Interexchange Service

Interexchange Service means that portion of a communications channel between a Company-designated Point-of-Presence in one exchange and a Point-of-Presence in another exchange.

Interruption

Interruption shall mean a condition whereby the Service or a portion thereof is inoperative, beginning at the time of notice by the Customer to Company that such Service is inoperative and ending at the time of restoration.

LATA (Local Access Transport Area)

A geographical area established for the provision and administration of communications Service of a local exchange company.

Local Access

Local Access means the Service between a Customer Premises and a Company designated Point-of-Presence.

Local Access Provider

Local Access Provider means an entity providing Local Access.

Multiplexing

Multiplexing is the sequential combining of lower bit rate Private Line Services onto a higher bit rate Private Line Service for more efficient facility capacity usage or vice versa.

Payment Method

The manner which the Customer designates as the means of billing charges for Calls using the Company's Service.

Physical Change

The modification of an existing Circuit, Dedicated Access line or port, at the request of the Customer, requiring some Physical Change.

Point-of-Presence (POP)

A Company-designated location where a facility is maintained for the purpose of providing access to its Service.

Primary Route

The route which, in the absence of Customer-designated routing or temporary re-routing, would be used by the Company in the provision of Service.

Rate Center

A specified geographical location used for determining mileage measurements.

Requested Service Date

The Requested Service Date is the date requested by the Customer for commencement of Service and agreed to by the Company.

Service

Service means any or all Service(s) provided pursuant to this Tariff.

Service Commitment Period

The term elected by the Customer and stated on the Service order during which the Company will provide the Services subscribed to by the Customer. The term can be monthly or in the case of Private Line Services for a period of up to 5 years.

Start of Service Date

The Requested Service Date or the date Service first is made available by the Company whichever is later.

Tariff

The current Intrastate Services Tariff and effective revisions thereto filed by the Company with the FPSC.

Toll Call

Any call extending beyond the local exchange of the originating caller which is rated on a toll schedule by the local exchange telephone company.

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2. RULES AND REGULATIONS

2.1. Undertaking of the Company

2.1.1. Intrastate Telecommunications Service ("Service") is the furnishing of Company communication Services contained herein between specified locations under the terms of this Tariff. The Company will provide Service to the public by reselling services purchased from underlying facilities based carriers.

2.1.2. Any member of the general public (including any natural person or legally organized entity such as a corporation, partnership, or governmental body) is entitled to obtain Service under this Tariff, provided that the Company reserves the right to deny Service: (A) to any Customer that, in the Company's reasonable opinion, presents an undue risk of nonpayment, (B) in circumstances in which the Company has reason to believe that the use of the Service would violate the provisions of this Tariff or any applicable law or if any applicable law restricts or prohibits provision of the Service, or (C) if insufficient facilities are available to provide the Service (in such cases Company shall make best efforts to accommodate the needs of all potential Customers by means of facility improvements or purchases, of capacity, if such efforts will, in the Company's opinion, provide the Company with a reasonable return on its expenditures), but only for so long as such unavailability exists.

2.1.3. Company, when acting at the Customer's request and as its authorized agent, will make reasonable efforts to arrange for Service requirements, such as special routing, Diversity, Alternate Access, or circuit conditioning.

2.2. Limitations of Services

2.2.1. Service is offered in equal access exchanges subject to the availability of facilities and the provisions of this Tariff. Company reserves the right to refuse to provide Service to or from any location where the necessary facilities and/or equipment are not available.

2.2.2. Service may be discontinued after five working days written notice to the Customer if:

2.2.2.A. the Customer is using the Service in violation of this Tariff; or

2.2.2.B. the Customer is using the Service in violation of the law or Commission regulation.

2.2.3. Service begins on the date that billing becomes effective and is provided on the basis of a minimum period of at least one month, 24 hours per day. For the purposes of computing charges in this Tariff, a month is considered to have 30 days.

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- 2.2.4. The Company reserves the right to discontinue furnishing Services or billing options, upon written notice, when necessitated by conditions beyond its control. Conditions beyond the Company's control include, but are not limited to, a Customer's having Call volume or a calling pattern that results, or may result, in network blockage or other Service degradation which adversely affects Service to the calling party, the Customer, or other Customers of the Company.
- 2.2.5. The name(s) of the Customer(s) desiring to use the Service must be stipulated in the application for Service.
- 2.2.6. The Customer agrees to operate the Company provided equipment in accordance with instructions of the Company or the Company's agent. Failure to do so will void the Company liability for interruption of Service and may make Customer responsible for damage to equipment pursuant to Section 2.2.7 below.
- 2.2.7. Customer agrees to return to the Company all Company-provided equipment delivered to Customer within five (5) days of termination of the Service in connection with which the equipment was used. Said equipment shall be in the same condition as when delivered to Customer, normal wear and tear only excepted. Customer shall reimburse the Company, upon demand, for any costs incurred by the Company due to Customer's failure to comply with this provision.
- 2.2.8. A Customer shall not use any servicemark or trademark of the Company or refer to the Company in connection with any product, equipment, promotion, or publication of the Customer without prior written approval of the Company.
- 2.2.9. In the event suit is brought or any attorney is retained by the Company to enforce the terms of this Tariff, the Company shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith.
- 2.2.10. The provision of Service will not create a partnership or joint venture between the Company and the Customer nor result in joint Service offerings to their respective Customers.
- 2.2.11. The rate or volume discount level applicable to a Customer for a particular Service or Services shall be the rate or volume discount level in effect at the beginning of the monthly billing period applicable to the Customer for the particular Service or Services. When a Service is subject to a minimum monthly charge, account charge, port charge or other recurring charge or Nonrecurring Charge for both intrastate and interstate Service, only one such charge shall apply per account and that charge shall be the interstate charge.

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- 2.2.12. Service requested by Customer and to be provided pursuant to this Tariff shall be requested on Company Service Order forms in effect from time to time or Customer's forms accepted in writing by an authorized headquarters representative of the Company (collectively referred to as "Service Orders").
- 2.2.13. If an entity other than the company (e.g., another carrier or a supplier) imposes charges on the Company in connection with a Service that entity's charges will be passed through to the Customer also.
- 2.2.14. The Service Commitment Period for any Service shall be established by the Service Order relevant thereto and commence on the Start of Service Date. Upon expiration, each Service Commitment Period for such Service shall automatically be extended subject to written notice of termination by either Company or Customer. The charges for Interexchange Service during any such extension shall not exceed the then current Company month-to-month charges applicable to such Service.
- 2.2.15. Reserved for future use.

2.3. Liabilities of the Company

- 2.3.1. Except as provided otherwise in this Tariff, the Company shall not be liable to Customer or any other person, firm or entity for any failure of performance hereunder if such failure is due to any cause or causes beyond the reasonable control of the Company. Such causes shall include, without limitation, acts of God, fire, explosion, vandalism, cable cut, storm or other similar occurrence, any law, order, regulation, direction, action or request of the United States government or of any other government or of any civil or military authority, national emergencies, insurrections, riots, wars, strikes, lockouts or work stoppages or other labor difficulties, supplier failures, shortages, breaches or delays, or preemption of existing Services to restore service in compliance with Part 64, Subpart D, Appendix A, of the FCC's Rules and Regulations.
- 2.3.2. With respect to the Services contained herein and except as otherwise provided herein, the Company's liability shall not exceed an amount equal to the charge applicable to a one minute Call to the Called Station at the time the affected Call was made. If the initial minute rate is higher than the additional minute rate, the higher rate shall apply. For those Services with monthly recurring charges, the Company's liability is limited to an amount equal to the proportionate monthly recurring charges for the period during which Service was affected.

- 2.3.3. The Company is not liable for any act or omission of any other company or companies (including any Company affiliate that is a participating or concurring carrier) furnishing a portion of the Service or facilities, equipment, or Services associated with such Service.
- 2.3.4. The Customer is responsible for taking all necessary legal steps for interconnecting the Customer provided terminal equipment with the Company facilities. The Customer shall ensure that the signals emitted into the Company's network do not damage Company equipment, injure personnel or degrade Service to other Customers. The Customer is responsible for securing all licenses, permits, rights-of-way, and other arrangements necessary for such interconnection. In addition, the customer shall comply with applicable LEC signal power limitations.
- 2.3.5. The Company may rely on Local Exchange Carriers or other third parties for the performance of other Services such as Local Access. Upon Customer request and execution and delivery of appropriate authorizing documents, the Company may act as agent for Customer in obtaining such other Services. Customer's liability for charges hereunder shall not be reduced by untimely Installation or non-operation of Customer provided facilities and equipment.
- 2.3.6. The failure to give notice of default, to enforce or insist upon compliance with any of the terms or conditions herein, the waiver of any term or conditions herein, or the granting of an extension of time for performance by the Company or the Customer shall not constitute the permanent waiver of any term or condition herein. Each of the provisions shall remain at all time in full force and effect until modified in writing.
- 2.3.7. Reserved for future use.
- 2.3.8. In the event parties other than Customer shall have use of the Service directly or indirectly through Customer, then Customer agrees to forever indemnify and hold Company and any affiliated or unaffiliated third-party, third-party provider or operator of facilities employed in provision of the Service harmless from and against any and all claims, demands, suits, actions, losses, damages, assessments or payments which may be asserted by said parties arising out of or relating to any Defects.
- 2.3.9. In the event that Company is required to perform a Circuit redesign due to inaccurate information provided by the Customer; or, circumstances in which such costs and expenses are caused by the Customer or reasonably incurred by the Company for the benefit of the Customer, the Customer is responsible for the payment of all such charges.

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2.4. Cancellation of Service by a Customer

- 2.4.1. If a Customer cancels a Service order before the Service begins, before completion of the Minimum Period, or before completion of some other period mutually agreed upon by the Customer and the Company, a charge will be levied upon the Customer for the nonrecoverable portions of expenditures or liabilities incurred expressly on behalf of the Customer by the Company and not fully reimbursed by Installation and monthly charges. If, based on a Service order by a Customer, any construction has either begun or been completed, but no Services provided, the nonrecoverable costs of such construction shall be borne by the Customer.
- 2.4.2. Either Customer or Company shall have the right, without cancellation charge or other liability, to cancel the affected portion of the Service, if the Company is prohibited by governmental authority from furnishing said portion, or if any material rate or term contained herein and relevant to the affected Service is substantially changed by order of the highest court of competent jurisdiction to which the matter is appeal, the Federal Communications Commission, or other local, state or federal government authority.

2.5. Interruption of Service by the Company

- 2.5.1. Upon nonpayment of any sum owing to the Company, or upon a violation of any of the provisions governing the furnishing of Service under this Tariff, the Company may, upon five working days written notification to the Customer, without incurring any liability, immediately discontinue the furnishing of such Service. The written notice shall be separate and apart from the regular monthly bill for service. Customer shall be deemed to have canceled Service as of the date of such disconnection and shall be liable for any cancellation charges set forth in this Tariff.
- 2.5.2. Without incurring any liability, the Company may discontinue the furnishing of Service(s) to a Customer upon five working days written notice if the Company deems that such action is necessary to prevent or to protect against fraud or to otherwise protect its personnel, agents, facilities or Services under the following circumstances:
- 2.5.2.A. if the Customer provides false information to the Company regarding the Customer's identity, address, credit-worthiness, past or current use of Customer communications Services, or its planned use of the Company Service(s);
- 2.5.2.B. if the customer does not pay past due charges;
- 2.5.2.C. in the event of unauthorized use.

- 2.5.2.D. Following the disconnection of service for any of these reasons, the Company or the local exchange utility acting as Company agent, will notify the telephone end user/customer that service was disconnected and why. The notice will include all reasons for the disconnection and will include a toll-free number where an end user/customer can obtain additional information. Notice shall be deemed given upon deposit, postage prepaid, in the U.S. Mail to the end user's/customer's last known address and in compliance with the Commission's rules.
- 2.5.3. The discontinuance of Service(s) by the Company pursuant to this Section does not relieve the Customer of any obligations to pay the company for charges due and owing for Service(s) furnished up to the time of discontinuance. The remedies set forth herein shall not be exclusive and the Company shall at all times be entitled to all rights available to it under either law or equity.
- 2.6. Credit Allowance
- 2.6.1. Credit allowance for the interruption of Service is subject to the general liability provisions set forth in this Tariff. Customers shall receive no credit allowance for the interruption of service which is due to the Company's testing or adjusting, negligence of the Customer, or to the failure of channels or equipment provided by the Customer. The Customer should notify the Company when the Customer is aware of any interruption in Service for which a credit allowance is desired. Before giving such notice, the Customer shall ascertain that the trouble is not being caused by any action or omission within Customer's control, or is not in wiring or equipment, if any, furnished by the Customer in connection with the Company's Services.
- 2.6.2. No credit is allowed in the event service must be interrupted in order to provide routine service quality or related investigations.
- 2.6.3. No credit shall be allowed:
- 2.6.3.A. For failure of services or facilities of Customer; or
- 2.6.3.B. For failure of services or equipment caused by the negligence or willful acts of Customer.
- 2.6.4. Credit for an interruption shall commence after Customer notifies Company of the interruption and ceases when services have been restored.
- 2.6.5. Credits are applicable only to that portion of Service interrupted.

- 2.6.6. For purposes of credit computation, every month shall be considered to have 720 hours.
- 2.6.7. No credit shall be allowed for an interruption of a continuous duration of less than two hours.
- 2.6.8. The Customer shall be credited for an interruption of two hours or more at a rate of 1/720th of the monthly recurring charge for the service affected for each hour or major fraction thereof that the interruption continues. Calculations of the credit shall be made in accordance with the following formula.

Credit Formula:

$$\text{Credit} = \frac{A \times B}{720}$$

"A" = outage time in hours

"B" = total monthly charge for affected facility

2.7. Use of Service

- 2.7.1. The Services offered herein may be used for any lawful purpose, including residential, business, governmental, or other use. However, the Customer remains liable for all obligations under this Tariff notwithstanding such sharing or resale and regardless of the Company's knowledge of same. The Company shall have no liability to any person or entity other than the Customer and only as set forth in Section 2.3. The Customer shall not use nor permit others to use the Service in a manner that could interfere with Services provided to others or that could harm the facilities of the Company or others.
- 2.7.2. Reserved for future use.

- 2.7.3. In addition to the other provisions in this Tariff, Customers reselling company Services shall be responsible for all interaction and interface with their own subscribers or customers. The provision of the Service will not create a partnership or joint venture between Company and Customer nor result in a joint communications Service offering to the Customers of either the Company or the Customer.
- 2.7.4. Service furnished by the Company shall not be used for any unlawful or fraudulent purposes.
- 2.7.5. The Customer will be billed directly by the LEC for certain Dedicated Access arrangements selected by the Customer for the provisioning of direct access arrangements. In those instances where the Company at the Customer's request may act as agent in the ordering of such arrangements, the Company will bill the Customer Local Access charges.

2.8. Payment and Billing

- 2.8.1. The following rules apply only to the Carrier's resold interexchange services and will govern payment and billing practices of the Carrier, unless inconsistent with any rule, order or regulation of the Commission. In the case of any inconsistency, the rule, order, or regulation of the Commission, or other provision of law, shall prevail.
- 2.8.1.A. Service is provided and billed on a billing cycle basis, beginning on the date that the service becomes effective. Billing is payable upon receipt. A late payment charge will accrue upon any unpaid past due balance.
- 2.8.1.B. The customer is responsible for payment of all charges for service and facilities furnished by the Carrier to the customer, as well as, all charges for services and facilities furnished by the Carrier to all persons using the customer's codes, premises, facilities, or equipment, with or without the knowledge or consent of the customer. The security of the customer's authorization codes, premises, switched access connections, and direct connect facilities is the sole responsibility of the customer. All calls placed using such direct connect facilities, authorization codes, premises, or switched access connections will be billed to, and must be paid by, the customer. Recurring and non-recurring charges are billed in arrears.
- 2.8.1.C. All bills are presumed accurate, and shall be binding on the customer unless objection is received by the Carrier in writing within Ninety (90) Days after such bills are rendered.
- 2.8.1.D. Carrier shall be entitled to revise bills previously rendered to adjust for previously unbilled service, or to adjust upward a bill previously rendered, for a period equivalent to the applicable contract law statute of limitations.

2.8.2. If a LEC has established or establishes a Special Access surcharge, the Company will bill the surcharge beginning on the effective date of such surcharge for Special Access arrangements presently in Service. The Company will cease billing the Special Access surcharge upon receipt of an Exemption Certificate or if the surcharge is removed by the LEC.

2.8.3. In the event the Company incurs fees or expenses, including attorney's fees, in collecting, or attempting to collect, any charges owed the Company, the Customer will be liable to the Company for the payment of all such fees and expenses reasonably incurred.

2.9. Advance Payments

2.9.1. For customers whom the Company feels an advance payment is necessary, the Company reserves the right to collect an amount not to exceed one (1) month's estimated charges, as an advance payment for service. This will be applied against the next month's charges and if necessary, a new advance payment will be collected for the next month.

2.10. Deposits

2.10.1. The Company does not require deposits from the customer.

2.11. Local Charges

2.11.1. Reserved for future use.

2.12. Assignment

2.12.1. The obligations set forth in this Tariff shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns, provided, however, the Customer shall not assign or transfer its rights or obligations without the prior written consent of the Company.

2.13. Tax and Fee Adjustments

2.13.1. All state and local taxes (i.e., gross receipts tax, sales tax, municipal utilities tax) are listed as separate line items and are not included in the quoted rates.

2.14. Timing of Calls

2.14.1. Long distance usage charges are based on the actual usage of the Company network. Chargeable time begins when a connection is established between the Calling Station and the Called Station. Chargeable time ends when either party "hangs up" thereby releasing the network connection.

2.15. Billing Increments

2.15.1. Unless otherwise specified in this Tariff, the minimum call duration for billing purposes is six (6) seconds. In addition, unless otherwise specified in this Tariff, usage is measured thereafter in six (6) second increments and rounded to the next higher six (6) second period.

2.16. Minimum Call Completion Rate

2.16.1. A Customer can expect a call completion rate of not less than 90% during peak use periods for all services.

2.16.2. There shall be no charges for uncompleted calls.

2.17. Method for Calculation of Airline Mileage

2.17.1. Reserved for future use.

2.18. Time of Day Rate Periods

2.18.1. Reserved for future use.

2.19. Special Customer Arrangements

2.19.1. In cases where a Customer requests a special or unique arrangement which may include engineering, conditioning, installation, construction, facilities, assembly, purchase or lease of facilities and/or other special Services not offered under this Tariff, the Company, at its option, may provide the requested Services. Appropriate recurring charges and/or nonrecurring charges and other terms and conditions will be developed for the Customer for the provisioning of such arrangements, and made part of this tariff and subject to approval by FPSC.

2.20. Inspection

2.20.1. The Company may, upon notice, make such tests and inspections as may be necessary to determine that the requirements of this Tariff are being complied with in the Installation, operation or maintenance of Customer or the Company equipment. The Company may interrupt the Service at any time, without penalty to the Company, should Customer violate any provision herein.

2.21. Employee Concessions

2.21.1. Reserved for future use.

2.22. Rate Quotes

2.22.1. Reserved for future use.

2.23. Bad Check Charges

2.23.1. The Company will charge a \$25.00 fee for all returned checks.

2.24. Per Call Billing Charges

2.24.1. Reserved for future use.

2.25. Special Contracts

2.25.1. Carrier may enter into contracts with end users such as hotels, or special categories of users, wherein additional discounts may be provided for volume use categories of users, wherein additional discounts may be provided for volume use or to reflect services performed for the Carrier by such users. These rates will be reflected in the tariff.

2.25.2. The Company will, from time to time, offer special contract and/or promotions to its customers, waiving certain charges. These promotions will be made part of this tariff and approved by the FPSC with specific starting and ending dates and under no circumstances run for longer than 90 days in any 12 month period.

2.26. Service Agreement

2.26.1. The name(s) of the customer(s) desiring to use the services must be set forth in the Service Agreement. An executed Service Agreement and letter of Agency is required to initiate service.

3. DESCRIPTION OF SERVICES

3.1. Service Offerings

3.1.1. The Company offers MTS intrastate interexchange long distance service utilizing switched or dedicated access arrangements between the Customers Premises and the Company's facilities for call origination. Call termination is completed through a combination of Company facilities and LEC switched access arrangements.

3.2. Switched Inbound Service

3.2.1. Switched inbound service permits inward calling (via 800 codes) to a specific location utilizing premium switched, Feature Group D access on both ends.

3.3. Switched Outbound Service

3.3.1. Switched outbound services permits outward calling utilizing premium switched Feature Group D access on both the originating and terminating ends.

3.4. Dedicated Inbound Service

3.4.1. Reserved for future use.

3.5. Dedicated Outbound Service

3.5.1. Reserved for future use.

3.6. Calling Card Service

3.6.1. The Company's Calling Card Service permits Customers to place long distance calls utilizing Company issued Calling Cards for billing purposes.

3.7. Directory Assistance Service

3.7.1. Customers will be billed a per call charge for each directory assistance call. The directory assistance charge applies to each call regardless of whether the directory assistance bureau is able to furnish the requested telephone number.

4. RATES AND CHARGES

4.1. Usage Rates

4.1.1. The following are the maximum per minute usage charges which apply to all calls. These charges are in addition to the Non-recurring Charges and Recurring Charges referred to herein.

Issued: December 12, 2000

Effective:

Issued by: Heather Qualey, Tariff Manager
Metstream Communications, Inc.
1815 NW 169th Place, Suite 4060
Beaverton, OR 97006

4.2. Switched Inbound Usage Rates

Reserved for future use.

4.3. Switched Outbound Usage Rates

4.3.1. Flat Rate Plan

FLAT RATE PLAN

Customers subscribing to the Company's Flat Rate Plan incur the flat rate per minute usage charges set forth below, with no monthly recurring charges.

Initial 6 Seconds	Additional 6 Seconds
0.010	0.010

4.3.2. Anytime Plan

ANYTIME PLAN

Customers subscribing to the Company's Anytime Plan incur a \$7.00 per month recurring charge, in addition to the per minute usage charges set forth below.

Initial 6 Seconds	Additional 6 Seconds
0.009	0.009

4.3.3. 250 Minute Plan

250 MINUTE PLAN

Customers subscribing to the Company's 250 Minute Plan will receive 250 Interstate calling minutes for a \$15.00 per month recurring charge, in addition to the per minute usage charges set forth below.

Initial 6 Seconds	Additional 6 Seconds
0.009	0.009

4.3.4. 1000 Minute Plan

1000 Minute Plan

Customers subscribing to the Company's 1000 Minute Plan will receive 1000 Interstate calling minutes for a \$45.00 per month recurring charge, in addition to the per minute usage charges set forth below.

Initial 6 Seconds	Additional 6 Seconds
0.009	0.009

4.4. Dedicated Inbound Usage Rates

Reserved for future use.

4.5. Dedicated Outbound Usage Rates

Reserved for future use.

4.6. Calling Card Usage Rates

Customers will incur a \$.75 surcharge for each call made utilizing the Company's calling card service, in addition to the usage charge set forth below.

Initial 6 Seconds	Additional 6 Seconds
0.025	0.025

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4.7. Recurring Charges

4.7.1. Customers will incur a monthly recurring charge of \$11.00 for non-verified accounting codes.

4.8. Non-recurring Charges

4.8.1. Customers will incur a non-recurring charge of \$16.00 for non-verified accounting codes.

4.9. Directory Assistance Service

4.9.1. The Company will provide directory assistance at a fee of \$.50 per call.

4.10. Hearing/Speech Impaired Provisions

4.10.1. For purposes of this tariff, the definitions of impaired refers to those persons with communication impairments, including those hearing impaired, deaf, deaf/blind, and speech impaired persons who have an impairment that prevents them from communicating over the telephone without the aid of a telecommunications device for the deaf.

4.10.2. Residential impaired customers or impaired members of a customer's household, upon written application and upon certification of their impaired status, which is evidenced by either a certificate from a physician, health care official, or state agency, or a diploma from an accredited educational institution for the impaired, may receive a discount off their message toll service rates, and, if they utilize telebraile devices, they may receive free access to local and intrastate long distance directory assistance. Additionally, TDD lines maintained by nonprofit organizations and governmental agencies, upon written application and verification that such lines maintained for the benefit of the impaired may receive a discount off their message toll service rates.

4.11. Special Rates for Handicapped Customers

4.11.1. Below are Sections of the Florida Rules concerning handicapped hearing/speech impaired persons and discounts on toll calls using the telecommunications relay service.

4.11.1.A. Hearing/Speech Impaired Persons: Intrastate toll message rates for TDD users shall be evening rates for daytime calls and night rates for evening and night calls.

4.11.1.B. Operation of Telecommunications Relay Service: For intrastate toll calls received from the relay service, the Company shall discount relay service calls by 50 percent off of the otherwise applicable rate for a voice nonrelay call except that were either the calling or called party indicates that either party is both hearing and visually impaired, the call shall be discounted 60 percent off of the otherwise applicable rate for a voice nonrelay call. The above discounts apply only to time-sensitive elements of a charge for the call and shall not apply to per call charges, such as a credit card surcharge. In the case of a tariff which includes either a discount based on number of minutes or the purchase of minutes in blocks, the discount shall be calculated by discounting the minutes of relay use before the tariffed rate is applied.

4.11.1.C. Directory Assistance Charges for Handicapped Persons: Pursuant to Florida Public Service Commission Rules and Regulations, Company will not charge for the first 50 directory assistance calls made each month by a handicapped person. The Company shall charge the prevailing tariff rates for every call in excess of 50 within a billing cycle.

4.12. Payphone Use Service Charge

4.12.1. A Payphone Use Service Charge applies to each completed interLATA and intraLATA non-sent paid message made over a pay phone owned by a utility or Customer Owned Pay Telephone (COPT) Service. This includes calling card service, collect calls, calls billed to a third number, completed calls to Directory Assistance and Prepaid Card Service calls. This charge is collected on behalf of the pay phone owner. All Customers will pay the Company a per call service charge of \$.30.

4.13. Late Charge

4.13.1. A late payment charge of 1.5% will apply to any unpaid past due balance.

EARLY, LENNON, PETERS & CROCKER, P.L.C.

ATTORNEYS AT LAW
900 COMERICA BUILDING
KALAMAZOO, MICHIGAN 49007-4752
TELEPHONE (616) 381-8844
FAX (616) 349-8525

GEORGE H. LENNON
DAVID G. CROCKER
HAROLD E. FISCHER, JR.
LAWRENCE M. BRENTON
GORDON C. MILLER

BLAKE D. CROCKER
ROBERT M. TAYLOR
PATRICK D. CROCKER
ANDREW J. VORBRICHT†
ROBERT G. LENNON††

† Also admitted in Iowa
†† Also admitted in New York, Illinois and Washington, D.C.

OF COUNSEL
VINCENT T. EARLY
THOMPSON BENNETT
JOHN T. PETERS, JR.
JOSEPH J. BURGIE
(1926 - 1992)

December 11, 2000

Florida Public Service Commission
Division of Administration
2540 Shumard Oak Blvd.
Gunter Building
Tallahassee, Florida 32399-0850

Re: METSTREAM COMMUNICATIONS, INC.

Dear Sir:

Enclosed herewith for filing with the Commission, please find an original and 6 copies of the above captioned corporation's APPLICATION FOR AUTHORITY TO PROVIDE INTEREXCHANGE TELECOMMUNICATIONS SERVICES WITHIN THE STATE OF FLORIDA, along with a check in the amount of \$250.00 to cover filing fees relating to same.

Also enclosed is an exact duplicate of this filing. Please stamp the duplicate received and return same in the self-addressed stamped envelope attached thereto.

Please contact me if you have additional questions or concerns.

Very truly yours,

EARLY, LENNON, PETERS & CROCKER, P.L.C.

Patrick D. Crocker
PDC/pas

21. What does the end user dial for each of the interexchange carrier services that were checked in services included (above)?

1+ / O+, O- for Operator Assistance / 411 Directory Assistance

22. _____ Other: