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PROFESSIONAL CORPORATION

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November 9, 1999

The Honorable Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102-0360

**FILED<sup>2</sup>**

NOV 09 1999

Re: 2<sup>nd</sup> Century Communications, Inc.

Missouri Public  
Service Commission

Dear Judge Roberts:

TA-2000-323

Enclosed for filing in the referenced matter please find the original and fourteen copies of:

1. An Application for a Certificate of Service Authority to Provide Basic Local Telecommunication Services and for Competitive Classification of 2<sup>nd</sup> Century Communications, Inc.
2. An Application for a Certificate of Service Authority to Provide Competitive Resold Intrastate Interexchange Telecommunications Services and Non-Switched Basic Telecommunications regarding 2<sup>nd</sup> Century Communications, Inc.

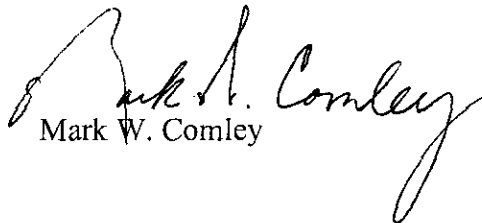
I also enclose an original and fourteen copies of a Motion for Protective Order, along with eight copies of Exhibit E to the above application for basic local authority and which is incorporated by reference into the application for interexchange and non-switched basic authority. Exhibit E is being filed under seal and is marked as Highly Confidential.

Thank you very much for your attention.

Very truly yours,

NEWMAN, COMLEY & RUTH P.C.

By:

  
Mark W. Comley

MWC:ab

Enclosure

cc: Office of Public Counsel  
Erin R. Swansiger

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>2</sup>

NOV - 9 1999

Missouri Public  
Service Commission

In the Matter of the Application of )  
 )  
2<sup>ND</sup> CENTURY COMMUNICATIONS, INC. )  
 )  
for a Certificate of Service Authority )  
to Provide Basic Local )  
Telecommunication Services )  
in the State of Missouri and to )  
Classify Such Services and the Company )  
As Competitive )

Case No. TA-2000-323

**APPLICATION FOR CERTIFICATE OF SERVICE AUTHORITY AND FOR  
COMPETITIVE CLASSIFICATION OF 2<sup>ND</sup> CENTURY COMMUNICATIONS, INC.**

Comes now, 2<sup>nd</sup> Century Communications, Inc. ("2<sup>nd</sup> Century," "Applicant" or "Company"), by its undersigned counsel, and hereby applies pursuant to MO. REV. STAT. §§ 392.361, 392.420, and 392.430 (1994), § 392.450 (Supp. 1998), the federal Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("1996 Act"), and MO. CODE REGS. ANN. tit. 4 § 240-2.060: (1) for a certificate of service authority to provide facilities-based and resold basic local telecommunications services in the State of Missouri in the exchanges of Southwestern Bell Telephone Company ("SWBT") and GTE-Missouri ("GTE"); and (2) to classify such services and the Applicant as competitive. Pursuant to MO. REV. STAT. § 392.420 and MO. CODE REGS. ANN. tit. 4 § 240-32.010(2), the Applicant also seeks a waiver of certain of the Commission's requirements for basic local exchange telecommunications service offerings. In support of its Application, 2<sup>nd</sup> Century provides the following information:

**I. IDENTIFICATION OF THE APPLICANT**

**A. CORPORATE INFORMATION**

1. 2<sup>nd</sup> Century is a privately-held corporation duly organized and existing under and by virtue of the laws of the State of Delaware. The Company was incorporated on July 14, 1998, and is headquartered at: 7702 Woodland Center Boulevard Suite 50 Tampa, Florida 33614 (813) 935-8866. 2<sup>nd</sup> Century is a wholly-owned subsidiary of 2<sup>nd</sup> Century Communications Holdings, Inc. which is a holding company also incorporated in Delaware. 2<sup>nd</sup> Century was organized to provide both domestic and international telecommunications services to small and medium-sized business customers in the State of Missouri and throughout the United States. A copy of 2<sup>nd</sup> Century's Articles of Incorporation is appended hereto as *Exhibit A*.

2. Applicant has been duly authorized by the Secretary of the State of Missouri to transact business as a foreign corporation. A copy of 2<sup>nd</sup> Century's Certificate of Authority, which was issued by the State of Missouri on July 22, 1999, is appended hereto as *Exhibit B*.

3. The Company has not yet established an office in Missouri, however, the name and address of the Company's registered agent in Missouri for service of process is:

National Registered Agents, Inc.  
300-B East High Street  
Jefferson, Missouri 65101

**B. DESIGNATED CONTACTS**

4. The designated contacts for this Application are:

Mark W. Comley #28847  
NEWMAN, COMLEY & RUTH P.C.  
601 Monroe, Suite 301  
P.O. Box 537  
Jefferson City, MO 65101  
Telephone: (573) 634-2266  
Facsimile: (573) 636-3306

Jonathan E. Canis  
Erin R. Swansiger  
KELLEY DRYE & WARREN LLP  
1200 19th Street, N.W., Suite 500  
Washington, D.C. 20036  
Telephone: (202) 955-9600  
Facsimile: (202) 955-9792

5. Copies of all correspondence, notices, inquiries and orders also should be sent to the following individual, who is Applicant's initial contact person for all regulatory and compliance issues:

Michael B. Reith  
Director -- Regulatory and Industry Relations  
2ND CENTURY COMMUNICATIONS, INC.  
7702 Woodland Center  
Tampa, Florida 33614  
(813) 935-8866

## II. SERVICES

### A. PROPOSED LOCAL EXCHANGE SERVICES TO BE OFFERED BY APPLICANT

6. Pursuant to this Application, 2<sup>nd</sup> Century seeks to offer and provide all forms of basic local exchange telecommunications services to small and medium-sized business customers in the State of Missouri, including:

- **"Plain Old Telephone Service" ("POTS")** -- originating and terminating local calls/dial-tone service, provided over 2<sup>nd</sup> Century's Data-Based Telephony ("DBT") network;
- **Data Transmission Services** -- digital data network services which utilize asynchronous transfer mode ("ATM") technology;
- **Switched Access Service** -- originating and terminating traffic between a customer premise and an IXC POP via shared local trunks using a local switch;
- and
- **PBX Trunking** -- carrying switched traffic between 2<sup>nd</sup> Century's switch and the customer's PBX.

7. In particular, 2<sup>nd</sup> Century intends to deliver integrated voice, data, video and Internet services to its business customers over a DBT network. 2<sup>nd</sup> Century intends to bundle its local

exchange service offerings, where possible, with its interexchange services.<sup>1</sup> 2<sup>nd</sup> Century anticipates collocating its switches in the central offices of other competitive local exchange carriers, and purchasing unbundled loops or leasing loops from incumbent local exchange carriers ("ILECs.") A detailed description of 2<sup>nd</sup> Century's network, which supports the integration, routing and transport of multiple services, may be found in 2<sup>nd</sup> Century's Fact Sheet, which is appended to this Application as *Exhibit C*.

8. In addition to the above-listed local exchange services and in conformity with the regulations of the Missouri Public Service Commission ("Commission"), 2<sup>nd</sup> Century, either directly or through arrangements with other service providers, will offer access to the following services: dual-party relay service for the hearing and speech-impaired; local emergency services, including 911 services established by local authorities; basic local operator services; basic local directory assistance; equal access to intraLATA and interLATA interexchange carriers, consistent with the rules and regulations of the Federal Communications Commission ("FCC"); and one (1) standard white pages directory listing.

### **III. DESCRIPTION OF THE MANAGERIAL, TECHNICAL AND FINANCIAL ABILITY OF APPLICANT**

9. 2<sup>nd</sup> Century possesses the technical and managerial expertise and experience necessary to provide the services it proposes herein. In support of its application, 2<sup>nd</sup> Century submits the following information to demonstrate that it has sufficient managerial and technological telecommunications experience and expertise, as well as the financial stability adequate to ensure its provision of basic local exchange telecommunications services within the State of Missouri.

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<sup>1</sup> Concurrent with this Application, 2<sup>nd</sup> Century has applied for a certificate of authority to provide resold interexchange and non-switched basic telecommunications services to business customers in Missouri.

A. MANAGERIAL AND TECHNICAL QUALIFICATIONS

10. 2<sup>nd</sup> Century is well qualified managerially, technically and financially to provide the facilities-based and resold competitive local exchange telecommunications services for which authority is requested in this Application. Although it is a start-up company, 2<sup>nd</sup> Century has access to significant capital and substantial technical and managerial expertise. The Company's management team includes individuals with substantive experience in successfully developing and operating start-up telecommunications businesses. This is evident by the fact that, between them, 2<sup>nd</sup> Century's corporate officers, together with its founder and board of directors member Michael Viren, have over seventy (70) years of experience in the telecommunications industry. 2<sup>nd</sup> Century also has adequate internal technical resources to support its Missouri operations, and, to this end, maintains a number of electrical engineers on its staff, including its President and CEO, John Prisco. This expertise in the telecommunications industry makes 2<sup>nd</sup> Century's management team well-qualified to construct, operate and manage 2<sup>nd</sup> Century's local exchange networks in Missouri.

11. Specific details of 2<sup>nd</sup> Century's management and technical experience are appended hereto as *Exhibit D*, which also contains the biographies of the key management and operational personnel who will be responsible for 2<sup>nd</sup> Century's telecommunications services in Missouri and throughout the United States.

12. To ensure that its Missouri customers receive the highest quality service and most advanced technology available, 2<sup>nd</sup> Century will deploy state-of-the-art DBT technology in its asynchronous transfer mode ("ATM") network, which will offer network convergence to its business customers. This new technology utilizes packets, cells or frames to transport multiple services through a single network using a single protocol. In particular, 2<sup>nd</sup> Century will deploy Convergent Integrated Communications Switches ("ICS") in its Missouri network for the transmission of voice

services. For additional information on 2<sup>nd</sup> Century's network, please see the Fact Sheet appended to this Application as *Exhibit C*.

13. 2<sup>nd</sup> Century is authorized to provide local exchange services in California, the District of Columbia, Florida, Georgia, Illinois, Indiana, Maryland, Massachusetts, Nevada, New Hampshire, Pennsylvania, Texas, Virginia and Wisconsin. 2<sup>nd</sup> Century has local exchange applications pending in North Carolina, and Tennessee. 2<sup>nd</sup> Century also is authorized to provide interexchange services in California, Florida, Georgia, Illinois, Indiana, Maryland, Massachusetts, New Hampshire, North Carolina, Pennsylvania and Wisconsin. 2<sup>nd</sup> Century has requests for interexchange authority (contained in the same application as that filed for local exchange authority) pending in North Carolina and Tennessee. 2<sup>nd</sup> Century has not been denied any requested authority to provide telecommunications services filed in any state, nor has 2<sup>nd</sup> Century had its authorization to provide telecommunications services revoked in any state.

14. 2<sup>nd</sup> Century currently is operational in the State of Florida, where it has been reselling local exchange services to a select group of customers since June 1999.

**B. FINANCIAL QUALIFICATIONS**

15. 2<sup>nd</sup> Century also possesses the necessary financial resources to provide the basic local exchange telecommunications services identified in this Application. As a start-up company, 2<sup>nd</sup> Century has no significant financial history, and currently is in the process of making enormous network investments, as well as securing vendors for the equipment and construction of its network. However, as will be evident from 2<sup>nd</sup> Century's most recent audited financial statements (2<sup>nd</sup> Century's Balance Sheet, Statement of Operations, and Cash Flow Statement), 2<sup>nd</sup> Century has the necessary financial resources to provide the telecommunications services described in this Application, and to finance its operations in order to ensure the continued provision of these services

in Missouri.

16. As will be demonstrated in its Cash Flow statement, 2<sup>nd</sup> Century has access to ample working capital, provided through privately-placed venture capital investment, to fund the construction and operation of 2<sup>nd</sup> Century's telecommunications network in Missouri, and to meet any lease and ownership obligations associated with its provision of local exchange services in Missouri. This capital will enable 2<sup>nd</sup> Century to meet its working capital requirements in Missouri for the foreseeable future.

17. 2<sup>nd</sup> Century's financial statements are privileged and highly confidential, and Applicant has filed simultaneously with this application a motion for protective order to prohibit their unrestricted disclosure. Although they will be referred to collectively as *Exhibit E* in this application, the financial statements will be found under seal and attached to the motion for protective order.

C. REPAIR AND MAINTENANCE/CUSTOMER SERVICE INFORMATION

18. 2<sup>nd</sup> Century's customer service representatives are available to assist its business customers with service, maintenance and billing issues. Specifically, 2<sup>nd</sup> Century's customer services representatives are prepared to respond to a broad range of service matters, including inquiries regarding: (1) the types of services offered by 2<sup>nd</sup> Century and the rates associated with such services; (2) monthly billing statements; (3) problems or concerns pertaining to a customer's current service; and (4) general telecommunications matters. For service issues, customers may contact 2<sup>nd</sup> Century's customer services department 24 hours a day, seven days a week, by calling them toll-free at (888) 272-8778. For billing issues, customers may contact 2<sup>nd</sup> Century's billing services department between the hours of 9 a.m. and 5 p.m., Monday through Friday, by calling them toll-free at (888) 272-8778. Customers wishing to communicate with a 2<sup>nd</sup> Century customer service



representative in writing can write to 2<sup>nd</sup> Century at:

2<sup>nd</sup> Century Communications, Inc.  
7702 Woodland Center  
Tampa, Florida 33614

#### **IV. GEOGRAPHIC AREAS**

19. The Applicant proposes to provide basic local exchange telecommunications services on a resold and facilities-basis throughout exchanges currently served by SWBT and GTE. A complete list of the SWBT and GTE, exchanges in which Applicant seeks authority to provide local exchange services in Missouri is set forth as *Exhibit F*. A map of the proposed service territory of the Applicant is appended hereto as *Exhibit G*.

#### **V. CLASSIFICATION**

20. 2<sup>nd</sup> Century requests classification as a competitive telecommunications company within the State of Missouri. Applicant believes that the services that it proposes to provide will be subject to sufficient competition to justify a lesser degree of regulation.

#### **VI. STATEMENTS OF COMPLIANCE AND REQUESTS FOR WAIVER**

21. 2<sup>nd</sup> Century will offer basic local exchange telecommunications service as a separate and distinct service in accordance with applicable law. 2<sup>nd</sup> Century will give consideration to equitable access for all Missourians, regardless of where they might reside or their income, to affordable telecommunications services in the Company's proposed service area, in accordance with applicable law.

22. 2<sup>nd</sup> Century is willing to comply with all applicable Commission rules, and is willing to meet all relevant service standards, including but not limited to, billing, quality of service, and tariff filing and maintenance. However, consistent with the Commission's treatment of other

certificated competitive local exchange telecommunications companies, 2<sup>nd</sup> Century requests that the following statutes and regulations be waived for its basic local exchange telecommunications service offerings, in accordance with MO. REV. STAT. § 392.420 and MO. CODE REGS. ANN. tit. 4 § 240-32.010(2):

### STATUTES

MO. REV. STAT. § 392.210.2	--	Uniform System of Accounts
MO. REV. STAT. § 392.270	--	Valuation of Property (Ratemaking)
MO. REV. STAT. § 392.280	--	Depreciation Accounts
MO. REV. STAT. § 392.290	--	Issuance of Stocks and Bonds
MO. REV. STAT. § 392.300.2	--	Acquisition of Stock
MO. REV. STAT. § 392.310	--	Stock and Debt Issuance
MO. REV. STAT. § 392.320	--	Stock Dividend Payment
MO. REV. STAT. § 392.330	--	Issuance of Securities, Debts and Notes
MO. REV. STAT. § 392.340	--	Reorganization(s)

### RULES

MO. CODE REGS. ANN. tit. 4 § 240-10.020	--	Income on Depreciation Fund Investments
MO. CODE REGS. ANN. tit. 4 § 240-30.010(2)(C)	--	Posting of exchange rates at central operating offices
MO. CODE REGS. ANN. tit. 4 § 240-30.040	--	Uniform System of Accounts
MO. CODE REGS. ANN. tit. 4 § 240-32.050(3)	--	Public Business Office Information
MO. CODE REGS. ANN. tit. 4 § 240-32.070(4)	--	Coin Telephones
MO. CODE REGS. ANN. tit. 4 § 240-33.030	--	Informing Customers of Lowest Priced Services
MO. CODE REGS. ANN. tit. 4 § 240-35.020, .030	--	Reporting of Bypass and Customer-Specific Arrangements
MO. CODE REGS. ANN. tit. 4 § 240-35.040(5)	--	Financing Fee <sup>2</sup>

23. Many of the above-referenced rules and statutory provisions have been waived with regard to other competitive basic local exchange companies. These rules or statutory provisions are

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<sup>2</sup> The late fee will be filed in Applicant's tariff.

principally designed to apply to non-competitive telecommunications carriers. As a result, it would be inconsistent with the goal and purpose of Section 392.530 to apply them to a competitive telecommunications carrier such as Applicant, and, for this reason, 2<sup>nd</sup> Century respectfully requests that the Commission waive the application of these rules.

24. 2<sup>nd</sup> Century further requests a waiver of MO. CODE REGS. ANN. tit. 4 § 240-2.060(6)(C). This rule requires that an application for a certificate of service authority to provider interexchange, local exchange or basic local exchange services shall include a proposed tariff with a forty-five (45) day effective date. 2<sup>nd</sup> Century finds it impossible at this time to develop tariffs to fully comply with this rule since it has not yet executed interconnection agreements with either SWBT or GTE. At such time as all facts necessary for the development of such tariffs are known to 2<sup>nd</sup> Century, the Company promptly will file said tariffs with the Commission in a manner consistent with recent Commission practice in similar cases. All filed tariffs will bear no less than a forty-five (45) day effective date. Once signed, all interconnection agreements with incumbent local exchange carriers also will be submitted for the Commission's approval.

25. 2<sup>nd</sup> Century has no pending or final judgments or decisions against it or its affiliates from any state or federal agency or court that involve customer services or rates. Appended hereto as *Exhibit H* is a verified statement that no annual report or assessment fees are overdue.

## **VII. PUBLIC INTEREST**

26. 2<sup>nd</sup> Century submits that approval of this Application is in the public interest because 2<sup>nd</sup> Century is well-qualified – technically, managerially, and financially – to serve the Missouri public as a facilities-based and resold local exchange carrier. Moreover, permitting 2<sup>nd</sup> Century to provide the services described in this Application will expand local service options for customers in Missouri, and will increase competition in Missouri by expanding the diversity of suppliers and competition within the local exchange telecommunications market -- without any adverse impact on the Commission's goals of universal service and affordable telecommunications services for the residents of Missouri.

27. 2<sup>nd</sup> Century's participation in the market for local exchange telecommunications services in Missouri will promote consumer choice by expanding the availability of innovative, high quality, reliable and competitively-priced telecommunications services. Approval of this Application also is likely to compel other local telecommunications providers to improve their existing services, increase the quality and efficiency of their operations, and introduce innovative new services of their own. The addition of 2<sup>nd</sup> Century to the Missouri telecommunications market makes it probable that consumers of telecommunications services in Missouri will receive the benefits of downward pressure on prices, improved customer responsiveness, and access to increasingly advanced telecommunications technology. Further, 2<sup>nd</sup> Century's provision of basic local exchange service to the business public in Missouri is consistent with the legislative goals set forth in the 1996 Act and Chapter 392 of the Missouri Revised Statutes.

WHEREFORE, 2<sup>nd</sup> Century respectfully requests that the Commission grant it a certificate

of service authority to provide basic local exchange telecommunication services in Missouri. 2<sup>nd</sup> Century also requests classification as a competitive telecommunications company in Missouri. Finally, 2<sup>nd</sup> Century requests that the Commission grant waivers of the aforementioned rules and statutory provisions.

Respectfully submitted,

By: 

Mark W. Comley, #28847  
NEWMAN, COMLEY & RUTH P.C.  
601 Monroe, Suite 301  
P.O. Box 537  
Jefferson City, MO 65101  
Telephone: (573) 634-2266  
Facsimile: (573) 636-3306

Jonathan E. Canis  
Erin R. Swansiger  
KELLEY DRYE & WARREN LLP  
1200 19th Street, N.W., Suite 500  
Washington, D.C. 20036

Attorneys for 2<sup>ND</sup> CENTURY COMMUNICATIONS, INC.

Dated: November 9, 1999

## VERIFICATION

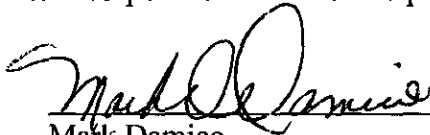
State of Florida )  
 )  
County of Hillsborough ) ss.

**Mark Damico**, Affiant, being duly sworn according to law, deposes and says that:

He is the **Vice President of Business Operations** (Office of Affiant) of 2<sup>nd</sup> Century Communications, Inc.

That he is authorized to and does make this affidavit for said corporation;

That the facts set forth in this Application are true and correct to the best of his knowledge, information, and belief and that he expects said corporation to be able to prove the same at any hearing hereof.

  
\_\_\_\_\_  
Mark Damico,  
Vice President of Business Operations  
2<sup>nd</sup> Century Communications, Inc.

Sworn and subscribed before me this <sup>(200)</sup> 13<sup>th</sup> day of November, 1999.

  
\_\_\_\_\_  
Signature of official administering oath

My commission expires May 26, 2003



## **LIST OF EXHIBITS**

- EXHIBIT A:** ARTICLES OF INCORPORATION
- EXHIBIT B:** AUTHORIZATION TO TRANSACT BUSINESS
- EXHIBIT C:** FACT SHEET
- EXHIBIT D:** STATEMENT OF MANAGERIAL AND TECHNICAL  
QUALIFICATIONS
- EXHIBIT E:** AUDITED FINANCIAL STATEMENTS  
(FILED UNDER SEAL WITH MOTION FOR  
PROTECTIVE ORDER)
- EXHIBIT F:** LIST OF LOCAL EXCHANGES
- EXHIBIT G:** MAP OF SERVICE TERRITORY
- EXHIBIT H:** VERIFIED STATEMENT

**2<sup>ND</sup> CENTURY COMMUNICATIONS, INC.**  
**APPLICATION FOR CPCN**  
**MISSOURI**  
**EXHIBIT A**

## **EXHIBIT A**

### **ARTICLES OF INCORPORATION**



*Office of the Secretary of State*

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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 "2ND CENTURY COMMUNICATIONS, INC.", FILED IN THIS OFFICE ON THE SEVENTH DAY OF JULY, A.D. 1998, AT 3 O'CLOCK P.M.

2917764 8100

991265647



9837853

06-29-99

*Edward J. Freel*  
\_\_\_\_\_  
Edward J. Freel, Secretary of State

AUTHENTICATION:

DATE:

**CERTIFICATE OF INCORPORATION**  
**OF**  
**2nd CENTURY COMMUNICATIONS, INC.**  
\*\*\*\*\*

**FIRST.** The name of the corporation is 2nd Century Communications, Inc.  
(the "Corporation").

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

**THIRD.** The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "DGCL").

**FOURTH.** The total number of shares of capital stock which the Corporation shall have authority to issue is 30,000,000 shares, consisting of (i) 20,000,000 shares of common stock with a par value of one thousandth of one cent (\$0.001) per share ("Common Stock") and (ii) 10,000,000 shares of preferred stock with a par value of one thousandth of one cent (\$0.001) per share ("Preferred Stock"). The Board of Directors is expressly authorized, at any time and from time to time, to fix, by resolution or resolutions, the following provisions for shares of any class or classes of Preferred Stock or any series of any class of Preferred Stock subject to the terms contained in any prior designation of a series of Preferred Stock of the Corporation:

(1) the designation of such class or series, the number of shares to constitute such class or series which may be increased or decreased (but not below the number of shares of that class or series then outstanding) by resolution of the Board of Directors, and the stated value thereof if different from the par value thereof;

(2) whether the shares of such class or series shall have voting rights, in addition to any voting rights provided by law, and, if so, the terms of such voting rights;

(3) the dividends, if any, payable on such class or series, whether any such dividends shall be cumulative, and, if so, from what dates, the conditions and dates upon which such dividends shall be payable, the preference or relation which such dividends shall bear to the dividends payable on any shares of stock of any other class or any other series of the same class;

STATE OF DELAWARE  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
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(4) whether the shares of such class or series shall be subject to redemption by the Corporation, and, if so, the times, prices and other conditions of such redemption;

(5) the amount or amounts payable upon shares of such series upon, and the rights of the holders of such class or series in, the voluntary or involuntary liquidation, dissolution or winding up, or upon any distribution of the assets, of the Corporation;

(6) whether the shares of such class or series shall be subject to the operation of a retirement or sinking fund and, if so, the extent to and manner in which any such retirement or sinking fund shall be applied to the purchase or redemption of the shares of such class or series for retirement or other corporate purposes and the terms and provisions relative to the operation thereof;

(7) whether the shares of such class or series shall be convertible into, or exchangeable for, shares of stock of any other class or any other series of the same class or any other securities and, if so, the price or prices or the rate or rates of conversion or exchange and the method, if any, of adjusting the same, and any other terms and conditions of conversion or exchange;

(8) the limitations and restrictions, if any, to be effective while any shares of such class or series are outstanding upon the payment of dividends or the making of other distributions on, and upon the purchase, redemption or other acquisition by the Corporation of, the Common Stock or shares of stock of any other class or any other series of the same class;

(9) the conditions or restrictions, if any, upon the creation of indebtedness of the Corporation or upon the issue of any additional stock, including additional shares of such class or series or of any other series of the same class or of any other class;

(10) the ranking (be it pari passu, junior or senior) of each class or series vis-a-vis any other class or series of any class of Preferred Stock as to the payment of dividends, the distribution of assets and all other matters; and

(11) any other powers, preferences and relative, participating, optional and other special rights, and any qualifications, limitations and restrictions thereof, insofar as they are not inconsistent with the provisions of this Certificate of Incorporation, to the full extent permitted in accordance with the laws of the State of Delaware.

The powers, preferences and relative, participating, optional and other special rights of each class or series of Preferred Stock, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding.

**FIFTH.** The Corporation is to have perpetual existence.

**SIXTH.** In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware:

A. The Board of Directors of the Corporation is expressly authorized to adopt, amend or repeal the By-Laws of the Corporation.

B. Elections of directors need not be by written ballot unless the By-Laws of the Corporation shall so provide.

C. The books of the Corporation may be kept at such place within or without the State of Delaware as the By-Laws of the Corporation may provide or as may be designated from time to time by the Board of Directors of the Corporation.

D. The number of shares of authorized Common Stock of the Corporation may be increased or decreased (but not below the number then outstanding) by the affirmative vote of the holders of a majority of the outstanding shares of capital stock of the Corporation entitled to vote thereon, voting together as a single class, notwithstanding the provisions of Section 242(b)(2) of the DGCL.

**SEVENTH.** The Corporation eliminates the personal liability of each member of its Board of Directors to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided, however, that, to the extent provided by applicable law, the foregoing shall not eliminate the liability of a director (i) for any breach of such 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 Title 8 of the DGCL or (iv) for any transaction from which such director derived an improper personal benefit. No amendment to or repeal of this provision shall apply to or have any effect on the liability or alleged liability of any director for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

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

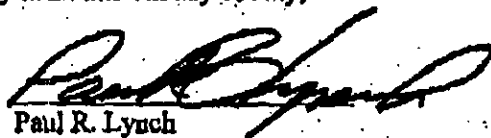
**NINTH.** The name and mailing address of the sole incorporator is as follows:

Paul R. Lynch, Esquire  
101 East Kennedy Blvd., Suite 2800  
Tampa, Florida 33602

**TENTH.** Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this Corporation under the provisions of Section 291 of Title 8 of the DGCL or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under the provisions of Section 279 of Title 8 of the DGCL, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

**ELEVENTH.** The Corporation shall, to the full extent permitted by Section 145 of the DGCL, as amended from time to time, indemnify all persons whom it may indemnify pursuant thereto. The indemnification provided by this Section 12 shall not limit or exclude any rights, indemnities or limitations of liability to which any person may be entitled, whether as a matter of law, under the By-laws of the Corporation, by agreement, vote of the stockholders or disinterested directors of the Corporation or otherwise.

**I, THE UNDERSIGNED,** being the sole incorporator hereinabove named, for the purpose of forming a corporation pursuant to the DGCL, do make this certificate, hereby declaring and certifying that this is my act and deed and the facts herein stated are true, and accordingly have hereunto set my hand this 7th day of July, 1998.

  
Paul R. Lynch  
Sole Incorporator

*Office of the Secretary of State*

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I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF DESIGNATION OF "2ND CENTURY COMMUNICATIONS, INC.", FILED IN THIS OFFICE ON THE FOURTEENTH DAY OF JULY, A.D. 1998, AT 1 O'CLOCK P.M.

2917764 8100

991265647



*Edward J. Freel*

9837852

06-29-99

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Edward J. Freel, Secretary of State

AUTHENTICATION:

DATE:

**CERTIFICATE OF DESIGNATION  
of  
SERIES A CONVERTIBLE PREFERRED STOCK  
of  
2<sup>ND</sup> CENTURY COMMUNICATIONS, INC.**

**Pursuant to Section 151 of the General Corporation Law  
of the State of Delaware**

2<sup>ND</sup> CENTURY COMMUNICATIONS, INC., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), in accordance with the provisions of Section 103 thereof, DOES HEREBY CERTIFY:

That pursuant to the authority vested in the Board of Directors in accordance with the provisions of the Corporation's Certificate of Incorporation (the "Certificate of Incorporation"), the said Board of Directors on July 14, 1998, adopted the following resolution creating a series of 10,000,000 shares of Preferred Stock designated as "Series A Convertible Preferred Stock."

RESOLVED, that pursuant to the authority vested in the Board of Directors of this Corporation in accordance with the provisions of the Certificate of Incorporation, Series A of Preferred Stock, par value \$.001 per share, of the Corporation be and hereby is created, and that the designation and number of shares thereof and the voting and other powers, preferences and relative, participating, optional or other rights of the shares of such series and the qualifications, limitations and restrictions thereof are as follows:

**Series A Convertible Preferred Stock**

1. Number of Shares. The series of Preferred Stock designated and known as "Series A Convertible Preferred Stock" shall consist of 10,000,000 shares.

2. Voting.

2A. General. Except as may be otherwise provided in these terms of the Series A Convertible Preferred Stock or by law, the Series A Convertible Preferred Stock shall vote together with all other classes and series of stock of the Corporation as a single class on all actions to be taken by the stockholders of the Corporation, including, but not limited to actions amending the Certificate of Incorporation of the Corporation to increase the number of authorized shares of Common Stock. Each share of Series A Convertible Preferred Stock shall entitle the holder thereof to such number of votes per share on each such action as shall equal the number of shares of Common Stock (including fractions of a share) into which each share of Series A Convertible Preferred Stock is then convertible.

2B. Board Size. The Corporation shall not, without the written consent or affirmative vote of the holders of at least sixty percent (60%) of the then outstanding shares of

Series A Convertible Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a series, increase the maximum number of directors constituting the Board of Directors to a number in excess of seven.

2C. Board Seats. The holders of the Series A Convertible Preferred Stock, voting as a separate series, shall be entitled to elect three directors of the Corporation. The holders of the Common Stock, voting as a separate class, shall be entitled to elect one director of the Corporation. The holders of the Series A Convertible Preferred Stock and the Common Stock, voting together as a single class, shall be entitled to elect the remaining directors of the Corporation.

3. Dividends. The Corporation shall not declare or pay any dividends or other distributions (as defined below), except pursuant to paragraph 4 or 7 hereof, on shares of Common Stock or the Series A Convertible Preferred Stock unless such dividend or other distribution is paid simultaneously to the holders of the Common Stock and the holders of the Series A Convertible Preferred Stock pro rata in proportion to the number of shares of Common Stock outstanding as of the record date and the number of shares of Common Stock that would then be issuable to the holders of the Series A Convertible Preferred Stock upon conversion thereof. For this purpose, "distribution" shall mean the transfer of cash or property without consideration, whether by way of dividend or otherwise, payable other than in Common Stock or other securities of the Corporation, or the purchase or redemption of shares of the Corporation (other than repurchases of Common Stock held by employees or directors of, or consultants to, the Corporation upon termination of their employment or services pursuant to agreements providing for such repurchase at a price equal to the original issue price of such shares and other than redemptions in liquidation, dissolution or winding up of the Corporation or pursuant to paragraph 7 hereof) for cash or property, including any such transfer, purchase or redemption by a subsidiary of this Corporation.

4. Liquidation. Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of the shares of Series A Convertible Preferred Stock shall be entitled, before any distribution or payment is made upon any stock ranking on liquidation junior to the Series A Convertible Preferred Stock, to be paid an amount equal to the greater of (i) \$1.00 per share plus, in the case of each share, an amount equal to all dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had each such share been converted to Common Stock pursuant to paragraph 6 immediately prior to such liquidation, dissolution or winding up, and the holders of Series A Convertible Preferred Stock shall not be entitled to any further payment, such amount payable with respect to one share of Series A Convertible Preferred Stock being sometimes referred to as the "Liquidation Preference Payment" and with respect to all shares of Series A Convertible Preferred Stock being sometimes referred to as the "Liquidation Preference Payments". If upon such liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the assets to be distributed among the holders of Series A Convertible Preferred Stock shall be insufficient to permit payment to the holders of Series A Convertible Preferred Stock of the amount distributable as aforesaid, then the entire assets of the Corporation to be so distributed shall be distributed ratably among the holders of Series A Convertible Preferred Stock. Upon any such liquidation,



dissolution or winding up of the Corporation, after the holders of Series A Convertible Preferred Stock shall have been paid in full the amounts to which they shall be entitled, the remaining net assets of the Corporation may be distributed to the holders of stock ranking on liquidation junior to the Series A Convertible Preferred Stock. Written notice of such liquidation, dissolution or winding up, stating a payment date, the amount of the Liquidation Preference Payments and the place where said Liquidation Preference Payments shall be payable, shall be delivered in person, mailed by certified or registered mail, return receipt requested, or sent by telecopier or telex, not less than 20 days prior to the payment date stated therein, to the holders of record of Series A Convertible Preferred Stock, such notice to be addressed to each such holder at its address as shown by the records of the Corporation. The consolidation or merger of the Corporation into or with any other entity or entities which results in the exchange of outstanding shares of the Corporation for securities or other consideration issued or paid or caused to be issued or paid by any such entity or affiliate thereof (other than a merger to reincorporate the Corporation in a different jurisdiction), and the sale, lease, abandonment, transfer or other disposition by the Corporation of all or substantially all its assets, shall be deemed to be a liquidation, dissolution or winding up of the Corporation within the meaning of the provisions of this paragraph 4. For purposes hereof, the Common Stock shall rank on liquidation junior to the Series A Convertible Preferred Stock.

5. Restrictions. At any time when at least 2,500,000 shares of Series A Convertible Preferred Stock are outstanding, except where the vote or written consent of the holders of a greater number of shares of the Corporation is required by law or by the Certificate of Incorporation, and in addition to any other vote required by law or the Certificate of Incorporation, without the approval of the holders of a majority of the then outstanding shares of Series A Convertible Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a series, the Corporation will not:

5A. Create or authorize the creation of any additional class or series of shares of stock;

5B. Consent to liquidation, dissolution or winding up of the Corporation or consolidate or merge into or with any other entity or entities or sell, lease, abandon, transfer or otherwise dispose of all or any substantial part of its assets;

5C. Amend, alter or repeal its Certificate of Incorporation or By-Laws in any respect;

5D. Purchase or set aside any sums for the purchase of, or pay any dividend or make any distribution on, any shares of stock other than the Series A Convertible Preferred Stock, except pursuant to paragraph 3 hereof and except for dividends or other distributions payable on the Common Stock solely in the form of additional shares of Common Stock and except for the purchase of shares of Common Stock from former employees of the Corporation who acquired such shares directly from the Corporation, if each such purchase is made pursuant to contractual rights held by the Corporation relating to the termination of employment of such

former employee and the purchase price does not exceed the original issue price paid by such former employee to the Corporation for such shares; or

5E. Redeem or otherwise acquire any shares of Series A Convertible Preferred Stock except as expressly authorized in paragraph 7 hereof or pursuant to a purchase offer made pro rata to all holders of the shares of Series A Convertible Preferred Stock on the basis of the aggregate number of outstanding shares of Series A Convertible Preferred Stock then held by each such holder.

6. Conversions. The holders of shares of Series A Convertible Preferred Stock shall have the following conversion rights:

6A. Right to Convert. Subject to the terms and conditions of this paragraph 6, the holder of any share or shares of Series A Convertible Preferred Stock shall have the right, at its option at any time, to convert any such shares of Series A Convertible Preferred Stock (except that upon any liquidation of the Corporation the right of conversion shall terminate at the close of business on the business day fixed for payment of the amount distributable on the Series A Convertible Preferred Stock) into such number of fully paid and nonassessable shares of Common Stock as is obtained by (i) multiplying the number of shares of Series A Convertible Preferred Stock so to be converted by \$1.00 and (ii) dividing the result by the conversion price of \$ 1. 00 per share or, in case an adjustment of such price has taken place pursuant to the further provisions of this paragraph 6, then by the conversion price as last adjusted and in effect at the date any share or shares of Series A Convertible Preferred Stock are surrendered for conversion (such price, or such price as last adjusted, being referred to as the "Conversion Price"). Such rights of conversion shall be exercised by the holder thereof by giving written notice that the holder elects to convert a stated number of shares of Series A Convertible Preferred Stock into Common Stock and by surrender of a certificate or certificates for the shares so to be converted to the Corporation at its principal office (or such other office or agency of the Corporation as the Corporation may designate by notice in writing to the holders of the Series A Convertible Preferred Stock) at any time during its usual business hours on the date set forth in such notice, together with a statement of the name or names (with address) in which the certificate or certificates for shares of Common Stock shall be issued.

6B. Issuance of Certificates; Time Conversion Effected. Promptly after the receipt of the written notice referred to in subparagraph 6A and surrender of the certificate or certificates for the share or shares of Series A Convertible Preferred Stock to be converted, the Corporation shall issue and deliver, or cause to be issued and delivered, to the holder, registered in such name or names as such holder may direct, a certificate or certificates for the number of whole shares of Common Stock issuable upon the conversion of such share or shares of Series A Convertible Preferred Stock. To the extent permitted by law, such conversion shall be deemed to have been effected and the Conversion Price shall be determined as of the close of business on the date on which such written notice shall have been received by the Corporation and the certificate or certificates for such share or shares shall have been surrendered as aforesaid, and at such time the rights of the holder of such share or shares of Series A Convertible Preferred Stock shall cease, and the person or persons in whose name or names any certificate or certificates for

shares of Common Stock shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of the shares represented thereby.

**6C. Fractional Shares; Dividends; Partial Conversion.** No fractional shares shall be issued upon conversion of Series A Convertible Preferred Stock into Common Stock and no payment or adjustment shall be made upon any conversion on account of any cash dividends on the Common Stock issued upon such conversion. At the time of each conversion, the Corporation shall pay in cash an amount equal to all dividends accrued and unpaid on the shares of Series A Convertible Preferred Stock surrendered for conversion to the date upon which such conversion is deemed to take place as provided in subparagraph 6B. In case the number of shares of Series A Convertible Preferred Stock represented by the certificate or certificates surrendered pursuant to subparagraph 6A exceeds the number of shares converted, the Corporation shall, upon such conversion, execute and deliver to the holder, at the expense of the Corporation, a new certificate or certificates for the number of shares of Series A Convertible Preferred Stock represented by the certificate or certificates surrendered which are not to be converted. If any fractional share of Common Stock would, except for the provisions of the first sentence of this subparagraph 6C, be delivered upon such conversion, the Corporation, in lieu of delivering such fractional share, shall pay to the holder surrendering the Series A Convertible Preferred Stock for conversion an amount in cash equal to the current market price of such fractional share as determined in good faith by the Board of Directors of the Corporation.

**6D. Adjustment of Price Upon Issuance of Common Stock.** Except as provided in subparagraph 6E, if and whenever the Corporation shall issue or sell, or is, in accordance with subparagraphs 6D(1) through 6D(7), deemed to have issued or sold, any shares of Common Stock for a consideration per share less than the Conversion Price in effect immediately prior to the time of such issue or sale, then, forthwith upon such issue or sale, the Conversion Price shall be reduced to the price determined by dividing (i) an amount equal to the sum of (a) the number of shares of Common Stock outstanding immediately prior to such issue or sale multiplied by the then existing Conversion Price and (b) the consideration, if any, received by the Corporation upon such issue or sale, by (ii) the total number of shares of Common Stock outstanding immediately after such issue or sale. For purposes of the above calculation, the number of shares of Common Stock then issuable upon the conversion of the outstanding shares of Series A Convertible Preferred Stock shall be deemed outstanding.

For purposes of this subparagraph 6D, the following subparagraphs 6D(1) to 6D(7) shall also be applicable:

**6D(1) Issuance of Rights or Options.** In case at any time the Corporation shall in any manner grant (whether directly or by assumption in a merger or otherwise) any warrants or other rights to subscribe for or to purchase, or any options for the purchase of, Common Stock or any stock or security convertible into or exchangeable for Common Stock (such warrants, rights or options being called "Options" and such convertible or exchangeable stock or securities being called "Convertible Securities") whether or not such Options or the right to convert or exchange any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable

upon the exercise of such Options or upon the conversion or exchange of such Convertible Securities (determined by dividing (i) the total amount, if any, received or receivable by the Corporation as consideration for the granting of such Options, plus the minimum aggregate amount of additional consideration payable to the Corporation upon the exercise of all such Options, plus, in the case of such Options which relate to Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable upon the issue or sale of such Convertible Securities and upon the conversion or exchange thereof, by (ii) the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon the conversion or exchange of all such Convertible Securities issuable upon the exercise of such Options) shall be less than the Conversion Price in effect immediately prior to the time of the granting of such Options, then the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of the total maximum amount of such Convertible Securities issuable upon the exercise of such Options shall be deemed to have been issued for such price per share as of the date of granting of such Options or the issuance of such Convertible Securities and thereafter shall be deemed to be outstanding. Except as otherwise provided in subparagraph 6D(3), no adjustment of the Conversion Price shall be made upon the actual issue of such Common Stock or of such Convertible Securities upon exercise of such Options or upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities.

6D(2) Issuance of Convertible Securities. In case the Corporation shall in any manner issue (whether directly or by assumption in a merger or otherwise) or sell any Convertible Securities, whether or not the rights to exchange or convert any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon such conversion or exchange (determined by dividing (i) the total amount received or receivable by the Corporation as consideration for the issue or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the conversion or exchange thereof, by (ii) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities) shall be less than the Conversion Price in effect immediately prior to the time of such issue or sale, then the total maximum number of shares of Common Stock issuable upon conversion or exchange of all such Convertible Securities shall be deemed to have been issued for such price per share as of the date of the issue or sale of such Convertible Securities and thereafter shall be deemed to be outstanding, provided that (a) except as otherwise provided in subparagraph 6D(3), no adjustment of the Conversion Price shall be made upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities and (b) if any such issue or sale of such Convertible Securities is made upon exercise of any Options to purchase any such Convertible Securities for which adjustments of the Conversion Price have been or are to be made pursuant to other provisions of this subparagraph 6D, no further adjustment of the Conversion Price shall be made by reason of such issue or sale.

6D(3) Change in Option Price or Conversion Rate. Upon the happening of any of the following events, namely, if the purchase price provided for in any Option referred to in subparagraph 6D(1), the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities referred to in subparagraph 6D(1) or 6D(2), or the rate at which Convertible Securities referred to in subparagraph 6D(1) or 6D(2) are convertible into or exchangeable for Common Stock shall change at any time (including, but not limited to, changes under or by reason of provisions designed to protect against dilution), the Conversion Price in effect at the time of such event shall forthwith be readjusted to the Conversion Price which would have been in effect at such time had such Options or Convertible Securities still outstanding provided for such changed purchase price, additional consideration or conversion rate, as the case may be, at the time initially granted, issued or sold; and on the termination of any such Option or any such right to convert or exchange such Convertible Securities, the Conversion Price then in effect hereunder shall forthwith be increased to the Conversion Price which would have been in effect at the time of such termination had such Option or Convertible Securities, to the extent outstanding immediately prior to such termination, never been issued.

6D(4) Stock Dividends. In case the Corporation shall declare a dividend or make any other distribution upon any stock of the Corporation (other than the Common Stock) payable in Common Stock, Options or Convertible Securities, then any Common Stock, Options or Convertible Securities, as the case may be, issuable in payment of such dividend or distribution shall be deemed to have been issued or sold without consideration.

6D(5) Consideration for Stock. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for cash, the consideration received therefor shall be deemed to be the amount received by the Corporation therefor, without deduction therefrom of any expenses incurred or any underwriting commissions or concessions paid or allowed by the Corporation in connection therewith. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation shall be deemed to be the fair value of such consideration as determined in good faith by the Board of Directors of the Corporation, without deduction of any expenses incurred or any underwriting commissions or concessions paid or allowed by the Corporation in connection therewith. In case any Options shall be issued in connection with the issue and sale of other securities of the Corporation, together comprising one integral transaction in which no specific consideration is allocated to such Options by the parties thereto, such Options shall be deemed to have been issued for such consideration as determined in good faith by the Board of Directors of the Corporation.

6D(6) Record Date. In case the Corporation shall take a record of the holders of its Common Stock for the purpose of entitling them (i) to receive a dividend or other distribution payable in Common Stock, Options or Convertible Securities or (ii) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such

record date shall be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

**6D(7) Treasury Shares.** The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Corporation, and the disposition of any such shares shall be considered an issue or sale of Common Stock for the purpose of this subparagraph 6D.

**6E. Certain Issues of Common Stock Excepted.** Anything herein to the contrary notwithstanding, the Corporation shall not be required to make any adjustment of the Conversion Price in the case of the issuance from and after the date of filing of these terms of the Series A Convertible Preferred Stock of up to an aggregate of 5,500,000 shares (appropriately adjusted to reflect the occurrence of any event described in subparagraph 6F) of Common Stock to directors, officers, employees or consultants of the Corporation in connection with their service as directors of the Corporation, their employment by the Corporation or their retention as consultants by the Corporation, plus such number of shares of Common Stock which are repurchased by the Corporation from such persons after such date pursuant to contractual rights held by the Corporation and at repurchase prices not exceeding the respective original purchase prices paid by such persons to the Corporation therefor.

**6F. Subdivision or Combination of Common Stock.** In case the Corporation shall at any time subdivide (by any stock split, stock dividend or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision shall be proportionately reduced, and, conversely, in case the outstanding shares of Common Stock shall be combined into a smaller number of shares, the Conversion Price in effect immediately prior to such combination shall be proportionately increased. In the case of any such subdivision, no further adjustment shall be made pursuant to subparagraph 6D(4) by reason thereof.

**6G. Reorganization or Reclassification.** If any capital reorganization or reclassification of the capital stock of the Corporation shall be effected in such a way that holders of Common Stock shall be entitled to receive stock, securities or assets with respect to or in exchange for Common Stock, then, as a condition of such reorganization or reclassification, lawful and adequate provisions shall be made whereby each holder of a share or shares of Series A Convertible Preferred Stock shall thereupon have the right to receive, upon the basis and upon the terms and conditions specified herein and in lieu of the shares of Common Stock immediately theretofore receivable upon the conversion of such share or shares of Series A Convertible Preferred Stock, such shares of stock, securities or assets as may be issued or payable with respect to or in exchange for a number of outstanding shares of such Common Stock equal to the number of shares of such Common Stock immediately theretofore receivable upon such conversion had such reorganization or reclassification not taken place, and in any such case appropriate provisions shall be made with respect to the rights and interests of such holder to the end that the provisions hereof (including without limitation provisions for adjustments of

the Conversion Price) shall thereafter be applicable, as nearly as may be, in relation to any shares of stock, securities or assets thereafter deliverable upon the exercise of such conversion rights.

**6H. Notice of Adjustment.** Upon any adjustment of the Conversion Price, then and in each such case the Corporation shall give written notice thereof, by delivery in person, certified or registered mail, return receipt requested, telecopier or telex, addressed to each holder of shares of Series A Convertible Preferred Stock at the address of such holder as shown on the books of the Corporation, which notice shall state the Conversion Price resulting from such adjustment, setting forth in reasonable detail the method upon which such calculation is based.

**6I. Other Notices.** In case at any time:

(1) the Corporation shall declare any dividend upon its Common Stock payable in cash or stock or make any other distribution to the holders of its Common Stock;

(2) the Corporation shall offer for subscription pro rata to the holders of its Common Stock any additional shares of stock of any class or other rights;

(3) there shall be any capital reorganization or reclassification of the capital stock of the Corporation, or a consolidation or merger of the Corporation with or into another entity or entities, or a sale, lease, abandonment, transfer or other disposition of all or substantially all its assets; or

(4) there shall be a voluntary or involuntary dissolution, liquidation or winding up of the Corporation;

then, in any one or more of said cases, the Corporation shall give, by delivery in person, certified or registered mail, return receipt requested, telecopier or telex, addressed to each holder of any shares of Series A Convertible Preferred Stock at the address of such holder as shown on the books of the Corporation, (a) at least 20 days' prior written notice of the date on which the books of the Corporation shall close or a record shall be taken for such dividend, distribution or subscription rights or for determining rights to vote in respect of any such reorganization, reclassification, consolidation, merger, disposition, dissolution, liquidation or winding up and (b) in the case of any such reorganization, reclassification, consolidation, merger, disposition, dissolution, liquidation or winding up, at least 20 days' prior written notice of the date when the same shall take place. Such notice in accordance with the foregoing clause (a) shall also specify, in the case of any such dividend, distribution or subscription rights, the date on which the holders of Common Stock shall be entitled thereto and such notice in accordance with the foregoing clause (b) shall also specify the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, disposition, dissolution, liquidation or winding up, as the case may be.

**6J. Stock to be Reserved.** The Corporation will at all times reserve and keep available out of its authorized Common Stock, solely for the purpose of issuance upon the conversion of Series A Convertible Preferred Stock as herein provided, such number of shares of

Common Stock as shall then be issuable upon the conversion of all outstanding shares of Series A Convertible Preferred Stock. The Corporation covenants that all shares of Common Stock which shall be so issued shall be duly and validly issued and fully paid and nonassessable and free from all taxes, liens and charges with respect to the issue thereof, and, without limiting the generality of the foregoing, the Corporation covenants that it will from time to time take all such action as may be requisite to assure that the par value per share of the Common Stock is at all times equal to or less than the Conversion Price in effect at the time. The Corporation will take all such action as may be necessary to assure that all such shares of Common Stock may be so issued without violation of any applicable law or regulation, or of any requirement of any national securities exchange upon which the Common Stock may be listed. The Corporation will not take any action which results in any adjustment of the Conversion Price if the total number of shares of Common Stock issued and issuable after such action upon conversion of the Series A Convertible Preferred Stock would exceed the total number of shares of Common Stock then authorized by the Certificate of Incorporation.

6K. No Reissuance of Series A Convertible Preferred Stock. Shares of Series A Convertible Preferred Stock which are converted into shares of Common Stock as provided herein shall not be reissued.

6L. Issue Tax. The issuance of certificates for shares of Common Stock upon conversion of Series A Convertible Preferred Stock shall be made without charge to the holders thereof for any issuance tax in respect thereof, provided that the Corporation shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the holder of the Series A Convertible Preferred Stock which is being converted.

6M. Closing of Books. The Corporation will at no time close its transfer books against the transfer of any Series A Convertible Preferred Stock or of any shares of Common Stock issued or issuable upon the conversion of any shares of Series A Convertible Preferred Stock in any manner which interferes with the timely conversion of such Series A Convertible Preferred Stock, except as may otherwise be required to comply with applicable securities laws.

6N. Definition of Common Stock. As used in this paragraph 6, the term "Common Stock" shall mean and include the Corporation's authorized Common Stock, par value \$0.001 per share, as constituted on the date of filing of these terms of the Series A Convertible Preferred Stock, and shall also include any capital stock of any class of the Corporation thereafter authorized which shall not be limited to a fixed sum or percentage in respect of the rights of the holders thereof to participate in dividends or in the distribution of assets upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation; provided that the shares of Common Stock receivable upon conversion of shares of Series A Convertible Preferred Stock shall include only shares designated as Common Stock of the Corporation on the date of filing of this instrument, or in case of any reorganization or reclassification of the outstanding shares thereof, the stock, securities or assets provided for in subparagraph 6G.



**6D. Mandatory Conversion.** If at any time the Corporation shall effect a firm commitment underwritten public offering of shares of Common Stock in which (i) the aggregate price paid for such shares by the public shall be at least \$15,000,000 and (ii) the price paid by the public for such shares shall be at least \$5.00 per share (appropriately adjusted to reflect the occurrence of any event described in subparagraph 6F), then effective upon the closing of the sale of such shares by the Corporation pursuant to such public offering, all outstanding shares of Series A Convertible Preferred Stock shall automatically convert to shares of Common Stock on the basis set forth in this paragraph 6. In addition, all outstanding shares of Series A Convertible Preferred Stock shall be automatically converted to shares of Common Stock on the basis set forth in this paragraph 6 upon the vote of the holders of at least two-thirds of the outstanding shares of Series A Convertible Preferred Stock. Holders of shares of Series A Convertible Preferred Stock so converted may deliver to the Corporation at its principal office (or such other office or agency of the Corporation as the Corporation may designate by notice in writing to such holders) during its usual business hours, the certificate or certificates for the shares so converted. As promptly as practicable thereafter, the Corporation shall issue and deliver to such holder a certificate or certificates for the number of whole shares of Common Stock to which such holder is entitled, together with any cash dividends and payment in lieu of fractional shares to which such holder may be entitled pursuant to subparagraph 6C. Until such time as a holder of shares of Series A Convertible Preferred Stock shall surrender his or its certificates therefor as provided above, such certificates shall be deemed to represent the shares of Common Stock to which such holder shall be entitled upon the surrender thereof.

**7. Redemption.** The shares of Series A Convertible Preferred Stock shall be redeemed as follows:

**7A. Mandatory Redemption.** On July 14, 2003, and on each of the next two anniversaries thereafter (the "Redemption Dates", and each a "Redemption Date"), upon the request of the holders of at least a majority of the outstanding shares of Series A Convertible Preferred Stock, the Corporation shall redeem any outstanding shares of Series A Convertible Preferred Stock according to the percentages listed below:

<u>Date of Redemption</u>	<u>Percentage of Shares of Series A Convertible Preferred Stock then Outstanding to be Redeemed</u>
July 14, 2003	33-1/3% of all the shares of Series A Convertible Preferred Stock Outstanding on July 14, 2003
July 14, 2004	50% of all the shares of Series A Convertible Preferred Stock outstanding on July 14, 2004
July 14, 2005	100% of all the shares of Series A Convertible Preferred Stock outstanding on July 14, 2005

**7B. Redemption Price and Payment.** The shares of Series A Convertible Preferred Stock to be redeemed on any Redemption Date shall be redeemed by paying for each share in cash an amount equal to \$1.00 per share plus, in the case of each share, an amount equal to all dividends declared but unpaid thereon, such amount being referred to as the "Redemption Price". Such payment shall be made in full on the applicable Redemption Date to the holders entitled thereto.

**7C. Redemption Mechanics.** At least 30 but not more than 40 days prior to each Redemption Date, the holders of at least a majority of the outstanding shares of Series A Convertible Preferred Stock may, at their option, notify the Corporation in writing (the "Requirement of Redemption Notice") that they desire the Corporation to redeem the specified percentage of the outstanding shares of Series A Convertible Preferred Stock. In the event the Corporation receives a Requirement of Redemption Notice, written notice (the "Redemption Notice") shall be given at least 20 but not more than 30 days prior to the applicable Redemption Date by the Corporation by delivery in person, certified or registered mail, return receipt requested, telecopier or telex, to each holder of record (at the close of business on the business day next preceding the day on which the Redemption Notice is given) of shares of Series A Convertible Preferred Stock notifying such holder of the redemption and specifying the Redemption Price, such Redemption Date, the number of shares of Series A Convertible Preferred Stock to be redeemed from such holder (computed on a pro rata basis in accordance with the number of such shares held by all holders thereof) and the place where said Redemption Price shall be payable. The Redemption Notice shall be addressed to each holder at his address as shown by the records of the Corporation. From and after the close of business on a Redemption Date, unless there shall have been a default in the payment of the Redemption Price, all rights of holders of shares of Series A Convertible Preferred Stock (except the right to receive the Redemption Price) shall cease with respect to the shares to be redeemed on such Redemption Date, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the Corporation legally available for redemption of shares of Series A Convertible Preferred Stock on a Redemption Date are insufficient to redeem the total number of shares of Series A Convertible Preferred Stock to be redeemed on such Redemption Date, the holders of such shares shall share ratably in any funds legally available for redemption of such shares according to the respective amounts which would be payable to them if the full number of shares to be redeemed on such Redemption Date were actually redeemed. The shares of Series A Convertible Preferred Stock required to be redeemed but not so redeemed shall remain outstanding and entitled to all rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of such shares of Series A Convertible Preferred Stock, such funds will be used, at the end of the next succeeding fiscal quarter, to redeem the balance of such shares, or such portion thereof for which funds are then legally available, on the basis set forth above.

**7D. Redeemed or Otherwise Acquired Shares to be Retired.** Any shares of Series A Convertible Preferred Stock redeemed pursuant to this paragraph 7 or otherwise acquired by the Corporation in any manner whatsoever shall be canceled and shall not under any circumstances be reissued; and the Corporation may from time to time take such appropriate

corporate action as may be necessary to reduce accordingly the number of authorized shares of Series A Convertible Preferred Stock.

8. Amendments. No provision of these terms of the Series A Convertible Preferred Stock may be amended, modified or waived without the written consent or affirmative vote of the holders of at least two-thirds of the then outstanding shares of Series A Convertible Preferred Stock.

*IN WITNESS WHEREOF*, the undersigned has executed this Certificate this 14th day of July, 1998.

2<sup>ND</sup> CENTURY COMMUNICATIONS, INC.

By: 

Michael A. Viren, President

*Office of the Secretary of State*

---

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF CORRECTION OF "2ND CENTURY COMMUNICATIONS, INC.", FILED IN THIS OFFICE ON THE TENTH DAY OF AUGUST, A.D. 1998, AT 2 O'CLOCK P.M.

2917764 8100

991265647



9837851

06-29-99

*Edward J. Freel*  
\_\_\_\_\_  
Edward J. Freel, Secretary of State

AUTHENTICATION:

DATE:

**CORRECTED**  
**CERTIFICATE OF INCORPORATION**  
**OF**  
**2nd CENTURY COMMUNICATIONS, INC.**  
\*\*\*\*\*

On July 7, 1998, 2<sup>nd</sup> Century Communications, Inc. filed its Certificate of Incorporation with the Delaware Secretary of State (the "Certificate"). The Certificate contained a typographical error in paragraph Fourth with respect to the par value of the common stock and preferred stock of the corporation. The par value of the common stock and the preferred stock was written as one-thousandth of one cent but reflected numerically as \$.001, or one-tenth of one cent. The intended par value of the common stock and the preferred stock was one-tenth of one cent (\$.001). This Corrected Certificate of Incorporation corrects the typographical error in paragraph Fourth and restates the Certificate of Incorporation in its entirety.

**FIRST.** The name of the corporation is 2nd Century Communications, Inc. (the "Corporation").

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

**THIRD.** The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "DGCL").

**FOURTH.** The total number of shares of capital stock which the Corporation shall have authority to issue is 30,000,000 shares, consisting of (i) 20,000,000 shares of common stock with a par value of one tenth of one cent (\$.001) per share ("Common Stock") and (ii) 10,000,000 shares of preferred stock with a par value of one tenth of one cent (\$.001) per share ("Preferred Stock"). The Board of Directors is expressly authorized, at any time and from time to time, to fix, by resolution or resolutions, the following provisions for shares of any class or classes of Preferred Stock or any series of any class of Preferred Stock subject to the terms contained in any prior designation of a series of Preferred Stock of the Corporation:

(1) the designation of such class or series, the number of shares to constitute such class or series which may be increased or decreased (but not below the number of shares of that class or series then outstanding) by resolution of the Board of Directors, and the stated value thereof if different from the par value thereof;

(2) whether the shares of such class or series shall have voting rights, in addition to any voting rights provided by law, and, if so, the terms of such voting rights;

(3) the dividends, if any, payable on such class or series, whether any such dividends shall be cumulative, and, if so, from what dates, the conditions and dates upon which such dividends shall be payable, the preference or relation which such dividends shall bear to the dividends payable on any shares of stock of any other class or any other series of the same class;

(4) whether the shares of such class or series shall be subject to redemption by the Corporation, and, if so, the times, prices and other conditions of such redemption;

(5) the amount or amounts payable upon shares of such series upon, and the rights of the holders of such class or series in, the voluntary or involuntary liquidation, dissolution or winding up, or upon any distribution of the assets, of the Corporation;

(6) whether the shares of such class or series shall be subject to the operation of a retirement or sinking fund and, if so, the extent to and manner in which any such retirement or sinking fund shall be applied to the purchase or redemption of the shares of such class or series for retirement or other corporate purposes and the terms and provisions relative to the operation thereof;

(7) whether the shares of such class or series shall be convertible into, or exchangeable for, shares of stock of any other class or any other series of the same class or any other securities and, if so, the price or prices or the rate or rates of conversion or exchange and the method, if any, of adjusting the same, and any other terms and conditions of conversion or exchange;

(8) the limitations and restrictions, if any, to be effective while any shares of such class or series are outstanding upon the payment of dividends or the making of other distributions on, and upon the purchase, redemption or other acquisition by the Corporation of, the Common Stock or shares of stock of any other class or any other series of the same class;

(9) the conditions or restrictions, if any, upon the creation of indebtedness of the Corporation or upon the issue of any additional stock, including additional shares of such class or series or of any other series of the same class or of any other class;

(10) the ranking (be it pari passu, junior or senior) of each class or series vis-a-vis any other class or series of any class of Preferred Stock as to the payment of dividends, the distribution of assets and all other matters; and

(11) any other powers, preferences and relative, participating, optional and other special rights, and any qualifications, limitations and restrictions thereof, insofar as they are not inconsistent with the provisions of this Certificate of Incorporation, to the full extent permitted in accordance with the laws of the State of Delaware.

The powers, preferences and relative, participating, optional and other special rights of each class or series of Preferred Stock, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding.

**FIFTH.** The Corporation is to have perpetual existence.

**SIXTH.** In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware:

A. The Board of Directors of the Corporation is expressly authorized to adopt, amend or repeal the By-Laws of the Corporation.

B. Elections of directors need not be by written ballot unless the By-Laws of the Corporation shall so provide.

C. The books of the Corporation may be kept at such place within or without the State of Delaware as the By-Laws of the Corporation may provide or as may be designated from time to time by the Board of Directors of the Corporation.

D. The number of shares of authorized Common Stock of the Corporation may be increased or decreased (but not below the number then outstanding) by the affirmative vote of the holders of a majority of the outstanding shares of capital stock of the Corporation entitled to vote thereon, voting together as a single class, notwithstanding the provisions of Section 242(b)(2) of the DGCL.

**SEVENTH.** The Corporation eliminates the personal liability of each member of its Board of Directors to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided, however, that, to the extent provided by applicable law, the foregoing shall not eliminate the liability of a director (i) for any breach of such 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 Title 8 of the DGCL or (iv) for any transaction from which such director derived an improper personal benefit. No amendment to or repeal of this provision shall apply to or have any effect on the liability or alleged liability of any director for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

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

**NINTH.** The name and mailing address of the sole incorporator is as follows:

Paul R. Lynch, Esquire  
101 East Kennedy Blvd., Suite 2800  
Tampa, Florida 33602

**TENTH.** Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or

stockholder thereof or on the application of any receiver or receivers appointed for this Corporation under the provisions of Section 291 of Title 8 of the DGCL or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under the provisions of Section 279 of Title 8 of the DGCL, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

**ELEVENTH.** The Corporation shall, to the full extent permitted by Section 145 of the DGCL, as amended from time to time, indemnify all persons whom it may indemnify pursuant thereto. The indemnification provided by this Section 12 shall not limit or exclude any rights, indemnities or limitations of liability to which any person may be entitled, whether as a matter of law, under the By-laws of the Corporation, by agreement, vote of the stockholders or disinterested directors of the Corporation or otherwise.

I, THE UNDERSIGNED, being the President of the Corporation, hereby declare and certify that this is my act and deed and the facts herein stated are true, and accordingly have hereunto set my hand this 6<sup>th</sup> day of August, 1998.

  
Michael A. Viren  
President



*Office of the Secretary of State*

---

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF OWNERSHIP, WHICH MERGES:

"2ND CENTURY ACQUISITION SUB, INC.", A DELAWARE CORPORATION,  
WITH AND INTO "2ND CENTURY COMMUNICATIONS, INC." UNDER THE  
NAME OF "2ND CENTURY COMMUNICATIONS, INC.", A CORPORATION  
ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE,  
AS RECEIVED AND FILED IN THIS OFFICE THE TWENTY-EIGHTH DAY OF  
APRIL, A.D. 1999, AT 4 O'CLOCK P.M.

2917764 8100M

991265647



9837850  
06-29-99  
*Edward J. Freel*  
\_\_\_\_\_  
Edward J. Freel, Secretary of State

AUTHENTICATION:

DATE:

**CERTIFICATE OF MERGER  
OF  
2<sup>ND</sup> CENTURY ACQUISITION SUB, INC.  
INTO  
2<sup>ND</sup> CENTURY COMMUNICATIONS, INC.**

The undersigned corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware ("DGCL"), does hereby certify pursuant to Section 251 of the DGCL as follows:

1. That the name and state of incorporation of each of the constituent corporations of the merger is as follows:

<u>Name</u>	<u>State of Incorporation</u>
2 <sup>nd</sup> Century Communications, Inc.	Delaware
2 <sup>nd</sup> Century Communications Acquisition Sub, Inc.	Delaware

2. An Agreement of Merger and Plan of Reorganization (the "Reorganization Agreement"), dated as of April 8, 1999, between the parties to the merger has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with the requirements of Section 251 of the DGCL.
3. The name of the surviving corporation of the merger is 2<sup>nd</sup> Century Communications, Inc.
4. The Certificate of Incorporation of 2<sup>nd</sup> Century Communications, Inc. shall be the Certificate of Incorporation of the surviving corporation, provided, however, that Article Fourth of the Certificate of Incorporation of 2<sup>nd</sup> Century Communications, Inc. shall be and hereby is amended to read as follows in its entirety:

FOURTH. The total number of shares of capital stock which the Corporation shall have authority to issue is 1,000 shares of common stock, one tenth of one cent (\$0.001) par value per share.
5. An executed copy of the Reorganization Agreement is on file at the principal place of business of the surviving corporation, the address of the same being:

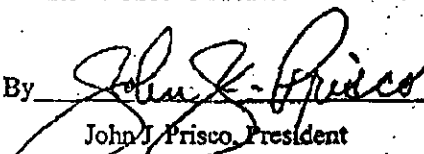
2<sup>nd</sup> Century Communications, Inc.  
7702 Woodland Center Boulevard  
Suite 50  
Tampa, FL 33614

6. A copy of the Reorganization Agreement will be furnished by the surviving Corporation, on request and without cost, to any stockholder of any constituent corporation.
7. The merger shall become effective at 11:59 p.m., Eastern Daylight Time on the date this Certificate of Merger is filed in accordance with Section 251 of the DGCL.

IN WITNESS WHEREOF, 2<sup>nd</sup> Century Communications, Inc. has caused this Certificate to be signed by John J. Prisco, its authorized officer, this 27<sup>th</sup> day of April, 1999.

2<sup>nd</sup> CENTURY COMMUNICATIONS, INC.

By

  
John J. Prisco, President

CERTIFICATE OF MERGER  
OF  
2<sup>ND</sup> CENTURY ACQUISITION SUB, INC.  
INTO  
2<sup>ND</sup> CENTURY COMMUNICATIONS, INC.

The undersigned corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware ("DGCL"), does hereby certify pursuant to Section 251 of the DGCL as follows:

1. That the name and state of incorporation of each of the constituent corporations of the merger is as follows:

<u>Name</u>	<u>State of Incorporation</u>
2 <sup>nd</sup> Century Communications, Inc.	Delaware
2 <sup>nd</sup> Century Communications Acquisition Sub, Inc.	Delaware

2. An Agreement of Merger and Plan of Reorganization (the "Reorganization Agreement"), dated as of April 8, 1999, between the parties to the merger has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with the requirements of Section 251 of the DGCL.
3. The name of the surviving corporation of the merger is 2<sup>nd</sup> Century Communications, Inc.
4. The Certificate of Incorporation of 2<sup>nd</sup> Century Communications, Inc. shall be the Certificate of Incorporation of the surviving corporation, provided, however, that Article Fourth of the Certificate of Incorporation of 2<sup>nd</sup> Century Communications, Inc. shall be and hereby is amended to read as follows in its entirety:
- FOURTH. The total number of shares of capital stock which the Corporation shall have authority to issue is 1,000 shares of common stock, one tenth of one cent (\$0.001) par value per share.
5. An executed copy of the Reorganization Agreement is on file at the principal place of business of the surviving corporation, the address of the same being:



## **EXHIBIT B**

### **AUTHORIZATION TO TRANSACT BUSINESS IN THE STATE OF MISSOURI**

# STATE OF MISSOURI



**Rebecca McDowell Cook**  
**Secretary of State**

## CORPORATION DIVISION - CERTIFICATE OF AUTHORITY

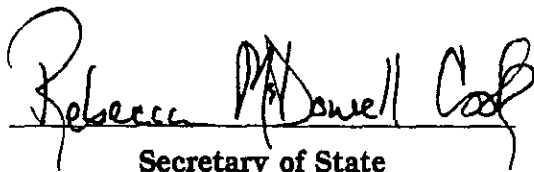
WHEREAS,  
2ND CENTURY COMMUNICATIONS, INC.

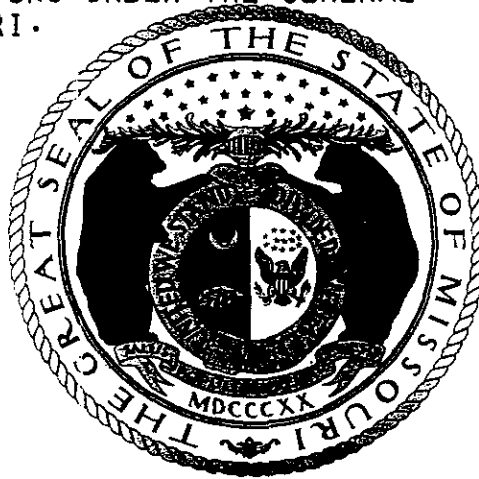
USING IN MISSOURI THE NAME  
2ND CENTURY COMMUNICATIONS, INC.

HAS COMPLIED WITH THE GENERAL AND BUSINESS CORPORATION LAW WHICH GOVERNS FOREIGN CORPORATIONS; BY FILING IN THE OFFICE OF THE SECRETARY OF STATE OF MISSOURI AUTHENTICATED EVIDENCE OF ITS INCORPORATION AND GOOD STANDING UNDER THE LAWS OF THE STATE OF DELAWARE.

NOW, THEREFORE, I, REBECCA MCDOWELL COOK, SECRETARY OF STATE OF THE STATE OF MISSOURI, DO HEREBY CERTIFY THAT SAID CORPORATION IS FROM THIS DATE DULY AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE, AND IS ENTITLED TO ALL RIGHTS AND PRIVILEGES GRANTED TO FOREIGN CORPORATIONS UNDER THE GENERAL AND BUSINESS CORPORATION LAW OF MISSOURI.

IN TESTIMONY WHEREOF, I HAVE SET MY HAND AND IMPRINTED THE GREAT SEAL OF THE STATE OF MISSOURI, ON THIS, THE 22ND DAY OF JULY, 1999.

  
Secretary of State



\$155.00

# STATE OF MISSOURI



**Rebecca McDowell Cook**  
**Secretary of State**

CORPORATION DIVISION  
CERTIFICATE OF CORPORATE RECORDS

2ND CENTURY COMMUNICATIONS, INC.

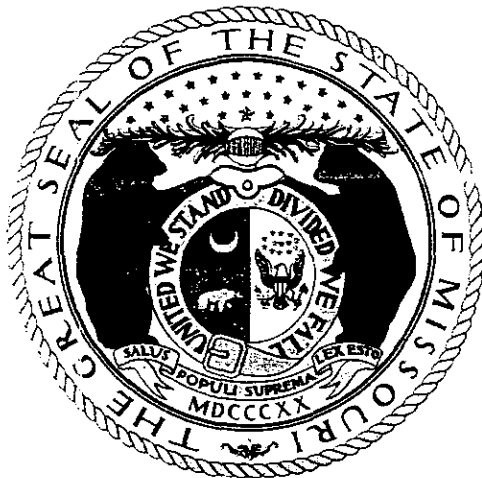
USING IN MISSOURI THE NAME

2ND CENTURY COMMUNICATIONS, INC.

I, REBECCA McDOWELL COOK, SECRETARY OF STATE OF THE STATE OF MISSOURI AND KEEPER OF THE GREAT SEAL THEREOF, DO HEREBY CERTIFY THAT THE ANNEXED PAGES CONTAIN A FULL, TRUE AND COMPLETE COPY OF THE ORIGINAL DOCUMENTS ON FILE AND OF RECORD IN THIS OFFICE.

IN TESTIMONY WHEREOF, I HAVE SET MY HAND AND IMPRINTED THE GREAT SEAL OF THE STATE OF MISSOURI, ON THIS, THE 22ND DAY OF JULY, 1999.

*Rebecca McDowell Cook*  
Secretary of State







# State of Missouri

Rebecca McDowell Cook, Secretary of State  
P.O. Box 778, Jefferson City, Mo. 65102

Corporation Division

**FILED**

AND CERTIFICATE OF  
AUTHORITY ISSUED

## Application for Foreign Corporation For a Certificate of Authority

(Submit in duplicate with filing fee of \$155.00)

JUL 22 1999

- (1) The corporation's name is 2nd Century Communications, Inc.  
and it is organized and existing under the laws of Delaware *Rebecca McDowell Cook*  
~~SECRETARY OF STATE~~
- (2) The name it will use in Missouri is 2nd Century Communications, GROUP, INC.
- (3) The date of its incorporation was July 7, 1998, and the period of its duration is perpetual  
month/day/year
- (4) The address of its principal place of business 7702 Woodland Center Boulevard, Suite 50, Tampa, FL 33614  
Address City/State/Zip
- (5) The name and address of its registered agent and office in the State of Missouri is  
National Registered Agents, Inc., 300-B East High St., Jefferson, MO 65101  
Name Address City/State/Zip
- (6) The specific purpose(s) of its business in Missouri are:  
To provide internet and telephone communications.
- (7) The name of its officers and directors and their business addresses are as follows:
- | (Officers)           | Name                     | Address | City/State/Zip |
|----------------------|--------------------------|---------|----------------|
| President            |                          |         |                |
| Vice President       | see attached Exhibit "A" |         |                |
| Secretary            |                          |         |                |
| Treasurer            |                          |         |                |
| (Board of Directors) |                          |         |                |
| Director             | see attached Exhibit "B" |         |                |
| Director             |                          |         |                |
| Director             |                          |         |                |
| Director             |                          |         |                |
- (8) The effective date of this document is the date it is filed by the Secretary of State of Missouri, unless you indicate a future date, as follows: \_\_\_\_\_  
(Date may not be more than 90 days after the filing date in this office)

In affirmation thereof, the facts stated above are true.

*John J. Prisco*  
(Authorized signature of officer or chairman of the board)  
John J. Prisco

President  
(Title)

July 12, 1999  
(Date of Signature)

Note: You must have a current certificate of good standing or certificate of existence with this application.  
This may be obtained from the Secretary of State or other authority that issues corporate charters.

**EXHIBIT "A"**

**CORPORATE OFFICERS**

**NAME & ADDRESS**

**OFFICE**

Michael A. Viren  
7702 Woodland Center Boulevard, Suite 50  
Tampa, Florida 33614

Chairman of the Board

John J. Prisco  
7702 Woodland Center Boulevard, Suite 50  
Tampa, Florida 33614

Chief Executive Officer and President

Oscar J. Williams  
7702 Woodland Center Boulevard, Suite 50  
Tampa, Florida 33614

Vice President & Chief Financial Officer

Carmine V. Rocca  
7702 Woodland Center Boulevard, Suite 50  
Tampa, Florida 33614

Vice President

Charlotte A. Baker  
7702 Woodland Center Boulevard, Suite 50  
Tampa, Florida 33614

Vice President

Mark Damico  
7702 Woodland Center Boulevard, Suite 50  
Tampa, Florida 33614

Vice President

Daniel J. Montague  
7702 Woodland Center Boulevard, Suite 50  
Tampa, Florida 33614

Assistant Vice President. Secretary &  
Treasurer

Beverly Privette  
7702 Woodland Center Boulevard, Suite 50  
Tampa, Florida 33614

Assistant Vice President & Controller

**EXHIBIT "B"**

**CORPORATE DIRECTORS**

**NAME & ADDRESS**

**OFFICE**

Michael A. Viren  
7702 Woodland Center Boulevard, Suite 50  
Tampa, Florida 33614

Chairman of the Board

John J. Prisco  
7702 Woodland Center Boulevard, Suite 50  
Tampa, Florida 33614

Director

William J. Geary  
7702 Woodland Center Boulevard, Suite 50  
Tampa, Florida 33614

Director

David R. Hathaway  
7702 Woodland Center Boulevard, Suite 50  
Tampa, Florida 33614

Director

J. Peter Wagner  
7702 Woodland Center Boulevard, Suite 50  
Tampa, Florida 33614

Director

Les Strauss  
7702 Woodland Center Boulevard, Suite 50  
Tampa, Florida 33614

Director

*State of Delaware*  
*Office of the Secretary of State*

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PAGE 1

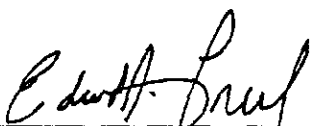
I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "2ND CENTURY COMMUNICATIONS, INC." IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE FOURTEENTH DAY OF JULY, A.D. 1999.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "2ND CENTURY COMMUNICATIONS, INC." WAS INCORPORATED ON THE SEVENTH DAY OF JULY, A.D. 1998.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL REPORTS HAVE BEEN FILED TO DATE.

AND I DO HEREBY FURTHER CERTIFY THAT THE FRANCHISE TAXES HAVE BEEN PAID TO DATE.



  
\_\_\_\_\_  
Edward J. Freel, Secretary of State

2917764 8300

991288838

AUTHENTICATION:

9864850

DATE:

07-14-99

**2<sup>ND</sup> CENTURY COMMUNICATIONS, INC.  
APPLICATION FOR CPCN  
MISSOURI  
EXHIBIT C**

## **EXHIBIT C**

### **FACT SHEET OF SECOND CENTURY COMMUNICATIONS, INC.**

## 2<sup>nd</sup> Century Communications Fact Sheet

### **The Company**

2<sup>nd</sup> Century Communications is the first ATM-based integrated communications provider (ICP) to offer small and medium-sized businesses one simple and cost-effective communications solution. 2<sup>nd</sup> Century reaches beyond the simple offering of commodity transport services of local, long distance and Internet access, to provide desktop functionality that supplements or replaces traditional telephone systems. 2<sup>nd</sup> Century will deliver integrated voice, data, video and Internet services and other applications *via* Data-Based Telephony (DBT).

### **Data-Based Telephony**

DBT uses packets, cells or frames to route and transport multiple services through a single network using a single protocol. It allows 2<sup>nd</sup> Century to integrate all services onto a single access network using a single switching fabric. Traditional circuit-switched Competitive Local Exchange Carriers (CLECs) require separate, dedicated networks for each service they provide. That means that first-generation CLECs used up to five different switching fabrics to carry their customers' local, long distance and Internet services.

### **ATM Technology**

The use of ATM technology, or asynchronous transfer mode, allows 2<sup>nd</sup> Century to offer network convergence, access convergence and application convergence. ATM technology is the most economical integrated access technology because it lowers the cost per bit on the Local Loop. Local, long distance, video, data and Internet services are delivered through one pipe with one protocol and supporting multiple applications. End-user applications include PBX features, computer telephony integration, unified messaging, and Web-based call detail reporting.

### **Customer Benefits**

With 2<sup>nd</sup> Century's solution, customers no longer need to invest in separate networks, separate pieces of equipment, separate telecommunications providers, and a technical support staff. 2<sup>nd</sup> Century allows customers to focus on their core business and not their telecommunications needs.

### **Details**

Founded in 1998 in Tampa, Fla., and privately held, 2<sup>nd</sup> Century Communications is funded by Venrock Associates, New York; Northbridge Venture Partners, Waltham, Mass.; and Accel Partners, Palo Alto, Calif. 2<sup>nd</sup> Century is on the World Wide Web at [www.2c2.com](http://www.2c2.com).

## **EXHIBIT D**

### **STATEMENT OF MANAGERIAL AND TECHNICAL QUALIFICATIONS**

2<sup>ND</sup> CENTURY COMMUNICATIONS, INC. ("2<sup>nd</sup> Century") is technically qualified to operate as a provider of facilities-based and resold basic local exchange telecommunications services in the State of Missouri. The following is a list of 2<sup>nd</sup> Century's management team:

<b>John Prisco</b>	<b>President, Chief Executive Officer &amp; Acting Chief Financial Officer</b>
<b>Charlotte Baker</b>	<b>Vice President of Marketing &amp; Chief Marketing Officer</b>
<b>Vince Rocca</b>	<b>Vice President of Engineering &amp; Chief Technical Officer</b>
<b>Mark Damico</b>	<b>Vice President of Business Operations</b>
<b>Beverly Privette</b>	<b>Controller/Treasurer</b>
<b>Joyce Gailey</b>	<b>Assistant Vice President, Industry Services Management</b>

Collectively, the members of 2<sup>nd</sup> Century's management team have designed, managed, and/or operated advanced telecommunications facilities throughout the United States. As demonstrated by the executive profiles of 2<sup>nd</sup> Century's management team appended to this Exhibit, the majority of the members of 2<sup>nd</sup> Century's management team for many years were associated with Intermedia Communications, Inc., a highly successful facilities-based local exchange carrier.

Michael Viren, the founder of 2<sup>nd</sup> Century and a current member of the board of directors, has over twenty-two (22) years experience in the telecommunications industry and was

responsible for developing Intermedia's data services and circuit switching services, and for establishing its highly successful network design. Vince Rocca, 2<sup>nd</sup> Century's Vice President of Engineering and Chief Technical Officer, formerly was the Director of Network Operations for Intermedia, for whom he designed the details of fiber optic and frame relay networks. Mr. Rocca has thirteen (13) years experience in the telecommunications industry.

2<sup>nd</sup> Century's President and Chief Executive Officer, John Prisco, founded a successful competitive access provider, Penn Access Corporation, located in Pittsburgh, Pennsylvania, and later was recruited to lead sales and marketing as a corporate officer and Vice President of Bell Atlantic. Mr. Prisco subsequently served as President of Cellular Vision and of CAI Wireless, two of Bell Atlantic's wireless ventures. Mr. Prisco has over twenty (20) years experience in the telecommunications industry, and has an extensive background in electrical engineering, having received a B.S. from Columbia University and an M.S. from the Massachusetts Institute of Technology, both in electrical engineering. Mark Damico, Vice President of Business Operations, has fourteen (14) years experience, and Charlotte Baker, Vice President of Marketing and Chief Marketing Officer has seven (7) years.

With such vast technical experience by the members of its management team, in addition to the outstanding team of engineers and network specialists it has employed, 2<sup>nd</sup> Century has the adequate technical experience and capabilities to develop and maintain successful local exchange operations in the State of Missouri.



## **EXHIBIT E**

### **AUDITED FINANCIAL STATEMENTS OF 2<sup>ND</sup> CENTURY COMMUNICATIONS, INC.**

**[CONFIDENTIAL AND PROPRIETARY –FILED UNDER SEAL]**

## **EXHIBIT E**

### **BALANCE SHEET**

**[CONFIDENTIAL AND PROPRIETARY –FILED UNDER SEAL]**

## **EXHIBIT E**

### **STATEMENT OF OPERATIONS**

**[CONFIDENTIAL AND PROPRIETARY – FILED UNDER SEAL]**

## **EXHIBIT E**

### **CASH FLOW STATEMENT**

**[CONFIDENTIAL AND PROPRIETARY – FILED UNDER SEAL]**

## **EXHIBIT F**

### **LIST OF LOCAL EXCHANGES**

#### **KANSAS CITY:**

FERREL VIEW  
GLADSTONE  
INDEPENDENCE  
KANSAS CITY  
LIBERTY  
PARKVILLE  
PLATTE CITY  
RAYTOWN  
SOUTH KANSAS CITY

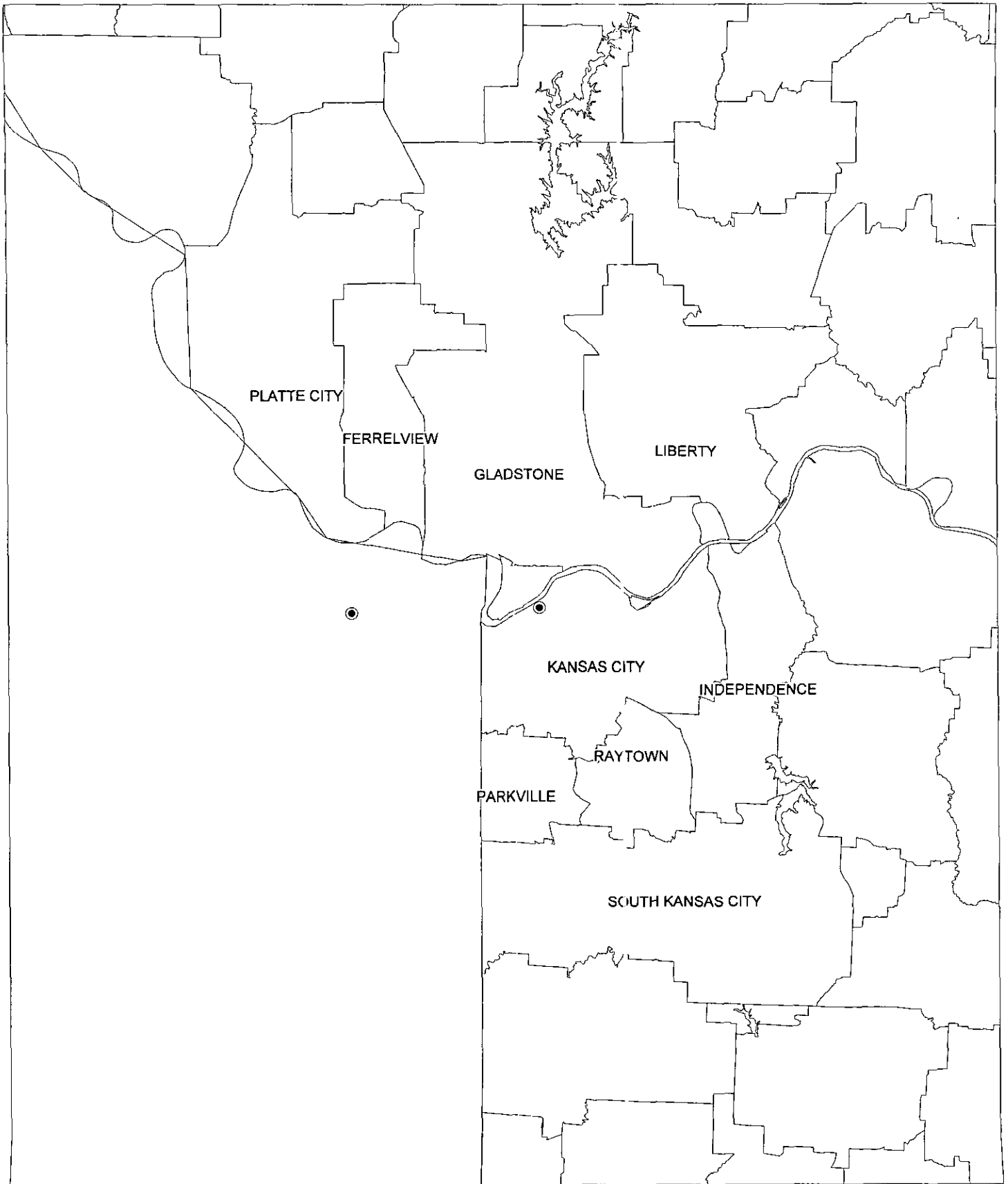
#### **ST. LOUIS:**

FERGUSON  
FLORISSANT  
KIRKWOOD  
LADUE  
MEHLVILLE  
OVERLAND  
SAPPINGTON  
ST. LOUIS  
SPANISH LAKE  
WEBSTER GROVES

## **EXHIBIT G**

### **MAP OF SERVICE TERRITORY**

# Kansas City, MO



# St. Louis, MO





## **EXHIBIT H**

### **VERIFIED STATEMENT REGARDING ANNUAL REPORT/ ASSESSMENT FEES**

## VERIFICATION

State of Florida )

County of Hillsborough )

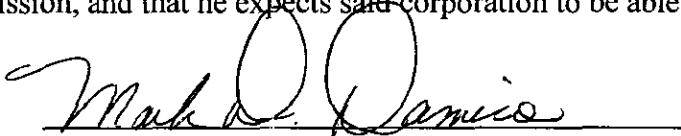
ss.

Mark Damico, Affiant, being duly sworn according to law, deposes and says that:

He is the Vice President of Business Operations (Office of Affiant) of 2<sup>nd</sup> Century Communications, Inc.

That he is authorized to and does make this affidavit for said corporation;

That, to the best of his knowledge, information, and belief, no annual report or assessment fees are overdue to any state regulatory commission, and that he expects said corporation to be able to prove the same at any hearing hereof.



Mark Damico,  
Vice President of Business Operations  
2<sup>nd</sup> Century Communications, Inc.

Sworn and subscribed before me this 3<sup>rd</sup> day of November, 1999



Beth A Plante  
My Commission CC840596  
Expires May 26, 2003