

SONNENSCHN NATH & ROSENTHAL

4520 MAIN STREET SUITE 1100

KANSAS CITY, MISSOURI 64111

Lisa C. Creighton  
(816) 932-4461  
l3c@sonnenschein.com

(816) 932-4400

FACSIMILE

(816) 531-7545

March 20, 2000

VIA FEDERAL EXPRESS

Mr. Dale Roberts  
Executive Secretary  
**Missouri Public Service Commission**  
301 W. High Street, Suite 530  
Jefferson City, MO 65101

FILED  
MAR 21 2000  
Missouri Public  
Service Commission

TA - 2000 - 585

**RE: *In the Matter of the Application of ConnectSouth Communications of Missouri, Inc. for a Certificate of Service Authority to Provide Basic Local Telecommunications Service, Local Exchange Telecommunications Service, and Interexchange Telecommunications Service in the State of Missouri and to Classify Said Services and the Company as Competitive.***

Dear Mr. Roberts:

Please find enclosed for filing the original and fourteen copies of the following:

1. Application of ConnectSouth Communications of Missouri, Inc. for Certificate of Service Authority and for Competitive Classification; and
2. Motion of ConnectSouth Communications of Missouri, Inc. for Protective Order.

Also enclosed are eight copies of Confidential Exhibit C to the Application, which is being filed under seal. By copy of this letter, I have mailed two copies of the enclosed to the Office of Public Counsel and one copy to the Office of General Counsel by Federal Express.

I have enclosed two additional sets of the enclosed, and would appreciate your stamping those "filed" and return them to me in the enclosed self-addressed, stamped envelope.

Very truly yours,



Lisa C. Creighton

MPJ/T2M

Enclosures

cc: Office of Public Counsel (w/encl.) (via Federal Express)  
Office of General Counsel (w/encl.) (via Federal Express)

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED

MAR 21 2000

Missouri Public  
Service Commission

IN THE MATTER OF THE APPLICATION )  
OF CONNECTSOUTH COMMUNICATIONS )  
OF MISSOURI, INC. FOR A CERTIFICATE )  
OF SERVICE AUTHORITY TO PROVIDE )  
BASIC LOCAL TELECOMMUNICATIONS )  
SERVICE, LOCAL EXCHANGE )  
TELECOMMUNICATIONS SERVICE, AND )  
INTEREXCHANGE )  
TELECOMMUNICATIONS SERVICE IN )  
THE STATE OF MISSOURI AND TO )  
CLASSIFY SAID SERVICES AND THE )  
COMPANY AS COMPETITIVE. )

Case No. TA-2000-585

**APPLICATION FOR CERTIFICATE OF SERVICE AUTHORITY**  
**AND FOR COMPETITIVE CLASSIFICATION**

Comes now, ConnectSouth Communications of Missouri, Inc. ("ConnectSouth Missouri"), by its undersigned counsel, and hereby applies pursuant to Sections 392.361, 392.420, and 392.430 RSMo 1994, 392.410, 392.450 RSMo. Supp. 1996, the Federal Telecommunications Act of 1996, and 4 CSR 240-2.060, for authority to provide (1) basic local telecommunications service in portions of the State of Missouri; (2) local exchange telecommunications service in portions of the State of Missouri; and (3) interexchange telecommunications service in the State of Missouri. ConnectSouth Missouri further applies for classification of said services and company as competitive. In support of this application, ConnectSouth Missouri states as follows:

1. Applicant, ConnectSouth Missouri, is a corporation duly organized and existing under and by the virtue of the laws of the State of Delaware. Its articles of incorporation (including amendments) and certificate of authority to conduct business in Missouri are attached as **Exhibit A** to this Application. ConnectSouth Missouri was formed in 2000 and is a wholly-owned

subsidiary of ConnectSouth DSL Holdings, Inc., ("ConnectSouth DSL") which in turn is owned by ConnectSouth Communications, Inc. ("ConnectSouth").

ConnectSouth will offer digital subscriber line service and Internet access to small businesses in eight markets by April and another 23 markets by the fall in the Southwestern Bell and BellSouth regions. The company is installing its own equipment in central phone switching offices throughout the 14 states and will have equipment in a total of 250 central offices for those markets by year end. Eventually, ConnectSouth plans to serve 80 markets throughout the Sun Belt, focusing on second, third and forth tier markets where businesses are less likely to find high speed Internet access. ConnectSouth is authorized to provide local service as iConnect in Mississippi and Texas and has applications pending in Alabama, Louisiana and Oklahoma. Additionally, ConnectSouth will soon file applications in Arkansas, Florida, Georgia, Kansas, Kentucky, North Carolina, South Carolina, and Tennessee.

By its launch in Missouri, ConnectSouth Missouri will install an Asynchronous Transfer Mode ("ATM") switched network to carry its data traffic and will establish hubs in selected locations within the state. The hubs will be connected to ConnectSouth Missouri's collocated facilities in the ILEC's central offices via DS3 or OC3 interconnections in a star configuration.

2. All inquires, correspondence, communications, pleadings, notices, orders and decisions relating to this case should be addressed to:

Attorney: Mark P. Johnson  
Lisa C. Creighton  
Sonnenschein Nath & Rosenthal  
4520 Main Street, Suite 1100  
Kansas City, Missouri 64111  
(816) 932-4400 (Telephone)  
(816) 531-7545 (Facsimile)

Place of Business

and Contact Person: Patricia Ana Garcia Escobedo  
Director of Regulatory  
ConnectSouth Communications  
9600 Great Hills Trail  
Austin, Texas 78759  
(512) 681-9224 (Telephone)  
(512) 681-9010 (Facsimile)

3. ConnectSouth Missouri proposes to provide the following services:

(a) Basic local exchange telecommunications service on a facilities-based and resold basis, and as a separate and distinct service, throughout all Missouri exchanges currently served by incumbent local exchange carriers Southwestern Bell Telephone Company ("SWBT"), Sprint/United Telephone Company ("United") and GTE Midwest, Inc. ("GTE"). The SWBT, United and GTE exchanges within which ConnectSouth Missouri proposes to offer service include all exchanges listed in the local exchange tariffs of those companies on file with and approved by the Commission. ConnectSouth Missouri may seek authority to provide this service in other areas of the state in a subsequent proceeding, but at present seeks no authority to provide service in any rural exchange in Missouri.

(b) Dedicated, non-switched local exchange private line services on a facilities and resold basis throughout all Missouri exchanges currently served by incumbent local exchange carriers Southwestern Bell Telephone Company ("SWBT"), Sprint/United Telephone Company ("United") and GTE Midwest, Inc. ("GTE"). The SWBT, United and GTE exchanges within which ConnectSouth Missouri proposes to offer service include all exchanges listed in the local exchange tariffs of those companies on file with and approved by the Commission. ConnectSouth Missouri may seek authority to provide this service in other areas of the state in a subsequent proceeding, but at present seeks no authority to provide service in any rural exchange in Missouri; and

(c) Interexchange telecommunications service on a facilities and resold basis throughout the State of Missouri.

4. Pursuant to this application, ConnectSouth Missouri seeks to offer and provide the following forms of telecommunications service:

(a) Basic local telecommunications: Exchange services include, but will not be limited to, access service, flat rate local exchange service, EAS service, toll restrictions, call control options, tone dialing, custom calling services, caller ID number and any other services available from the underlying incumbent local exchange carrier or other certificated carrier within ConnectSouth Missouri's service area both through its own facilities and on a resale basis. ConnectSouth Missouri also intends, either directly or indirectly through arrangements with others, to provide 911 and E911 services, white page directory listings, access to telephone relay services and access to directory assistance;

(b) Dedicated local exchange: ConnectSouth Missouri shall furnish point-to-point dedicated local exchange access services to interexchange and other local exchange carriers, and non-carrier customers; and

(c) Interexchange: Through a combination of its own facilities and through resale, ConnectSouth Missouri will offer interexchange services, including both inbound and outbound intraLATA and interLATA toll services.

Initially, however, ConnectSouth Missouri will provide only Digital Subscriber Line (DSL) telecommunications services to mid-size and small businesses and will deploy xDSL technology to provide high-speed, high-quality data connections.

5. ConnectSouth Missouri possesses the technical and managerial expertise and experience necessary to provide the services it proposes, as evidenced by the document attached hereto and incorporated herein by reference as **Exhibit B, Part I**. In addition, the backgrounds of ConnectSouth Missouri's management, which demonstrate the Company's extensive experience and expertise, are attached hereto and incorporated herein by reference as **Exhibit B, Part II**. ConnectSouth Missouri also possesses the necessary financial resources, as evidenced by the documents attached hereto and incorporated herein by reference as **Exhibit C**. By motion filed herewith, ConnectSouth Missouri seeks a protective order granting proprietary status to the financial information contained in Exhibit C.

6. ConnectSouth Missouri also seeks classification as a competitive telecommunications company and designation of the services which it proposes to offer as competitive telecommunications services.

7. ConnectSouth Missouri will offer basic local telecommunications service as a separate and distinct service in accordance with applicable law. ConnectSouth Missouri will provide service on an equitable and non-discriminatory basis to all Missourians, regardless of where they might reside or their income.

8. ConnectSouth Missouri agrees to comply with all applicable statutes and Commission rules and to meet all relevant service standards related, but not limited to, billing, quality of service and tariff filing and maintenance. Consistent with the Commission's treatment of other certificated competitive local exchange telecommunications companies, ConnectSouth Missouri requests that the following statutes and regulations be waived:

(a) With respect to its proposed provision of basic local telecommunications service, ConnectSouth Missouri requests waiver of the following statutes and regulations:

<u>Statutes</u>	<u>Missouri Public Service Commission Rules</u>
392.210.2	4 CSR 240-10.020
392.270	4 CSR 240-30.040
392.280	4 CSR 240-35
392.290.1	
392.300.2	
392.310	
392.320	
392.330	
392.340	

(b) With respect to its proposed provision of local exchange and interexchange services, ConnectSouth Missouri requests waiver of the following statutes and regulations:

<u>Statutes</u>	<u>Missouri Public Service Commission Rules</u>
392.240(1)	4 CSR 240-10.020
392.270	4 CSR 240-30.010(2)(C)
392.280	4 CSR 240-30.040
392.290	4 CSR 240-32.030(1)(B)
392.310	4 CSR 240-32.030(1)(C)
392.320	4 CSR 240-32.030(2)
392.330	4 CSR 240-32.050(3)-(6)
392.340	4 CSR 240-32.070(4)
	4 CSR 240-33.030
	4 CSR 240-33.040(5)

9. ConnectSouth Missouri further requests a temporary waiver of the tariff filing requirements of 4 CSR 240-2.060(4)(H). This rule requires that an application for a certificate of service authority to provide interexchange, local exchange or basic local exchange service shall include a proposed tariff with a forty-five day effective date. Even though ConnectSouth Missouri intends to provide some of its services through the use of its own facilities, ConnectSouth Missouri

cannot at this time develop tariffs to fully comply with this rule because ConnectSouth Missouri has not yet executed or received Commission approval of any interconnection agreements with incumbent local exchange companies. At such time as all facts necessary for the development of such tariffs are known to ConnectSouth Missouri, it will promptly file said tariffs bearing no less than a 30 day effective date with the Commission in a manner consistent with recent Commission practice in similar cases.

10. No state has ever denied an application for certification by ConnectSouth Missouri or its parent nor has any state ever suspended or revoked certification previously granted to ConnectSouth Communications as iConnect.

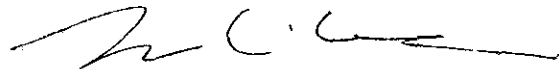
11. ConnectSouth Missouri submits that the public interest will be served by Commission approval of this application because ConnectSouth Missouri's proposed services will create and enhance competition and expand customer service options consistent with the legislative goals set forth in the Federal Telecommunications Act of 1996 and Chapter 392 RSMo. Prompt approval of this application also will expand the availability of innovative, high quality and reliable telecommunications services within the State of Missouri. The grant of a certificate of service authority to ConnectSouth Missouri to provide facilities-based and resold services within Missouri will benefit the public because it will increase competition and customer choice for users of exchange access and local exchange services. By increasing competition, ConnectSouth Missouri's provision of service is expected to improve the price and quality of telephone service in Missouri. Moreover, ConnectSouth Missouri's entry into the market will neither prejudice nor disadvantage any class of telephone customers or providers. To the contrary, the presence of another authorized carrier will provide additional consumer choice, promote competition, lower prices and stimulate development of additional telecommunications services.



The facilities that ConnectSouth Missouri plans to construct in Missouri will also benefit the public. As opportunities for economic growth continue to shift toward information services and technology, the quality of Missouri's communications infrastructure will determine the state's ability to attract and maintain jobs because a modern telecommunications infrastructure attracts industry and lowers production costs.

WHEREFORE, ConnectSouth Missouri respectfully requests that the Commission grant it a certificate of service authority to provide basic local telecommunications services, local exchange telecommunications services, and interexchange telecommunications services as herein requested, classify ConnectSouth Missouri and its proposed services as competitive, grant a waiver of the aforesaid statutes and regulations, and such other relief as the Commission deems reasonable.

Respectfully submitted,



Mark P. Johnson, MO Bar No. 30740  
Lisa C. Creighton, MO Bar No. 42194  
Sonnenschein Nath & Rosenthal  
4520 Main Street, Suite 1100  
Kansas City, Missouri 64111  
(816) 932-4400 (Telephone)  
(816) 531-7545 (Facsimile)

ATTORNEY FOR APPLICANT  
CONNECTSOUTH COMMUNICATIONS  
OF MISSOURI, INC.

Dated: March 20, 2000

VERIFICATION


STATE OF MISSOURI     )  
                                      ) ss.  
COUNTY OF JACKSON    )

COMES NOW Lisa C. Creighton, being of lawful age and duly sworn, swears and affirms as follows:

1. My name is Lisa C. Creighton, and I am the attorney for ConnectSouth Communications of Missouri, Inc. In that capacity I am authorized to verify this Application and the information contained therein on behalf of ConnectSouth Communications of Missouri, Inc.
2. The information contained herein is true and accurate to the best of my knowledge and belief.

  
\_\_\_\_\_  
Lisa C. Creighton

Subscribed and sworn to before me this 20<sup>th</sup> day of March, 2000.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

**CARMEN M. WESSON  
NOTARY PUBLIC STATE OF MISSOURI  
CLAY COUNTY  
MY COMMISSION EXP. MARCH 23, 2000**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 20<sup>th</sup> day of March, 2000, two true and correct copies of the above and foregoing were mailed via Federal Express to:

Office of Public Counsel  
301 West High Street  
Suite 250  
Jefferson City, Missouri 65101

With one copy being forwarded via Federal Express on the same date to:

Office of General Counsel  
Missouri Public Service Commission  
301 West High Street  
Room 530  
Jefferson City, Missouri 65101



---

ATTORNEY FOR APPLICANT  
CONNECTSOUTH COMMUNICATIONS  
OF MISSOURI, INC.

**EXHIBIT A**

**Corporate Documents**

**Articles of Incorporation**

**Certificate of Authority to Conduct Business in Missouri**

State of Delaware  
Office of the Secretary of State

---

PAGE 1

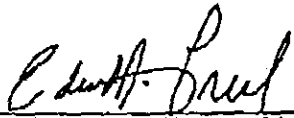
I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "CONNECTSOUTH COMMUNICATIONS OF MISSOURI, INC.", FILED IN THIS OFFICE ON THE TWENTY-EIGHTH DAY OF JANUARY, A.D. 2000, AT 9 O'CLOCK A.M.

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



3167662 8100

001046814

  
Edward J. Freel, Secretary of State

0227033

AUTHENTICATION:

DATE:

01-31-00

**CERTIFICATE OF INCORPORATION  
OF  
CONNECTSOUTH COMMUNICATIONS OF MISSOURI, INC.**

**ARTICLE I**

The name of the Corporation is ConnectSouth Communications of Missouri, Inc.

**ARTICLE II**

The name of the Corporation's registered agent and the address of its registered office in the State of Delaware is Corporation Service Company, 1013 Centre Road, Wilmington, New Castle County, Delaware 19805-1297.

**ARTICLE III**

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

**ARTICLE IV**

The total number of shares of capital stock which the Corporation shall have the authority to issue is one thousand (1,000) shares of Common Stock, \$.01 par value.

**ARTICLE V**

In furtherance and not limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized to alter, amend or repeal the bylaws of the Corporation or to adopt new bylaws.

**ARTICLE VI**

The incorporator is Kevin R. Shook, whose mailing address is 1717 Main Street, Suite 2800, Dallas, Texas 75201.

**ARTICLE VII**

The number of directors constituting the initial Board of Directors is two (2), and the name and address of the persons who are to serve as directors until the first annual meeting of the stockholders or until their respective successors are elected and qualified are:

Name	Address
Jeff Mucci	9600 Great Hills Trail Suite 250 East Austin, Texas 79759
Chris Hugman	9600 Great Hills Trail Suite 250 East Austin, Texas 79759

#### ARTICLE VIII

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

Any repeal or modification of the foregoing paragraph by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

#### ARTICLE IX

A. Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director or officer of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director or officer or in any other capacity while serving as a director or officer, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than permitted prior thereto), against all expense, liability and loss (including, without limitation, attorneys' fees, judgments, fines, excise taxes or penalties and amounts paid or to be paid in settlement) incurred or suffered by such indemnitee in connection therewith and such indemnification shall continue with respect to an indemnitee who has ceased to be a director or

officer and shall inure to the benefit of the indemnitee's heirs, executors and administrators; provided, however, that, except as provided in paragraph (B) hereof with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify any such indemnitee in connection with a proceeding initiated by such indemnitee only if such proceeding was authorized by the Board of Directors of the Corporation. The right to indemnification conferred in this Article IX shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition (hereinafter an "advancement of expenses"); provided, however, that, if the Delaware General Corporation Law requires, an advancement of expenses incurred by an indemnitee shall be made only upon delivery to the Corporation of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this Article or otherwise.

B. **Right of Indemnitee to Bring Suit.** If a claim under paragraph (A) of this Article is not paid in full by the Corporation within sixty days after a written claim has been received by the Corporation (except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty days), the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, the indemnitee shall also be entitled to be paid the expense of prosecuting or defending such suit. In (i) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (ii) in any suit by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that the indemnitee has not met the applicable standard of conduct set forth in the Delaware General Corporation Law. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder or by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled under this Article or otherwise to be indemnified, or to such advancement of expenses, shall be on the Corporation.

C. **Non-Exclusivity of Rights.** The rights to indemnification and to the advancement of expenses conferred in this Article IX shall not be exclusive of any other right which any person may have or hereafter acquire under this Certificate of Incorporation or any bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

D. **Insurance.** The Corporation may maintain insurance, at its expense, to protect itself and any indemnitee against any expense, liability or loss, whether or not the Corporation would have



the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.

E. Indemnity of Employees and Agents of the Corporation. The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Article IX or as otherwise permitted under the Delaware General Corporation Law with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

#### ARTICLE X

No stockholder of the Corporation shall by reason of his holding shares of any class of its capital stock have any preemptive or preferential right to purchase or subscribe for any shares of any class of the Corporation, now or hereafter to be authorized, or any notes, debentures, bonds or other securities convertible into or carrying warrants, rights or options to purchase shares of any class or any other security, now or hereafter to be authorized, whether or not the issuance of any such shares or such notes, debentures, bonds or other securities would adversely affect the dividend, voting or any other rights of such stockholder, and the Board of Directors may issue shares of any class of the Corporation, or any notes, debentures, bonds or other securities convertible into or carrying warrants, rights or options to purchase shares of any class, without offering any such shares of any class, either in whole or in part, to the existing holders of any class of stock of the Corporation.

#### ARTICLE XI

Cumulative voting for the election of Directors shall not be permitted.

IN WITNESS WHEREOF, the undersigned incorporator of the Corporation hereby certifies that the facts herein stated are true, and accordingly has signed this instrument this 28th day of January, 2000.

/s/ Kevin R. Shook  
Kevin R. Shook  
Incorporator

BYLAWS  
OF  
CONNECTSOUTH COMMUNICATIONS OF MISSOURI, INC.

ARTICLE I

Offices

Section 1. Registered Office. The registered office of the corporation shall be in the City of Wilmington, County of New Castle, State of Delaware.

Section 2. Other Offices. The corporation may also have offices at such other places, both within and without the State of Delaware, as the Board of Directors may from time to time determine or as the business of the corporation may require.

ARTICLE II

Meetings of Stockholders

Section 1. Place of Meetings. Meetings of stockholders may be held at such time and place, within or without the State of Delaware, as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof.

Section 2. Annual Meetings. An annual meeting of stockholders shall be held on such day in each fiscal year of the corporation and at such time and place as may be fixed by the Board of Directors, at which meeting the stockholders shall elect a Board of Directors and transact such other business as may properly be brought before the meeting.

Section 3. Notice of Annual Meeting. Written or printed notice of the annual meeting, stating the place, day and hour thereof, shall be given to each stockholder entitled to vote thereat at such address as appears on the books of the corporation, not less than ten days nor more than sixty days before the date of the meeting.

Section 4. Special Meetings. Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by statute or the certificate of incorporation, may be called by the President, and shall be called by the President or the Secretary at the request in writing of a majority of the Board of Directors, or at the request in writing of stockholders of record owning at least one-tenth (1/10) of all shares issued and outstanding and entitled to vote at such meeting. Such request shall state the purpose or purposes of the proposed meeting.

Section 5. Notice of Special Meetings. Written or printed notice of a special meeting of stockholders, stating the place, day and hour and purpose or purposes thereof, shall be given to

each stockholder entitled to vote thereat at such address as appears on the books of the corporation, not less than ten days nor more than sixty days before the date of the meeting.

Section 6. Business at Special Meetings. Business transacted at all special meetings of stockholders shall be confined to the purpose or purposes stated in the notice thereof.

Section 7. Stockholder List. At least ten days before each meeting of stockholders, a complete list of the stockholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the number of voting shares held by each, shall be prepared by the Secretary. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for such ten day period, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any stockholder during the meeting.

Section 8. Quorum. The holders of a majority of the votes attributed to the shares of capital stock issued and outstanding and entitled to vote thereat, represented in person or by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute, the certificate of incorporation or these bylaws. The stockholders present may adjourn the meeting despite the absence of a quorum. When a meeting is adjourned for less than thirty days in any one adjournment and a new record date is not fixed for the adjourned meeting, it shall not be necessary to give any notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken, and at the adjourned meeting any business may be transacted that might have been transacted on the original date of the meeting. When a meeting is adjourned for thirty days or more, or when after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given as in the case of an original meeting.

Section 9. Majority Vote. When a quorum is present at any meeting, the vote of the holders of a majority of the shares having voting power represented in person or by proxy shall decide any question brought before such meeting, unless the question is one upon which, by express provision of statute, the certificate of incorporation or these bylaws, a different vote is required, in which case such express provision shall govern and control the decision of such question.

Section 10. Proxies. (a) Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period.

(b) Without limiting the manner in which a stockholder may authorize another person or persons to act for him as proxy pursuant to subsection (a) of this Section, the following shall constitute a valid means by which a stockholder may grant such authority:

(i) A stockholder may execute a writing authorizing another person or persons to act for him as proxy. Execution may be accomplished by the stockholder or his authorized officer, director, employee or agent signing such writing or causing his or her signature to be affixed to such writing by any reasonable means including, but not limited to, by facsimile signature.

(ii) A stockholder may authorize another person or persons to act for him as proxy by transmitting or authorizing the transmission of a telegram, cablegram, or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which it can be determined that the telegram, cablegram or other electronic transmission was authorized by the stockholder. If it is determined that such telegrams, cablegrams or other electronic transmissions are valid, the inspectors or, if there are no inspectors, such other persons making that determination shall specify the information upon which they relied.

(c) Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to subsection (b) of this Section may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

(d) Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to subsection (b) of this Section may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

Section 11. Voting. Unless otherwise provided by statute or the certificate of incorporation, each stockholder shall have one vote for each share of stock having voting power, registered in his name on the books of the corporation.

Section 12. Consent of Stockholders in Lieu of Meeting. Any action required to be taken at any annual or special meeting of stockholders, or any action which may be taken at any annual or special meeting of stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and such consent or consents are delivered to the corporation. Every written consent shall bear the date of signatures of each stockholder and no written consent shall be effective to take the corporate action referred to therein unless, within

sixty days of the earliest dated consent, written consents signed by a sufficient number of holders to take action are delivered to the corporation. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

Section 13. Inspectors. (a) The corporation shall, in advance of any meeting of stockholders, appoint one or more inspectors to act at the meeting and make a written report thereof. The corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his ability.

(b) The inspectors shall (i) ascertain the number of shares outstanding and the voting power of each, (ii) determine the shares represented at a meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares represented at the meeting, and their count of all votes and ballots. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors.

(c) The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting. No ballot, proxies or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the polls unless the Delaware Court of Chancery, upon application by a stockholder, shall determine otherwise.

(d) In determining the validity and counting of proxies and ballots, the inspectors shall be limited to an examination of the proxies, any envelopes submitted with those proxies, any information provided in accordance with Article II, Section 10(b)(ii), ballots and the regular books and records of the corporation, except that the inspectors may consider other reliable information for the limited purpose of reconciling proxies and ballots submitted by or on behalf of banks, brokers, their nominees or similar persons that represent more votes than the holder of a proxy is authorized by the record owner to cast, or more votes than the stockholder holds of record. If the inspectors consider other reliable information for the limited purpose permitted herein, the inspectors at the time they make their certification pursuant to subsection (b)(v) of this Section shall specify the precise information considered by them including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained and the basis for the inspector's belief that such information is accurate and reliable.

## ARTICLE III

### Board of Directors

Section 1. Powers. The business and affairs of the corporation shall be managed by a Board of Directors. The Board may exercise all such powers of the corporation and do all such lawful acts and things as are not by statute, by the certificate of incorporation or these bylaws directed or required to be exercised or done by the stockholders.

Section 2. Number of Directors. The number of directors which shall constitute the whole Board shall be fixed from time to time by resolution of the Board of Directors, provided that such number shall not be less than one (1) nor more than five (5).

Section 3. Election and Term. Except as provided in Section 4 of this Article III, directors shall be elected at the annual meeting of the stockholders, and each director shall be elected to serve until the next annual meeting and until his successor shall have been elected and shall qualify, or until his death, resignation or removal from office. Directors need not be stockholders of the corporation.

Section 4. Vacancies and Newly Created Directorships. If the office of any director or directors becomes vacant by reason of death, resignation, retirement, disqualification, removal from office, or otherwise, or the number of directors constituting the whole Board shall be increased, a majority of the remaining or existing directors, though less than a quorum, may choose a successor or successors, or the director or directors to fill the new directorship or directorships, who shall hold office for the unexpired term in respect to which such vacancy occurred or, in the case of a new directorship or directorships, until the next annual meeting of the stockholders.

Section 5. Removal. The stockholders may remove a director either for or without cause at any meeting of stockholders, provided notice of the intention to act upon such matter shall have been given in the notice calling such meeting.

## ARTICLE IV

### Meetings of the Board

Section 1. First Meeting. The first meeting of each newly elected Board of Directors shall be held at the location of and immediately following the annual meeting of stockholders, and no notice of such meeting shall be necessary to the newly elected directors in order legally to constitute the meeting, provided a quorum shall be present; or the Board may meet at such place and time as shall be fixed by the consent in writing of all the directors. All meetings of the Board of Directors may be held at such place, either within or without the State of Delaware, as from time to time shall be determined by the Board of Directors.

Section 2. Regular Meetings. Regular meetings of the Board may be held at such time and place and on such notice, if any, as shall be determined from time to time by the Board.

Section 3. Special Meetings. Special meetings of the Board may be called by the President or the Chairman of the Board on twenty-four hours' notice to each director, delivered either personally or by mail or by telegram or telecopier. Special meetings shall be called by the President or the Secretary in like manner and on like notice on the written request of one director.

Section 4. Quorum and Voting. At all meetings of the Board, a majority of the directors at the time in office shall be necessary and sufficient to constitute a quorum for the transaction of business; and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute, the certificate of incorporation or these bylaws. If a quorum shall not be present at any meeting of directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 5. Telephone Meetings. Directors may attend any meeting of the Board or any committee thereof by conference telephone, radio, television or similar means of communication by means of which all persons participating in the meeting can hear each other, and all members so attending shall be deemed present at the meeting for all purposes including the determination of whether a quorum is present.

Section 6. Action by Written Consent. Any action required or permitted to be taken by the Board or any committee thereof, under the applicable provisions of any statute, the certificate of incorporation, or these bylaws, may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all the members of the Board or committee, as the case may be.

## ARTICLE V

### Committees

Section 1. Executive Committee. The Board of Directors, by resolution adopted by a majority of the whole Board, may designate one or more directors to constitute an Executive Committee, which Committee, to the extent provided in such resolution, shall have and may exercise all of the authority of the Board of Directors in the business and affairs of the corporation except where action by the Board of Directors is expressly required by statute. The Executive Committee shall keep regular minutes of its proceedings and report the same to the Board when required.

Section 2. Other Committees. The Board of Directors may similarly create other committees for such terms and with such powers and duties as the Board deems appropriate.

Section 3. Committee Rules; Quorum. Each committee may adopt rules governing the method of calling and time and place of holding its meetings. Unless otherwise provided by the Board of Directors, a majority of any committee shall constitute a quorum for the transaction of business, and the act of a majority of the members of such committee present at a meeting at which a quorum is present shall be the act of such committee.

## ARTICLE VI

### Compensation of Directors

The Board of Directors shall have authority to determine, from time to time, the amount of compensation, if any, which shall be paid to its members for their services as directors and as members of committees. The Board shall also have power in its discretion to provide for and to pay to directors rendering services to the corporation not ordinarily rendered by directors as such, special compensation appropriate to the value of such services as determined by the Board from time to time. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity and receiving compensation therefor.

## ARTICLE VII

### Notices

Section 1. Methods of Notice. Whenever any notice is required to be given to any stockholder, director or committee member under the provisions of any statute, the certificate of incorporation or these bylaws, such notice shall be delivered personally or shall be given in writing by mail addressed to such stockholder, director or committee member at such address as appears on the books of the corporation, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail with postage thereon prepaid. Notice to directors and committee members may also be given by telegram, which notice shall be deemed to be given at the time it is delivered to the telegraph office, or by telecopy, which notice shall be deemed to be given at the time it is transmitted or in person, which notice shall be deemed to be given when received.

Section 2. Waiver of Notice. Whenever any notice is required to be given to any stockholder, director or committee member under the provisions of any statute, the certificate of incorporation or these bylaws, a waiver thereof in writing signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Attendance at any meeting shall constitute a waiver of notice thereof except as otherwise provided by statute.



## ARTICLE VIII

### Officers

Section 1. Executive Officers. The executive officers of the corporation shall consist of at least a President and a Secretary, each of whom shall be elected by the Board of Directors. The Board of Directors may also elect as officers of the corporation a Chairman of the Board, one or more Vice Presidents, one or more of whom may be designated Executive or Senior Vice Presidents and may also have such descriptive titles as the Board shall deem appropriate, and a Treasurer. Any two or more offices may be held by the same person.

Section 2. Election and Qualification. The Board of Directors at its first meeting after each annual meeting of stockholders shall elect the officers of the corporation.

Section 3. Other Officers and Agents. The Board may elect or appoint Assistant Vice Presidents, Assistant Secretaries and Assistant Treasurers, and such other officers and agents as it shall deem necessary, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors.

Section 4. Salaries. The salaries of all officers of the corporation shall be fixed by the Board of Directors except as otherwise directed by the Board.

Section 5. Term, Removal and Vacancies. The officers of the corporation shall hold office until their successors are chosen and qualify. Any officer or agent of the corporation may be removed at any time by the affirmative vote of a majority of the Board of Directors, or by the President. Any vacancy occurring in any office of the corporation may be filled by the Board of Directors or otherwise as provided in this Article.

Section 6. Execution of Instruments. The Chairman of the Board and the President (and such other officers as are authorized thereunto by resolution of the Board of Directors) may execute in the name of the corporation bonds, notes, debentures and other evidences of indebtedness, stock certificates, deeds, mortgages, deeds of trust, indentures, contracts, leases, agreements and other instruments, requiring a seal under the seal of the corporation, and may execute such documents where not requiring a seal, except where such documents are required by law to be otherwise signed and executed, and except where the signing and execution thereof shall be exclusively delegated to some other officer or agent of the corporation.

Section 7. Duties of Officers. The duties and powers of the officers of the corporation shall be as provided in these bylaws, or as provided for pursuant to these bylaws, or (except to the extent inconsistent with these bylaws or with any provision made pursuant hereto) shall be those customarily exercised by corporate officers holding such offices.

Section 8. Chairman of the Board. The Chairman of the Board shall preside when present at all meetings of the Board of Directors. He shall advise and counsel the other officers of the corporation and shall exercise such powers and perform such duties as shall be assigned to

or required of him from time to time by the Board of Directors. The Chairman of the Board may, if so designated by the Board of Directors, be the Chief Executive Officer of the corporation; in such event he shall have all of the powers granted by the bylaws to the President and from time to time may delegate all, or any, of his powers and duties to the President.

**Section 9. President.** The President shall preside at all meetings of the stockholders and shall be ex-officio a member of all standing committees, have general powers of oversight, supervision and management of the business and affairs of the corporation, and see that all orders and resolutions of the Board of Directors are carried into effect.

In the event another executive officer has been designated Chief Executive Officer of the corporation by the Board of Directors, then (i) such other executive officer shall have all of the powers granted by the bylaws to the President; and (ii) the President shall, subject to the powers of supervision and control thereby conferred upon the Chief Executive Officer, be the chief operating officer of the corporation and shall have all necessary powers to discharge such responsibility including general supervision of the affairs of the corporation and general and active control of all of its business.

The President shall perform all the duties and have all the powers of the Chairman of the Board in the absence of the Chairman of the Board.

**Section 10. Vice Presidents.** The Vice Presidents in the order determined by the Board of Directors shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform such other duties as the Board of Directors, the Chairman of the Board and the President may prescribe.

**Section 11. Secretary.** The Secretary shall attend all meetings of the Board of Directors and all meetings of the stockholders and record all votes and the minutes of all proceedings in a book to be kept for that purpose and shall perform like duties for the committees of the Board of Directors when required. Except as may be otherwise provided in these bylaws, he shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors and the President. He shall keep in safe custody the seal of the corporation, if any, and shall have authority to affix the same to any instrument requiring it, and when so affixed it may be attested by his signature. The Board of Directors may give general authority to any other officer to affix the seal of the corporation and to attest the affixing by his signature. In the absence of the Treasurer and all Assistant Treasurers, the Secretary shall perform all the duties and have all the powers of the Treasurer.

**Section 12. Assistant Secretaries.** The Assistant Secretaries in the order determined by the Board of Directors shall, in the absence or disability of the Secretary, perform the duties and exercise the powers of the Secretary and shall perform such other duties as the Board of Directors, the Chairman of the Board and President may prescribe. Assistant secretaries may be appointed by the president without prior approval of the board of directors.

Section 13. Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all monies and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the Board of Directors. He shall disburse the funds of the corporation as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the Board of Directors, the Chairman of the Board and the President, whenever they may require it, an account of all of his transactions as Treasurer and of the financial condition of the corporation.

Section 14. Assistant Treasurers. The Assistant Treasurers in the order determined by the Board of Directors shall, in the absence or disability of the Treasurer, perform the duties and exercise the powers of the Treasurer and shall perform such other duties as the Board of Directors, the Chairman of the Board and the President may prescribe.

## ARTICLE IX

### Shares and Stockholders

Section 1. Certificates Representing Shares. Every holder of stock in the corporation shall be entitled to have a certificate, signed by, or in the name of the corporation by, the Chairman or Vice Chairman of the Board of Directors, or the President or a Vice President and the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the corporation, certifying the number of shares owned by him in the corporation. The signature of any such officer may be facsimile. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of its issuance. If the corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided in Section 202 of the General Corporation Law of the State of Delaware, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the corporation shall issue to represent such class or series of stock a statement that the corporation will furnish without charge to each stockholder who so requests the designations, preferences and relative, participating, optional or other special rights of each class or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Section 2. Transfer of Shares. Subject to valid transfer restrictions and to stop-transfer orders directed in good faith by the corporation to any transfer agent to prevent possible violations of federal or state securities laws, rules or regulations, or for any other lawful purpose, upon surrender to the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the

corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

### Section 3. Fixing Record Date.

(a) In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty nor less than ten days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the date on which notice is given, or, if notice is waived, at the close of business on the date next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by this Section, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by statute, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(c) In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to receive any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 4. Registered Stockholders. The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of any share or shares to receive dividends, and to vote as such owner, and for all other purposes as such owner; and the corporation shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Delaware.

Section 5. Lost Certificates. The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require and/or give the corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

## ARTICLE X

### Indemnification

(a) The corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) The corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a

manner he reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

(c) To the extent that a director or officer of the corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b), or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(d) Any indemnification under subsections (a) and (b) (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director or officer is proper in the circumstances because he has met the applicable standard of conduct set forth in subsections (a) and (b). Such determination shall be made (1) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit, or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by the stockholders.

(e) Expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the director or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the corporation as authorized in this Article X. Such expenses incurred by other employees or agents may be so paid upon such terms and conditions, if any, as the Board of Directors deems appropriate.

(f) The indemnification and advancement of expenses provided by, or granted pursuant to, the other subsections of this Article X shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the Certificate of Incorporation, any agreement or vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

(g) The corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this Article X.

(h) For purposes of this Article X, references to "the corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article X with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(i) For purposes of this Article X, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to "serving at the request of the corporation" shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this Article X.

(j) The indemnification and advancement of expenses provided by, or granted pursuant to, this Article X shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

## ARTICLE XI

### General

Section 1. Dividends. Dividends upon the capital stock of the corporation, subject to the provisions of the certificate of incorporation, if any, or of the resolutions, if any, providing for any series of stock, may be declared by the Board of Directors at any meeting thereof, or by the Executive Committee at any meeting thereof. Dividends may be paid in cash, in property or in shares of the capital stock of the corporation, subject to the provisions of the certificate of incorporation or of the resolutions, if any, providing for any series of stock.

Section 2. Reserves. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, deem proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose or purposes as the directors shall think conducive to the interests of the corporation, and the directors may modify or abolish any such reserve in the manner in which it was created.

Section 3. Shares of Other Corporations. The Chairman of the Board, the President and any Vice President is authorized to vote, represent and exercise on behalf of the corporation all rights incident to any and all shares of any other corporation or other entity standing in the name of the corporation. The authority herein granted to said officer may be exercised either by said officer in person or by any person authorized so to do by proxy or power of attorney duly executed by said officer. Notwithstanding the above, however, the Board of Directors, in its discretion, may designate by resolution any additional person to vote or represent said shares of other corporations and other entities.

Section 4. Checks. All checks, drafts, bills of exchange or demands for money of the corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 5. Corporate Records. The corporation shall keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, a record of its stockholders giving the names and addresses of all stockholders and the number and class and series, if any, of shares held by each. All other books and records of the corporation may be kept at such place or places within or without the State of Delaware as the Board of Directors may from time to time determine.

Section 6. Fiscal Year. The fiscal year of the corporation shall be fixed by the Board of Directors; if not so fixed, it shall be the calendar year.

## ARTICLE XII

### Amendments

These bylaws may be altered, amended or repealed or new bylaws may be adopted at any annual meeting of the stockholders or at any special meeting of the stockholders at which a quorum is present or represented, by the affirmative vote of the holders of a majority of the shares entitled to vote at such meeting and present or represented thereat, or by the affirmative vote of a majority of the whole Board of Directors at any regular meeting of the Board or at any special meeting of the Board, provided notice of the proposed alteration, amendment or repeal or the adoption of new bylaws is set forth in the notice of such meeting.



No. F00480415

# STATE OF MISSOURI



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

## CORPORATION DIVISION - CERTIFICATE OF AUTHORITY

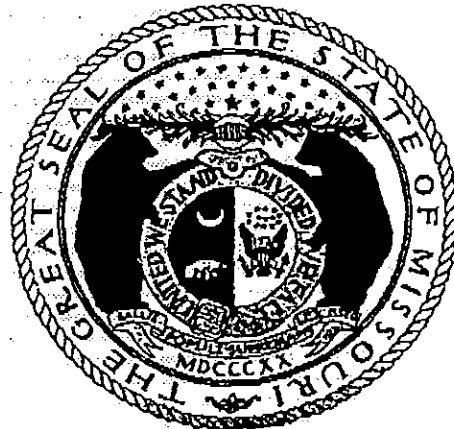
WHEREAS,  
CONNECTSOUTH COMMUNICATIONS OF MISSOURI, INC.

using in Missouri the name  
CONNECTSOUTH COMMUNICATIONS OF MISSOURI, 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 24th day of FEBRUARY, 2000.



*Rebecca McDowell Cook*  
Secretary of State

\$155.00



State of Missouri  
Rebecca McDowell Cook, Secretary of State

Corporations Division  
P.O. Box 778, Jefferson City, MO 65102

James C. Kirkpatrick State Information Center  
600 W. Main Street, Rm 322, Jefferson City, MO 65101

Application for Certificate of Authority  
For a Foreign For-Profit Corporation  
(Submit in duplicate with filing fee of \$155.00)

FILED  
AND CERTIFICATE OF  
AUTHORITY ISSUED

1. The corporation's name is ConnectSouth Communications of Missouri, Inc. and it is organized and existing under the laws of Delaware FEB 24 2000
2. The name it will use in Missouri is Rebecca McDowell Cook
3. The date of its incorporation was January 28, 2000 and the period of its duration is perpetual  
month/day/year
4. The address of its principal place of business 1013 Centre Rd., Wilmington, DE 19805  
Address City/State/Zip
5. The name and address of its registered agent and office in the State of Missouri is  
Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company  
221 Bollivar Street, Jefferson City, Missouri 65101  
Name Address City/State/Zip
6. The specific purpose(s) of its business in Missouri are:  
Telecommunication Services.
7. The name of its officers and directors and their business addresses are as follows:
- | (Officers)     | Name         | Address                                      | City/State/Zip |
|----------------|--------------|--|----------------|
| President      | Jeff Mucci   | 9600 Great Hills Trails, #250 E., Austin, TX | 78759          |
| Vice President | Chris Hugman | 9600 Great Hills Trails, #250 E., Austin, TX | 78759          |
| Secretary      | Chris Hugman | 9600 Great Hills Trails, #250 E., Austin, TX | 78759          |
| Treasurer      | Chris Hugman | 9600 Great Hills Trails, #250 E., Austin, TX | 78759          |
- (Board of Directors) See attached officers/directors rider
- | Director | Name         | Address                                      | City/State/Zip |
|----------|--------------|--|----------------|
| Director | Jeff Mucci   | 9600 Great Hills Trails, #250 E., Austin, TX | 78759          |
| Director | Chris Hugman | 9600 Great Hills Trails, #250 E., Austin, TX | 78759          |
| 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.

Chris Hugman Vice President Feb. 11, 2000  
(Authorized Signature) (Printed Name) (Title) (Date)

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

## **EXHIBIT B**

### **Technical Abilities and Managerial Resources**

## **EXHIBIT B**

### **Part I**

#### **TECHNICAL ABILITIES**

ConnectSouth Missouri possesses the technical qualifications to provide facilities-based and resold local exchange and exchange access services in Missouri. By leveraging prior working relationships within the ranks of Brooks Fiber, MFS/Worldcom, Williams Company, and Cisco, ConnectSouth has assembled a diverse and experienced operational team well-versed in the design, construction, and operation of data and voice networks that have brought competition to the telecommunications marketplace, including local telecommunications service. This exceptional operational group is coupled with a proven unbundled network element provisioning management tier which will allow ConnectSouth to rapidly execute its business plan. Finally, ConnectSouth has recruited an aggressive senior sales and marketing team with a proven track record of selling and marketing services.

ConnectSouth is currently certificated to provide local service as iConnect in Mississippi and Texas and has applications pending in Alabama, Louisiana and Oklahoma. Additionally, ConnectSouth soon will file applications in Florida, Georgia, Kentucky, North Carolina, South Carolina, and Tennessee.

Because the ConnectSouth management team recognizes the importance of customer service as a component of providing telecommunications services, ConnectSouth has a toll-free customer service number, 800-378-1360, which customers can call to receive prompt service 24 hours a day, 7 days a week. ConnectSouth will process all complaints through its customer service organization, which can be reached by phone, fax, email, regular mail or in person. Each customer complaint received anywhere within ConnectSouth's organization will be recorded for tracking and trend analysis purposes. An analysis of each complaint will be performed to determine the appropriate short- and long-term action. In order to determine the appropriate action, each complaint will be investigated for a determination of whether or not the complaint is an isolated incident or indicative of a systemic problem.

In all cases, each complaint will be answered within a reasonable time by ConnectSouth personnel. Each complaint will be tracked and the customer will be kept informed until a satisfactory resolution is obtained. ConnectSouth staff will be available at all times to immediately address technical problems as they arise.

**EXHIBIT B**  
**Part II**

**MANAGERIAL RESOURCES**

ConnectSouth has the technical and management qualifications to provide the proposed telecommunications services in its proposed service territory. The necessary technical and managerial expertise is available to ConnectSouth through its existing management team. More specifically, ConnectSouth's technical and managerial qualifications are demonstrated by the professional backgrounds of the following key members of its executive staff.

**Jeff Mucci**

**Chief Executive Officer/President/Director**

From the period of December 1997 up until the October 1999 formation of iConnect Corp., Mr. Mucci had served as co-founder, President/COO and Board member of LEC Unwired, LLC. Mr. Mucci was central in the initiation and oversight relative to the deployment of US Unwired's start-up CLEC and internet business plan. As President, Mr. Mucci not only developed LEC Unwired's business plan, but secured \$24 million private debt/equity financing with commitments for an additional \$100 million, negotiated interconnection/collocation agreements with both BellSouth and Southwestern Bell Telephone, and recruited experienced sales, marketing, operations, and engineering management personnel. By the time Mr. Mucci departed LEC Unwired, he had matured the company to a staff in excess of 100 employees, facilities-based local service in three markets, internet access in seven markets and an annualized revenue-run rate in excess of \$ 6.0 million (improving from nearly \$ zero in less than nine months.)

To meet the growing business needs for dedicated internet access at an affordable price point, Mr. Mucci during the six months prior to the iConnect formation, had evaluated DSL vendors and had begun deployment of DSL equipment in twenty (20) central offices in Louisiana.

Immediately prior to his tenure at LEC Unwired, LLC. Mr. Mucci was Vice President of Sales - Eastern Region with Advanced Radio Telecom ("ART") where he was responsible for developing the carrier market (ILEC, IXC, CLEC, ISP, cable companies and large end users) for broadband wireless networks. Before joining ART, Mr. Mucci was employed by Metropolitan Fiber Systems (MFS) where he held various managerial positions in sales, marketing, and business development including director of the shared-tenant business unit which offered local, long distance, and internet service in fourteen (14) cities nationwide.

Mr. Mucci received a B.S. in Financial Management from Clemson University in 1985.

**Christopher E. Hugman****VP Operations and General Manager**

Before the October 1999 formation of iConnect, Mr. Hugman was Vice President and General Manager of Prime Telecom in Washington, DC. Mr. Hugman's duties and responsibilities at Prime Telecom included the development and implementation of that company's plan to deploy CLEC/Internet services in the National Capital area using CATV infrastructure. His area of oversight included all phases of regulatory, engineering, operations, sales and marketing. In the course of formulating the Prime Telecom operational plan, Mr. Hugman developed advanced ATM/IP network architecture as well as an OSS architecture supporting the operation, and conducted vendor evaluation and selection process for the required systems.

Prior to joining Prime Telecom, Mr. Hugman was with Brooks Fiber Properties as General Manager in Oklahoma City as well as Director of Engineering for the south-central region. During his tenure at Brooks, he successfully built the company's Oklahoma City operations into one of the top three producing offices in the forty-city Brooks Network. The Oklahoma City network would serve as a model for new projects and would be comprised of more than 75 employees, 150 miles of fiber and a Lucent 5ESS switch. As Director of Engineering, Mr. Hugman established and directed a 20-person staff responsible for the engineering, design, policy, procedure, budgeting and capacity management for the south-central region which would eventually encompass the markets of Oklahoma City, Tulsa, Little Rock, Springfield and Jackson, MS. In both positions, Mr. Hugman was heavily involved with the ILEC on interconnection, operational and regulatory related matters.

Prior to joining Brooks Fiber in 1994, Mr. Hugman held various management and staff positions with both Wiltel and Southwestern Bell in regulatory, local access planning, sales, sales support and network engineering. Mr. Hugman graduated from Southern Methodist University with a BS in Electrical Engineering and a subsequent Masters of Business Administration.

**Olin Kropog****VP/General Manager - Gulf States**

Mr. Kropog has worked closely with Senior Management up until the inception of iConnect and is currently serving as iConnect's Vice President and General Manager for the Gulf State region which will eventually include Louisiana, Alabama, Mississippi, and portions of Florida and Tennessee. Mr. Kropog is responsible for developing and leading direct and indirect sales channels as well as insuring the timely collocation installation and network construction. Additionally, Mr. Kropog has brought to the company additional expertise in the development and management of internet and web marketing programs along with creating the type of product innovations advantageous to small to medium sized business enterprises.

Prior to joining iConnect, Mr. Kropog served as Director of Sales for Petrocom Communications, an offshore cellular provider seeking to leverage existing switching and fiber facilities into a Gulf State regional CLEC/Internet Strategy. In this capacity, Mr. Kropog was responsible for developing the business plan and participated in financing presentations. Immediately preceding his recruitment to Petrocom, Mr. Kropog was SVP Sales and Marketing for American Metrocom, a start-up CLEC/Internet Company based in New Orleans and Branch General Manager for MCI responsible for all Louisiana markets.

Additionally, Mr. Kropog has more than 10 years experience working extensively throughout Bell South's nine state region in various director and management level sales positions within Bell South's Federal, National and Major Accounts divisions. Mr. Kropog is a native of New Orleans with an MBA from Loyola School of Business and a BS in Physical Education and Math from Southern Louisiana University.

**Dan Cobb**

**Western Region Vice President of Sales**

Over the past six years, Mr. Cobb has held sales and sales management positions in various Texas, Oklahoma and Missouri markets with MCI Worldcom, Brooks Fiber, Wiltel and MCI. Mr. Cobb demonstrated his leadership skills by being the number one sales representative and the number four sales manager in the Brooks Fiber Organization during 1997 and 1998. Immediately prior to joining the iConnect team, Mr. Cobb was a Sales Manager for Worldcom's Telecom group in Ft. Worth where he was responsible for driving monthly sales revenue for the following MCI Worldcom product lines: (a) Competitive Access Services, (b) IXC private line, (c) frame relay, (d) ATM, (e) collocation and (f) internet Services. Mr. Cobb was a regular member of the elite sales recognition programs within each of the above-mentioned companies. Mr. Cobb holds a BS in Accounting from Oklahoma State University.

**Mark Harrison**

**Director - Project Management**

Mr. Harrison brings to iConnect a strong project management and operations background. Prior to joining iConnect, Mr. Harrison held the position of Local Operations Manager for MCI Worldcom in Oklahoma City with responsibility for all service operations, maintenance and network implementation on that company's local service network. Mr. Harrison had previously served MCI as its Oklahoma City region's Network Implementation Manager with responsibility for deployment network equipment and fiber optics in customer locations, collocations with the ILEC and CLEC central offices.

Before his tenure at MCI, Mr. Harrison specialized in outside plant construction management for Brooks Fiber Properties and Multimedia Cablevision. While working for Brooks, he supervised the implementation of more than 150 route miles of fiber optic network, the largest newly constructed network within the Brooks organization at that time.

**Eric Adler**

**Regional Engineering**

Mr. Adler brings both a broad knowledge of telecommunications engineering and experience in ILEC relations to iConnect. Formerly with Logix Communication, Mr. Adler was responsible for all engineering matters concerning the entire Logix network, including both switched and transport services. As Manager of Switched Engineering for Brooks Fiber in the south-central region, he and his team managed all switch engineering and trunking activity with the corresponding ILEC for five Brooks Fiber networks. Mr. Adler's previous experience includes a broad array of engineering assignments while serving with ACRS, a telecommunications engineering company. Mr. Adler holds a BSEE and an MSEE from the University of Oklahoma.

**Steve Dyer****Provisioning Manager**

Mr. Dyer offers iConnect the unique experience of having developed provisioning processes for two separate startup CLECs. For Brooks Fiber, Mr. Dyer handled all provisioning activity in Oklahoma City and developed the necessary procedures and processes to insure smooth and timely service implementations. More recently with Logix Communications, Mr. Dyer served as Manager of Provisioning, again charged with the design of the necessary process flow to support a broad suite of voice and data services. Mr. Dyer has also served in a variety of other capacities within the CLEC environment including Dispatch Technician, Network Technician, and Network Planning Engineer.



**EXHIBIT C**

**Financial Ability**

**CONTAINS HIGHLY CONFIDENTIAL INFORMATION  
AND IS BEING FILED UNDER SEAL**