

Sharon O. Jacobs
615.251.6745
sjacobs@wyattfirm.com

October 3, 2000

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EXECUTIVE SECRETARY

Mr. K. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

00-0086

**Re: Application of Z-Tel Communications, Inc. for Amended Authority
to Provide Facilities Based Local Exchange Telecommunications Services**


Dear Mr. Waddell:

Enclosed, please find for filing, the Application of Z-Tel Communications for Amended Authority, as referenced above, along with 13 additional copies as required by the Tennessee Regulatory Authority.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact either me or Knox Walkup at (615) 244-0020.

Respectfully submitted,

WYATT, TARRANT & COMBS, LLP

By: 
Sharon O. Jacobs

POSTED
10-3-00

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NOV 3 PM

OFFICE OF THE
EXECUTIVE SECRETARY

In the Matter of)
Z-Tel Communications, Inc.)
For a Certificate to Provide Competing)
Local Exchange Telecommunications Services)

TRA Docket No.

20-00861

**APPLICATION FOR AMENDED AUTHORITY TO PROVIDE FACILITIES-BASED LOCAL
EXCHANGE TELECOMMUNICATIONS SERVICES**

Pursuant to applicable Tennessee Statutes and the Rules and regulations of the Tennessee Regulatory Authority and Section 253 of the Federal Telecommunications Act of 1996 ("Act"), Z-Tel Communications, Inc. ("Z-Tel" or "Applicant") respectfully requests that the Tennessee Regulatory Authority ("TRA") grant Z-Tel amended authority to provide facilities-based local exchange telecommunications services, including exchange access telecommunications services, within the State of Tennessee. Z-Tel was previously granted authority to provide resold local exchange and interexchange services on September 15, 1998 in Docket No. 98-00410.

In support of its Application, Z-Tel submits the following:

I. Administrative Requirements

- A. Z-Tel is willing and able to comply with all applicable rules and regulations in Tennessee pertaining to the provision of competing local telecommunications services.
- B. Corporate name of service provider:

Z-Tel Communications, Inc.

C. Corporate address of service provider:

601 South Harbour Island Boulevard, Suite 220
Tampa, Florida 33602
Telephone: 813-233-4611
Facsimile: 813-233-4620

All correspondence, notices, inquiries, and other communications regarding this Petition should be addressed to:

Knox Walkup
Sharon O. Jacobs
Wyatt, Tarrant & Combs
2525 West End Avenue, Suite 1500
Nashville, TN 37203
Telephone: 615-251-6713
Facsimile: 615-244-0020

Contact name and address at the Company is:

Timothy Seat
Vice President - Regulatory Affairs
Z-Tel Communications, Inc.
777 South Harbour Island Boulevard, Suite 990
Tampa, Florida 33602
Telephone: 813-233-4611
Facsimile 813-233-4620

E. Corporate Principal Officers:

The names and address of the Applicants corporate officers and the corporate officers of the Applicant's parent company, Z-Tel Technologies, Inc. are listed in Exhibit A of this application.

F. Principal Officers in Tennessee

The company does not have any employees in the state of Tennessee. Company operations will be managed centrally at the Tampa, Florida headquarters location.

G. Copy of Articles of Organization

Applicant is a Corporation incorporated under the laws of the State of Delaware and qualified to do business in the State of Tennessee on May 4, 1998. A copy of Petitioner's Certificate of Organization is attached hereto as Exhibit B.

H. Copy of license to do business in the state of Tennessee.

Please see Exhibit C.

II. Managerial Requirements

Z-Tel is managerially qualified to provide facilities-based local exchange services throughout Tennessee. Z-Tel has an excellent senior management team, backed by experienced employees, who are competent in telephony engineering, operations and marketing. Attached hereto as Exhibit D is a list of names and biographies of Z-Tel's senior management team.

III. Technical Requirements

A. Proposed network data

1. Geographic area coverage: Z-Tel intends to offer service throughout areas currently served by BellSouth.
2. The company does not intend to deploy switches, but rather offer service based on an unbundled network element platform.
3. Z-Tel is not planning to build any facilities in Tennessee. Instead it will lease lines, switches and interconnection (including the recombination of these elements into a complete service) from BellSouth.
4. The company does not intend to deploy equipment in Tennessee.

5. Z-Tel proposes to provide facilities-based local exchange services through the combination of its own facilities and the resale of other carriers' facilities and network elements.

Z-Tel's primary market is residential customers. Z-Tel intends to provide a network bundled telecommunications service which would include long distance service, local exchange service, voice mail and selected custom calling features. In addition, the Company will provide to its customers additional custom calling and class features.

Z-Tel shall, either directly or through arrangements with its underlying carrier provide the following services: 1) access to 911 and E911 emergency service; 2) white page directory listings and directory assistance; 3) consumer access to and support for the Tennessee Relay Center in the same manner as the incumbent local exchange telephone companies; 4) free blocking service for 900/976 pay per call services in accordance with TRA policy; 5) Lifeline and Link-up services to qualifying citizens of the state; 6) educational discounts in existence as of June 6, 1995 TRA Rule 1220-4-8-.04.

- B. Since all elements of the network, including lines, switches and interconnection are to be provided by BellSouth, Z-Tel will rely on the engineers of BellSouth to construct and maintain its network services. J. Bryan Bunting, Senior Vice President - Engineering & Technical Support supervises services and equipment provided by BellSouth.

C. There are no special CPE requirements that would not be compatible with an incumbent carrier. Since all elements of the network are to be provided by BellSouth, all elements and CPE, if any, will be compatible with the BellSouth network.

D. Repair and Maintenance

1. Z-Tel understands the importance of effective customer service for local service consumers. Z-Tel has a toll free customer service telephone number that is available with live operator response 24 hours per day, 7 days per week.
2. Z-Tel's toll free telephone number for customer inquiries, complaints and repair is 1-800-511-4572. In addition, customers may contact the company in writing at the headquarters address.
3. The contact for resolution of customer complaints with the TRA is:

Customer Service
Z-Tel Communications, Inc.
601 South Harbour Island Boulevard, Suite 220
Tampa, Florida 33602
1-800-511-4572
4. The contact person responsible for and knowledgeable about the company's operations is:

Timothy Seat
Vice President - Regulatory Affairs
Z-Tel Communications, Inc.
777 South Harbour Island Boulevard, Suite 990
Tampa, Florida 33602
813-233-4611

IV. Financial Requirements

- A. Estimated cost of network, switches, and unbundled network elements (UNEs).

Z-Tel is not proposing to build a network or to deploy switches, but will utilize network and switching provided by BellSouth. UNEs will be provisioned according to the interconnection agreement between BellSouth and Z-Tel.

- B. Most recent audited financial statements

Z-Tel possesses the financial qualifications required of applicants requesting expanded authority to provide local exchange service on a facilities-basis. Applicant has access to the financing and capital necessary to provide facilities-based local exchange services throughout Tennessee. In support of this Application, attached hereto as Exhibit E-1, is a copy of Z-Tel's most current financial statements, including the 10K of Z-Tel's parent company, Z-Tel Technologies.

- C. Projected financial Statements

Please see Exhibit E-2

- D. Capital Expenditures Budget

Not applicable as no construction is to be undertaken by Z-Tel. The costs of Tennessee operations will consist of leasing UNE-P and additional administrative and sales overhead. Z-Tel is already operating as an interexchange carrier in Tennessee and is operating as a facilities-based local exchange service provider in several states. The incremental administrative and sales costs are not projected to be significant for the company. No new funds or capital will be required to expand the company's services in Tennessee.

E. Reciprocal Compensation for terminating ISP traffic.

Not applicable.

F. Bond requirement

The company has filed a \$20,000 bond as an interexchange reseller in the state of Tennessee.

V. Small and Minority-Owned Telecommunications Business Participation Plan

Please see Exhibit F.

VI. TRA Rules for Local Telecommunications Providers

The company provides evidence with this application that notice of the application has been served on the eighteen (18) incumbent local exchange companies in Tennessee. Please see Exhibit G.

VII. Toll Dialing Parity Plan

The company submits its Toll Dialing Parity Plan in Exhibit H.

VIII. Numbering Issues

1. What is your company's expected demand for NXXs per NPA within a year of approval of your application?

None.

2. How many NXXs do you estimate that you will request from NANPA when you establish your service footprint?

None. As a UNE-P provider all orders will be provided through BellSouth

3. When and in what NPA do you expect to establish your service footprint?

The company intends to offer service in territory currently served by BellSouth.

4. Will the company sequentially assign telephone numbers within NXXs?

Not applicable.

5. What measures does the company intend to take to conserve Tennessee numbering resources?

The company will comply with resource conservation measures as per BellSouth procedures.

6. When ordering new NXXs for growth, what percentage fill of an existing NXX does the company use to determine when a request for a new NXX will be initiated?

Not applicable.

IX. Tennessee Specific Operational Issues

1. How does the company intend to comply with TCA §65-21-114? In its description, please explain technically how the company will not bill for countywide calls within Tennessee.

Initially Z-Tel plans to mirror or offer larger calling areas than those of BellSouth. To the extend that BellSouth provides county wide calling Z-Tel will as well.

2. Is the company aware of the Tennessee County Wide Calling database maintained by BellSouth and the procedures to enter your telephone numbers on the database?

Yes, the company is aware of the database and the procedures involved.

3. How does your company intend to provide metro area toll-free calling ("MAC") around Memphis, Nashville, Knoxville and Chattanooga?

No. The company does not have plans to offer presently.

4. Is the company aware of the MAC database maintained by BellSouth and the procedures to enter your telephone numbers on the database?

Yes, the company is aware of the database and the procedures involved.

5. Please provide the name and telephone number of an employee of your company that will be responsible to work with the TRA in resolving customer complaints.

Dolorene Sackman
Manager, Regulatory Affairs
813-233-4613

6. Does the company intend to telemarket its services in Tennessee? If yes, is the company aware of the telemarketing statutes and regulations found in TCA §65-4-401 et seq. And Chapter 1220-4-11?

Yes, the company intends to telemarket in Tennessee. The company is aware of the telemarketing statutes and regulations, including the "Do Not Call" statute, in the state and will abide by them.

X. Miscellaneous

A. Sworn pre-filed testimony is provided in Exhibit I.

B. Upon certification and prior to commencing service, Z-Tel will file a proposed tariff for its end user local exchange offerings (containing rates along with terms, and conditions of service) with the Commission for its review.

C. Status of Z-Tel in other states

Z-Tel has been providing local exchange service since 1999 and currently has customers in Georgia, Massachusetts, New York, Pennsylvania and Texas. Z-Tel provides a copy of a recent press release indicating its progress in the local exchange arena in Exhibit J.

The states in which the Petitioner is authorized to offer facilities-based local exchange service are: Alabama, California, Colorado, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, New York, Ohio, Oregon, Pennsylvania, Texas and Washington. The Company has resale-based local exchange service in several other states and currently is in the process of requesting expanded authority to provide local exchange services on a facilities-basis nationwide. Petitioner has

demonstrated the ability to implement new services and to work with other carriers to provide high quality, economical products for telecommunication customers. Local exchange service, on a facilities-basis, is currently offered by Z-Tel in Georgia, New York, Massachusetts, Texas, Pennsylvania, Maryland and Oregon. The Company has in excess of 170,000 residential exchange access lines.

- D. Z-Tel is not currently involved in any mergers or acquisitions. A chart showing the company's corporate structure is found in Exhibit K.
- E. The Company may, in order to safeguard its interests, require a Customer which has a proven history of late payments to the Company or does not have established credit or has a bad credit rating to make a deposit prior to or at any time after the provision of service to the Customer to be held by the Company as a guarantee of the payment of rates and charges. No such deposit will be required of a Customer which has established satisfactory credit and has no history of late payments to the Company.

Z-Tel has posted a bond for \$20,000 under its current authority as a reseller in the State of Tennessee.

- F. Complaints filed with state and federal regulatory agencies.
Please see Exhibit L.

G. Proposed Service Area

Z-Tel proposes to offer its services throughout the State of Tennessee in areas currently served by BellSouth and Sprint/United which are designated open to competition.

Currently, the company does not intend to offer service in areas served by any incumbent local exchange telephone company with fewer than 100,000 total access lines. Z-Tel will mirror the local calling scopes of the incumbent local exchange companies, as required by this Commission, until the Commission orders otherwise.

H. The company will provide a Wireline Activity Report to the TRA on a monthly basis once the company begins operations in the state.

XI. Public Interest

Grant of Z-Tel's Application to provide facilities-based local exchange services is in the public interest and serves the public convenience and necessity. In enacting the Federal Telecommunications Act of 1996, the United States Congress determined that it is in the public interest to promote competition in the provision of telecommunications services, including local exchange services. Experience with competition in other telecommunications markets, such as long distance, competitive access, and customer premises equipment, demonstrates the benefits that competition can bring to consumers. Consumers are enjoying increased services, lower prices, higher quality, and greater reliability. This is true not only with respect to the service offerings of the new entrants, but also as a result of the response of incumbent monopoly providers to the introduction of competition.

Most competition in the local exchange market has been for business customers. Z-Tel plans to bring the benefits of competition to Tennessee's residential consumers. Z-Tel's proposed services will provide multiple public benefits by increasing the competitive choices available to users in Tennessee. Enhanced competition in telecommunications services likely will further stimulate economic development in Tennessee. In addition, increased competition will create incentives for all carriers to offer lower prices, more innovative services, and more responsive customer service.

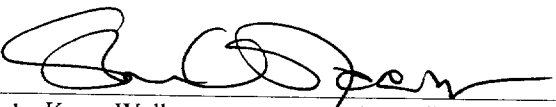
XII. Statement of Compliance

Z-Tel agrees to abide by TCA §65-4-201 and all applicable state statutes and all applicable Orders, Rules and Regulations entered and adopted by the Tennessee Regulatory Authority.

WHEREFORE, Z-Tel Communications, Inc. respectfully requests that the Commission enter an Order granting Z-Tel's Application for a Certificate to Provide Competing Local Telecommunications Services throughout the State of Tennessee.

Respectfully submitted,

Counsel for Z-Tel Communications, Inc.

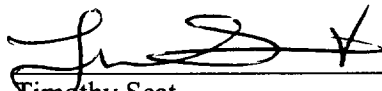


John Knox Walkup Attny # 7776
Sharon O. Jacobs Attny # 14626
Wyatt, Tarrant & Combs
2525 West End Avenue, Suite 1500
Nashville, TN 37203
Telephone: 615-251-6713
Facsimile: 615-244-0020

VERIFICATION


State of Florida)
 Hillsborough) : SS
County of ~~Tampa~~)

I, Timothy Seat, hereby declare under penalty of perjury, that I am the Vice President - Regulatory Affairs of Z-Tel Communications, Inc., the Petitioner in this proceeding; that I am authorized to make this verification on behalf of Z-Tel Communications, Inc.; that I have read the foregoing Petition and exhibits; and that the facts stated therein are true and correct to the best of my knowledge, information and belief.

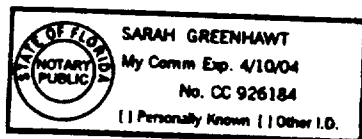


Timothy Seat
Vice President - Regulatory Affairs
Z-Tel Communications, Inc.

Subscribed and sworn to before me this 21 day of August, 2000.



Notary Public Sarah Greenhawt



Exhibits

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Exhibit A

Corporate Officers and Directors

Officers and Directors

Z-Tel Communications, Inc. Officers and Directors

D. Gregory Smith	President, Chief Executive Officer and Director
John M. Hutchens	Director
Mark H. Johnson	Secretary and Treasurer

Z-Tel Technologies, Inc. Officers and Directors

D. Gregory Smith	President, Chief Executive Officer, Chairman of the Board and Director
James Corman	President - Consumer Services
John M. Hutchens	Senior Vice President - Chief Financial Officer
Charles W. McDonough	Senior Vice President - Chief Technology Officer
J. Bryan Bunting	Senior Vice President - Engineering and Technical Support
James A. Kitchen	Senior Vice President - Chief Architect
Mark H. Johnson	Secretary and Treasurer
Robert A. Curtis	Senior Vice President - Strategic Planning
Doug W. Jackson	Vice President - Marketing

Officers for Z-Tel Communications and Z-Tel Technologies, Inc. are located at 601 South Harbour Island Boulevard, Suite 220, Tampa, Florida 33602.

Exhibit B

Articles of Organization

Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "Z-TEL COMMUNICATIONS, INC.", FILED IN THIS OFFICE ON THE NINETEENTH DAY OF MARCH, A.D. 1998, AT 11:30 O'CLOCK A.M.



A handwritten signature in cursive script, reading "Edward J. Freel".

Edward J. Freel, Secretary of State

AUTHENTICATION:

2873445 8100

DATE: 8982585

981105844

03-20-98

CERTIFICATE OF INCORPORATION OF
Z-TEL COMMUNICATIONS, INC.

1. The name of the corporation is Z-Tel Communications, Inc.
2. The address of its registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.
3. The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.
4. The total number of shares of stock which the corporation shall have authority to issue is One Thousand (1,000) and the par value of each of such shares is Zero Dollars and One Cent (\$0.01) amounting in the aggregate to Ten Dollars and No Cents (\$10.00).
5. The board of directors is authorized to make, alter or repeal the bylaws of the corporation. Election of directors need not be by written ballot.
6. The name and mailing address of the sole incorporator is:

Laura Vitalo
Corporation Trust Center
1209 Orange Street
Wilmington, Delaware 19801
7. 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.
8. The corporation shall indemnify its officers, directors, employees and agents to the extent permitted by the General Corporation Law of Delaware.

I, THE UNDERSIGNED, being the incorporator hereinbefore named, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, 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 19th day of March, 1998.



Laura Vitalo, Sole Incorporator

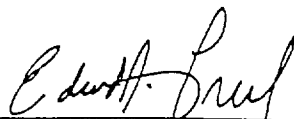
State of Delaware
Office of the Secretary of State PAGE 1

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 RESTATED CERTIFICATE OF "Z-TEL COMMUNICATIONS, INC.", CHANGING ITS NAME FROM "Z-TEL COMMUNICATIONS, INC." TO "Z-TEL TECHNOLOGIES, INC.", FILED IN THIS OFFICE ON THE SECOND DAY OF APRIL, A.D. 1998, AT 4:30 O'CLOCK P.M.



2873445 8100

981129183



Edward J. Freel, Secretary of State

AUTHENTICATION: 9010962

DATE: 04-03-98

**RESTATED CERTIFICATE OF INCORPORATION
OF
Z-TEL COMMUNICATIONS, INC.**

Z-Tel Communications, Inc., a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

The name of the corporation is Z-Tel Communications, Inc. The date of filing of its original Certificate of Incorporation with the Secretary of State was March 19, 1998.

The text of the Certificate of Incorporation as amended or supplemented heretofore is further amended hereby to read as herein set forth in full:

1. The name of the corporation is Z-Tel Technologies, Inc.
2. The address of its registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.
3. The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.
4. The total number of shares of stock which the corporation shall have authority to issue is One Thousand (1,000) and the par value of each of such shares is Zero Dollars and One Cent (\$.01) amounting in the aggregate to Ten Dollars and No Cents (\$10.00).
5. The board of directors is authorized to make, alter or repeal the bylaws of the corporation. Election of directors need not be by written ballot.
6. The name and mailing address of the sole incorporator is:

Laura Vitalo
Corporation Trust Center
1209 Orange Street
Wilmington, Delaware 19801

7. A director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director except for liability (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware

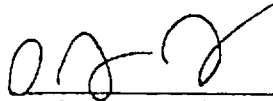
General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit.

8. The corporation shall indemnify its officers, directors, employees and agents to the extent permitted by the General Corporation Law of Delaware.

This Restated Certificate of Incorporation was duly adopted by the Board of Directors in accordance with Sections 241 and 245 of the General Corporation Law of the State of Delaware. The corporation has not received payment for its capital.

This Restated Certificate of Incorporation shall be effective on April 2, 1998.

IN WITNESS WHEREOF, said Z-Tel Communications, Inc. has caused this Certificate to be signed by D. Gregory Smith, its president, this 2nd day of April, 1998.



D. Gregory Smith, President

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
Z-TEL TECHNOLOGIES, INC.**

Z-Tel Technologies, Inc., a corporation existing under the laws of the State of Delaware, does hereby certify as follows:

1. The name of the corporation is Z-Tel Technologies, Inc. The original Certificate of Incorporation was filed with the Secretary of State of Delaware on March 19, 1998.

2. This Restated Certificate of Incorporation restates and integrates and also further amends the Certificate of Incorporation of the Corporation. This Amended and Restated Certificate of Incorporation was proposed by the board of directors and duly adopted by the stockholders of the Corporation in the manner and by the vote prescribed by Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware (as the same exists or may hereafter be amended). The text of the Certificate of Incorporation is hereby amended and restated to read in its entirety as follows:

ARTICLE I

Name

The name of the corporation is Z-Tel Technologies, Inc.

ARTICLE II

Registered Office; Registered Agent

The address of the corporation's registered office in the State of Delaware is: Corporation Trust Center, 1209 Orange Street in the City of Wilmington, County of New Castle. The name of the corporation's registered agent at such address is: The Corporation Trust Company.

ARTICLE III

Purposes and Powers

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.

*STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 10:00 AM 10/21/1998
991405585 - 2873445*

ARTICLE IV

Capital Stock

The total number of shares of stock which the corporation shall have authority to issue is 50,000,000, of which 30,000,000 shall be shares of common stock, \$.01 par value per share (the "Common Shares"), and 20,000,000 shall be shares of preferred stock, \$.01 par value per share (the "Preferred Shares"). The designations, voting powers and relative rights and preferences of the two classes of shares of stock shall be as set forth below.

A. Common Shares

1. **Powers, Rights and Preferences.** The Common Shares shall be without distinction as to powers, rights and preferences, and shall have one vote per share on all matters on which shareholders are generally entitled to vote.

2. **Dividends.** After the requirements regarding preferential dividends on the Preferred Shares (fixed in accordance with the provisions of paragraph B of this Article IV), if any, have been met and after the corporation has complied with all of the requirements, if any, regarding the setting aside of sums as sinking funds or redemption or purchase accounts (fixed in accordance with the provisions of paragraph B of this Article IV) and subject further to any other conditions which may be fixed in accordance with the provisions of paragraph B of this Article IV, then but not otherwise, the holders of Common Shares shall be entitled to receive such dividends, if any, as may be declared from time to time by the board of directors.

3. **Distributions.** After distribution in full of the preferential amount (as may be fixed in accordance with the provisions of paragraph B of this Article IV), if any, to be distributed to the holders of Preferred Shares, and subject to any further rights of the holders of Preferred Shares (as may be fixed in accordance with the provisions of paragraph B of this Article IV) to further participate in a liquidation, distribution or sale of assets, dissolution or winding-up of the corporation, all its remaining assets, tangible and intangible, of whatever kind available for distribution to the shareholders, ratably in proportion to the number of Common Shares held by each.

B. Preferred Shares

1. **Issuance by Board Resolution; Series.** The board of directors of the corporation shall have the authority by resolution to issue from time to time Preferred Shares on such terms as it may determine and for such consideration as fixed by the board of directors. The Preferred Shares may be issued in one or more series as may be determined from time to time by the board of directors. Each series shall be distinctly designated by number, letter or title. All Preferred Shares of any one series shall be alike in every particular, except that there may be different dates from which dividends thereon, if any, shall be cumulative, if made cumulative. The powers, preferences and relative, participating, optional and other rights of each such series,

and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding.

2. Preferences and Rights. Subject to the provisions of subparagraph 3 of this paragraph B of Article IV, the board of directors of the corporation is hereby expressly granted authority to fix by resolution or resolutions adopted prior to the issuance of any Preferred Shares of each particular series, the designation, powers, preferences and relative, participating, optional and other rights, and the qualifications, limitations and restrictions thereof, if any, of such series.

3. Issuance of Preferred Shares. The relative powers, preferences and rights of each series of Preferred Shares in relation to the powers, preferences and rights of other series of Preferred Shares shall, in each case, be as fixed from time to time by the board of directors in resolutions adopted pursuant to authority granted in this paragraph B of Article IV, and the consent by series vote or otherwise, of the holders of such of the series of Preferred Shares as are from time to time outstanding shall not be required for the issuance by the board of directors of any other series of Preferred Shares, whether or not the powers, preferences and rights of such other series shall be fixed by the board of directors as senior to, or on a parity with, the powers, preferences and rights of such outstanding series, or any of them; provided, however, that the board of directors may provide in such resolutions regarding any series of Preferred Shares that the consent of the holders of a certain percentage, as fixed therein by the board of directors, of the outstanding Preferred Shares of such series shall be required for the issuance of any other series of Preferred Shares.

ARTICLE V

Incorporator

The name and mailing address of the incorporator is:

Laura Vitalo
The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, Delaware 19801

ARTICLE VI

Directors

A. Number of Directors. The affairs of the corporation shall be managed and conducted by a board of directors, and unless otherwise provided in the by-laws, the election of directors need not be by written ballot. The number of directors which shall constitute the whole board of directors shall be fixed by, or in the manner provided in, the by-laws of the corporation.

B. Power and Authority of the Board of Directors: The board of directors shall have such powers as are conferred on the board of directors by the laws of the State of Delaware. In furtherance of such powers, the board of directors is expressly authorized to adopt, amend or repeal the by-laws of the corporation without the consent or vote of the stockholders.

ARTICLE VII

Indemnification of Directors and Officers

Each person who is or was a director or officer of the corporation and each person who serves or served at the request of the corporation as a director, officer or partner of another enterprise shall be indemnified by the corporation in accordance with, and to the fullest extent authorized by, the General Corporation Law of the State of Delaware as the same now exists or may be hereafter amended. No amendment to or repeal of this Article VII shall apply to or have any effect on the rights of any individual referred to in this Article VII for or with respect to acts or omissions of such individual occurring prior to such amendment or repeal.

ARTICLE VIII

Elimination of Certain Liability of Directors

To the fullest extent permitted by the General Corporation Law of the State of Delaware as the same now exists or may be hereafter amended, a director of the corporation shall not be liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. No amendment to or repeal of this Article VIII shall apply to or have any effect on the liability or alleged liability of any director of the corporation for or with respect to any acts or omissions of such director occurring prior to the effective date of such amendment or repeal.

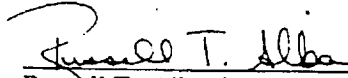
ARTICLE IX

Reservation of Powers

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

The undersigned, being the Secretary of the corporation does hereby certify that the corporation has amended and restated its Certificate of Incorporation as set forth above, does hereby certify that such amendment and restatement has been duly adopted in accordance with the applicable provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware, and does hereby make and file this Amended and Restated Certificate of Incorporation.

Dated: October 20, 1998



Russell T. Alba, Secretary

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State of Delaware
Office of the Secretary of State

PAGE 1

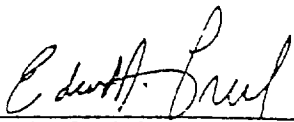
I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF DESIGNATION OF "Z-TEL TECHNOLOGIES, INC.", FILED IN THIS OFFICE ON THE FOURTH DAY OF NOVEMBER, A.D. 1998, AT 10:30 O'CLOCK A.M.

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



2873445 8100

981423867



Edward J. Freel, Secretary of State

AUTHENTICATION: 9387082

DATE: 11-04-98

CERTIFICATE OF DESIGNATIONS, PREFERENCES
AND RELATIVE RIGHTS, QUALIFICATIONS,
LIMITATIONS AND RESTRICTIONS

OF THE

SERIES A CONVERTIBLE PREFERRED STOCK

AND

SERIES B CONVERTIBLE PREFERRED STOCK

OF

Z-TEL TECHNOLOGIES, INC.

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

Z-Tel Technologies, Inc., a Delaware corporation (the "Corporation") certifies that pursuant to the authority contained in Article FOURTH of its Certificate of Incorporation (the "Certificate of Incorporation") and in accordance with the provisions of Section 151 of the General Corporation Law of the State of Delaware, the Board of Directors of the Corporation at a Special Meeting held on October 30, 1998, adopted the following resolution which resolution remains in full force and effect on the date hereof.

RESOLVED, that there are hereby established (i) a series of authorized preferred stock, having a par value of \$0.01 per share, which series be designated as "Series A Convertible Preferred Stock" (the "Series A Preferred"), shall consist of 5,930,749 shares and shall have the voting powers, preferences and relative, participating, optional and other special rights, and qualifications, limitations and restrictions thereof as set forth herein and (ii) a series of authorized preferred stock, having a par value of \$0.01 per share, which series be designated as "Series B Convertible Preferred Stock" (the "Series B Preferred"), shall consist of 1,338,208 shares and shall have the voting powers, preferences and relative, participating, optional and other special rights, and qualifications, limitations and restrictions thereof as set forth herein:

1. Certain Definitions. Unless the context otherwise requires, the terms defined in this Section 1 shall have, for all purposes of this resolution, the meanings herein specified (with terms defined in the singular having comparable meanings when used in the plural).

(a) "Stock Purchase Agreement" shall mean the Stock Purchase Agreement, dated as of November 4, 1998, by and among the Corporation, NationsBanc Capital Corporation ("NBCC"), and the other parties signatory thereto.

(b) "Stockholders' Agreement" shall mean the Stockholders' Agreement, dated as of November 4, 1998, by and among the Corporation, NBCC and the other parties signatory thereto.

(c) "Senior Bridge Financing" shall have the meaning given such term in the Stock Purchase Agreement.

2. Dividends and Distributions.

(a) Series A Dividends. The holders of record of shares of Series A Preferred shall be entitled to receive dividends at a rate of eight percent (8%) of the Conversion Value (as defined in Section 4(a) below) per annum per share of Series A Preferred (the "Series A Dividend"), which shall be fully cumulative, prior and in preference to any declaration or payment of any dividend or other distribution on any other class or series of Preferred Stock (other than as set forth herein) or the Common Stock (and excluding any stock splits and subdivisions for which an adjustment is made under Section 4(d)(vi)(1) below). The foregoing dividend on the Series A Preferred shall accrue from the date of issuance of each share until the earlier of (i) the conversion of the Series A Preferred to Common Stock, (ii) the liquidation, distribution or winding up of the Corporation, or (iii) the consummation of the Put pursuant to Section 7 of the Stockholders' Agreement. Such dividend shall be payable annually on December 31 of each year (each a "Series A Annual Dividend Date") commencing on December 31, 1999, except that if any such date is a Saturday, Sunday or legal holiday (a "Non-Business Day") then such dividend shall be payable on the next day that is not a Saturday, Sunday or legal holiday on which banks in the State of Delaware are permitted to be closed (a "Business Day") to holders of record as they appear on the stock books of the Corporation on the applicable record date, which shall be not more than sixty (60) nor less than ten (10) days preceding the payment date for such dividends, as fixed by the Board of Directors (the "Series A Record Date"). The dividends shall be payable only when, as and if declared by the Board of Directors out of funds legally available therefor. The dividends shall either (i) accrue, (ii) be payable in cash, or (iii) be payable in shares of Common Stock, as provided in the next paragraph. The dividends shall automatically accrue in the absence of an election by the Board of Directors within sixty (60) days after each Series A Annual Dividend Date to pay the dividends in cash or in shares of Common Stock, as provided in the next paragraph. The amount of dividends payable for any period that is shorter or longer than a full annual dividend shall be computed on the basis of a 360-day year and the actual number of days elapsed (including the first day but excluding the last day) occurring in the period for which such amount is payable. All accrued but unpaid dividends (whether declared or undeclared) shall accrue interest at a rate of eight percent (8%) per annum computed on the basis of a 360-day year and the actual number of days elapsed (including the first day but excluding the last day) occurring in the period for which such amount is payable, but with interest on such dividend compounded on a quarterly basis (on each March 31, June 30, September 30 and December 31) for the year during which such dividend was payable, and thereafter until paid. Notwithstanding anything else contained herein to the contrary, the Series A Dividend shall be pari passu with the Series B Dividend (as defined herein). If the Series A Dividend and the Series B Dividend cannot be paid in full, dividends shall be paid, to the maximum possible extent, to the holders of the Series A Preferred and the Series B Preferred on a pari passu basis, on the basis of the amount of accrued and unpaid dividends outstanding on each share. No dividend shall be paid to holders of Series A Preferred or Series B Preferred unless dividends are paid to all holders of Series A Preferred and Series B Preferred pursuant to the terms of this resolution.

The Board of Directors of the Corporation may, within sixty (60) days after each Series A Annual Dividend Date, elect (the "Series A Dividend Election") to pay the annual cash dividends payable for such year on such Series A Annual Dividend Date in shares of Common Stock (each a "Series A Payment-in-Kind" or more than one the "Series A Payments-in-Kind") rather than cash. If such an election is made, the Corporation shall promptly notify the holders of record of the Series A Preferred entitled to such annual dividend of the election to make the Series A Payments-in-Kind in lieu of cash dividends for such Series A Annual Dividend Date. A Series A Dividend Election for any particular Series A Annual Dividend Date shall operate only for such Series A Annual Dividend Date. Series A Payments-in-Kind shall be payable as of the Series A Annual Dividend Date of each year for which the election is made, except that if such date is a Non-Business Day then such Series A Payment-in-Kind shall be payable as of the next Business Day to holders of record as they appear on the stock books of the Corporation on the applicable Record Date. Each Series A Payment-in-Kind shall be equal in amount to that number of shares of Common Stock that is equal in number to the aggregate cash dividend payable on any such dividend date (including accrued interest compounded on a quarterly basis as indicated above) divided by the fair market valuation for such Common Stock determined by the Board of Directors at such time in good faith, and shall be allocated on a pro rata basis to each holder entitled to receive such dividend. The holders of at least fifty percent (50%) of the outstanding Series A Preferred shall have the right to challenge any determination by the Board of Directors of fair market value pursuant to this Section 2(a), in which case the determination of fair market value shall be made by an independent appraiser or investment banker, mutually acceptable to the Board of Directors and the challenging parties, who is qualified in the fair market appraisal of companies, the cost of such appraisal to be borne (a) by the challenging parties, if the fair market value as determined by such appraisal does not exceed the determination of fair market value by the Board of Directors by more than ten percent (10%) and (b) by the Corporation, if the fair market value as determined by such appraisal exceeds the determination of fair market value by the Board of Directors by more than ten percent (10%). Certificates representing the shares of Common Stock issuable on payment of any Series A Payment-in-Kind shall be delivered to each holder entitled to receive such Series A Payment-in-Kind (in appropriate denominations) on or before the ninetieth (90th) day following the Series A Annual Dividend Date for which such Series A Payment-in-Kind is elected to be made hereunder (or such later date as the independent determination of fair market value has been made). Notwithstanding anything else contained herein to the contrary, if, in respect of any Series A Dividend (I) a Series A Dividend Election is made by the Corporation and such Series A Dividend is paid by a Series A Payment-in-Kind, then the Corporation shall make a Series B Dividend Election (as defined herein) with respect to the corresponding Series B Dividend and such Series B Dividend shall be paid by a Series B Payment-in-Kind (as defined herein) and (II) such Series A Dividend is accrued or paid in cash, then the corresponding Series B Dividend shall also be accrued or paid in cash, as the case may be, in order that the holders of Series A Preferred and Series B Preferred receive the same type of consideration with respect to each Series A Dividend and each Series B Dividend.

(b) **Series B Dividends.** The holders of record of shares of Series B Preferred shall be entitled to receive dividends at a rate of eight percent (8%) of the Conversion Value per annum per share of Series B Preferred (the "Series B Dividend"), which shall be fully cumulative, prior and in preference to any declaration or payment of any dividend or other distribution on any other class or series of Preferred Stock (other than as set forth herein) or the Common Stock (and excluding any stock splits and subdivisions for which an adjustment is made under Section

4(d)(vi)(1) below). The foregoing dividend on the Series B Preferred shall accrue from the date of issuance of each share until the earlier of (i) the conversion of the Series B Preferred to Common Stock, (ii) the liquidation, distribution or winding up of the Corporation, or (iii) the consummation of the Put pursuant to Section 7 of the Stockholders' Agreement. Such dividend shall be payable annually on December 31 of each year (each a "Series B Annual Dividend Date") commencing on December 31, 1999, except that if any such date is a Non-Business Day then such dividend shall be payable on the next day that is a Business Day to holders of record as they appear on the stock books of the Corporation on the applicable record date, which shall be not more than sixty (60) nor less than ten (10) days preceding the payment date for such dividends, as fixed by the Board of Directors (the "Series B Record Date"). The dividends shall be payable only when, as and if declared by the Board of Directors out of funds legally available therefor. The dividends shall either (i) accrue, (ii) be payable in cash, or (iii) be payable in shares of Common Stock, as provided in the next paragraph. The dividends shall automatically accrue in the absence of an election by the Board of Directors within sixty (60) days after each Series B Annual Dividend Date to pay the dividends in cash or in shares of Common Stock, as provided in the next paragraph. The amount of dividends payable for any period that is shorter or longer than a full annual dividend shall be computed on the basis of a 360-day year and the actual number of days elapsed (including the first day but excluding the last day) occurring in the period for which such amount is payable. All accrued but unpaid dividends (whether declared or undeclared) shall accrue interest at a rate of eight percent (8%) per annum computed on the basis of a 360-day year and the actual number of days elapsed (including the first day but excluding the last day) occurring in the period for which such amount is payable, but with interest on such dividend compounded on a quarterly basis (on each March 31, June 30, September 30 and December 31) for the year during which such dividend was payable, and thereafter until paid. Notwithstanding anything else contained herein to the contrary, the Series B Dividend shall be pari passu with the Series A Dividend. If the Series A Dividend and the Series B Dividend cannot be paid in full, dividends shall be paid, to the maximum possible extent, to the holders of the Series A Preferred and the Series B Preferred on a pari passu basis, on the basis of the amount of accrued and unpaid dividends outstanding on each share. No dividend shall be paid to holders of Series A Preferred or Series B Preferred unless dividends are paid to all holders of Series A Preferred and Series B Preferred pursuant to the terms of this resolution.

The Board of Directors of the Corporation may, within sixty (60) days after each Series B Annual Dividend Date, elect (the "Series B Dividend Election") to pay the annual cash dividends payable for such year on such Series B Annual Dividend Date in shares of Common Stock (each a "Series B Payment-in-Kind" or more than one the "Series B Payments-in-Kind") rather than cash. If such an election is made, the Corporation shall promptly notify the holders of record of the Series B Preferred entitled to such annual dividend of the election to make the Series B Payments-in-Kind in lieu of cash dividends for such Series B Annual Dividend Date. A Series B Dividend Election for any particular Series B Annual Dividend Date shall operate only for such Series B Annual Dividend Date. Series B Payments-in-Kind shall be payable as of the Series B Annual Dividend Date of each year for which the election is made, except that if such date is a Non-Business Day then such Series B Payment-in-Kind shall be payable as of the next Business Day to holders of record as they appear on the stock books of the Corporation on the applicable Record Date. Each Series B Payment-in-Kind shall be equal in amount to that number of shares of Common Stock that is equal in number to the aggregate cash dividend payable on any such dividend date (including accrued interest compounded on a quarterly basis as indicated above) divided by the fair market valuation for such Common Stock determined by the Board of Directors at such time in good faith, and shall

be allocated on a pro rata basis to each holder entitled to receive such dividend. Certificates representing the shares of Common Stock issuable on payment of any Series B Payment-in-Kind shall be delivered to each holder entitled to receive such Series B Payment-in-Kind (in appropriate denominations) on or before the ninetieth (90th) day following the Series B Annual Dividend Date for which such Series B Payment-in-Kind is elected to be made hereunder (or such later date as the independent determination of fair market value has been made). Notwithstanding anything else contained herein to the contrary, if, in respect of any Series B Dividend (I) a Series A Dividend Election is made by the Corporation and such Series A Dividend is paid by a Series A Payment-in-Kind, then the Corporation shall make a Series B Dividend Election with respect to the corresponding Series B Dividend and such Series B Dividend shall be paid by a Series B Payment-in-Kind and (II) such Series A Dividend is accrued or paid in cash, then the corresponding Series B Dividend shall also be accrued or paid in cash, as the case may be, in order that the holders of Series B Preferred and Series A Preferred receive the same type of consideration with respect to each Series B Dividend and each Series A Dividend.

(c) **Other Permitted Distributions.** Notwithstanding Section 2(a) and 2(b) hereof, the Corporation may at any time, out of funds legally available therefor, repurchase shares of Common Stock of the Corporation issued to or held by any person subject to the Corporation's right of first refusal to purchase such shares contained in the Stockholders' Agreement, and pursuant to the terms of the Stockholders' Agreement, whether or not dividends on the Series A Preferred or Series B Preferred shall have been declared and paid or funds set aside therefor, in each event subject to any other contractual restrictions entered into by the Corporation.

3. **Liquidation Rights.** In the event of any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary (a "Liquidation"), distributions shall be made to the holders of Series A Preferred and Series B Preferred in respect of such Series A Preferred and Series B Preferred before any amount shall be paid to the holders of any other class or series of capital stock of the Corporation in the following manner:

(a) **Liquidation Amount.** The holders of the Series A Preferred and Series B Preferred, subject to the other terms contained herein, shall be entitled to be paid first out of the assets of the Corporation available for distribution to holders of its capital stock an amount equal to (i) the Conversion Value, as appropriately adjusted to reflect any stock split, stock dividend, combination, recapitalization and the like (collectively a "Recapitalization"), plus (ii) all accrued but unpaid dividends (whether declared or undeclared, including any interest accrued thereon calculated through the date of liquidation), prior to any distribution to the holders of any other Preferred or Common Stock. If the proceeds from a Liquidation are not sufficient to pay to the holders of Series A Preferred and Series B Preferred the full preference amount set forth above, then such holders shall instead be entitled to receive the entire assets and funds of the Corporation legally available for distribution to the holders of capital stock, which assets and funds shall be distributed ratably among the holders of the Series A Preferred and Series B Preferred. Notwithstanding anything else contained herein to the contrary, the holders of Series A Preferred and the holders of Series B Preferred shall be treated *pari passu* with respect to distributions to be made as a result of a Liquidation, on the basis of the amounts per share to be paid to each.

(b) **Events Deemed a Liquidation.** For purposes of this Section 3, the holders of greater than fifty percent (50%) of the Series A Preferred then outstanding (which such holders

must include NationsBanc Capital Corporation and, at such time as they become holders of Series A Preferred, Saskatchewan Telecommunications Holding Corporation), may elect to have treated as a Liquidation the consolidation or merger of the Corporation with or into any other corporation or the sale or other transfer in a single transaction or a series of related transactions of all or substantially all of the assets of the Corporation, or any other reorganization of the Corporation. If such election is made by such requisite holders of Series A Preferred, then and only then, the holders of Series B Preferred may elect to have such events treated as a Liquidation.

(c) **Valuation of Securities and Property.** In the event the Corporation proposes to distribute assets other than cash in connection with any Liquidation, the value of the assets to be distributed to the holders of shares of Series A Preferred and Series B Preferred shall be determined in good faith by the Board of Directors. Any securities not subject to an investment letter or similar restrictions on free marketability shall be valued as follows:

(i) if traded on a national securities exchange or the NASDAQ National Market System ("NASDAQ"), the value shall be deemed to be the average of the security's closing prices on such exchange or NASDAQ over the thirty (30) trading day period ending three (3) days prior to the distribution;

(ii) if actively traded over-the-counter (other than NASDAQ), the value shall be deemed to be the average of the closing bid prices over the thirty (30) day period ending three (3) days prior to the distribution; or

(iii) if there is no active public market, the value shall be the fair market value thereof as determined in good faith by the Board of Directors.

The method of valuation of securities subject to an investment letter or other restrictions on free marketability shall be adjusted to make an appropriate discount from the market value determined as above in clauses (i), (ii) or (iii) to reflect the fair market value thereof as determined in good faith by the Board of Directors. The holders of at least fifty percent (50%) of the outstanding Series A Preferred shall have the right to challenge any determination by the Board of Directors of fair market value pursuant to this Section 3(c), in which case the determination of fair market value shall be made by an independent appraiser or investment banker selected jointly by the Board of Directors and the challenging parties, the cost of such appraisal to be borne (a) by the challenging parties, if the fair market value as determined by such appraisal does not exceed the determination of fair market value by the Board of Directors by more than ten percent (10%) and (b) by the Corporation, if the fair market value as determined by such appraisal exceeds the determination of fair market value by the Board of Directors by more than ten percent (10%).

4. **Conversion.** The holders of Series A Preferred and Series B Preferred have conversion rights as follows (the "**Conversion Rights**"):

(a) **Right to Convert.** Each share of Series A Preferred and Series B Preferred shall initially be convertible, at the option of the holder thereof, at any time on or after the date of issuance thereof, into the number of fully paid and nonassessable shares of Common Stock which results from dividing the Conversion Price (as hereinafter specified) per share in effect at the time of conversion into the per share Conversion Value in effect at the time of conversion. The initial

Conversion Price of the Series A Preferred and Series B Preferred shall be \$3.7094803 per share, and the Conversion Value of the Series A Preferred and Series B Preferred shall be \$3.7094803 per share ("Conversion Value"). The initial Conversion Price of the Series A Preferred and Series B Preferred shall be subject to adjustment from time to time as provided in Section 4(d) hereof. The Conversion Value shall not be subject to adjustment. Upon conversion, all accrued or declared but unpaid dividends (including any interest accrued thereon calculated as of the date of conversion) on the Series A Preferred and Series B Preferred so converted shall be paid in cash or Common Stock, at the option of the Corporation, and in the case of cash, to the extent permitted by applicable law (and if not then permitted by applicable law, at such time as the Corporation is permitted by applicable law to pay any such dividends).

(b) Automatic Conversion. Each share of Series A Preferred and Series B Preferred shall automatically be converted into shares of Common Stock upon the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of securities for the account of the Corporation to the public: (i) the gross proceeds of which equal or exceed \$20,000,000 at a per share price of at least \$12; and (ii) whereby the aggregate value of the shares of Common Stock issuable on conversion of each share of Series A Preferred and Series B Preferred (utilizing the offering price in such underwriting) is at least two (2) times the Conversion Value. Upon conversion, all accrued but unpaid dividends (whether declared or undeclared) on the Series A Preferred and Series B Preferred shall be paid in cash, to the extent permitted by applicable law (and if not then permitted by applicable law, at such time as the Corporation is permitted by applicable law to pay any such dividends).

(c) Mechanics of Conversion. Before any holder of Series A Preferred or Series B Preferred shall be entitled to convert the same into shares of Common Stock and to receive certificates therefor, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the principal office of the Corporation or of any transfer agent for the Series A Preferred and Series B Preferred, and shall give written notice to the Corporation at such office that such holder elects to convert the same; provided, however, that in the event of an automatic conversion pursuant to Section 4(b) hereof, the outstanding shares of Series A Preferred and Series B Preferred shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; and provided further that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such automatic conversion unless and until the certificates evidencing such shares of Series A Preferred and Series B Preferred are either delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement reasonably satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. The Corporation shall as soon as practicable after such delivery, or after such agreement and indemnification, issue and deliver at such office to such holder of Series A Preferred or Series B Preferred, a certificate or certificates for the number of shares of Common Stock to which it, he or she shall be entitled as aforesaid and a check payable to the holder in the amount of any accrued or declared but unpaid dividends (including any interest accrued thereon calculated as of the date of conversion) payable pursuant to Section 2 hereof, if any. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series A Preferred or Series B Preferred to be converted, or, in the

case of automatic conversion, simultaneously upon the occurrence of the event leading to such automatic conversion, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date. If the Corporation fails to pay all such dividends (and interest thereon) within twenty (20) days of the date of conversion, the holder entitled to such dividends (and interest thereon) may elect to have the Corporation issue to such holder, in lieu of such cash payment, additional shares of Common Stock calculated by dividing the total amount payable on such date by the Conversion Price.

(d) Adjustments to Conversion Price.

(i) Special Definitions. For purposes of this Section 4(d), the following definitions shall apply:

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

(2) "Convertible Securities" shall mean any evidences of indebtedness, shares or other securities convertible into or exchangeable for Common Stock.

(3) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Section 4(d)(iii), deemed to be issued) by the Corporation after the Original Issue Date, other than shares of Common Stock issued or issuable:

(A) upon conversion of shares of Series A Preferred or shares of Series B Preferred;

(B) pursuant to a stock grant, option plan or purchase plan, other employee stock incentive program or agreement that in the aggregate does not exceed 1,261,000 shares (as adjusted for recapitalizations, stock splits, stock dividends and the like) (the "Option Pool"), or other options and warrants in existence on the Original Issue Date and set forth in Schedule 2.5 of the Stock Purchase Agreement;

(C) as a dividend or distribution on shares of Series A Preferred or shares of Series B Preferred;

(D) pursuant to Options or Convertible Securities issued in conjunction with the Senior Bridge Financing that upon exercise or conversion in the aggregate do not exceed 856,757 shares (as adjusted for recapitalizations, stock splits, stock dividends and the like, the "Senior Bridge Warrants");

(E) in a transaction described in Section 4(d)(vi);

(F) by way of dividend or other distribution on shares of Common Stock excluded from the definition of Additional Shares of Common by the foregoing clauses (A), (B), (C), (D), (E) or this clause (F).

(4) "Original Issue Date" shall mean the date on which the first share of Series A Preferred was issued.

(ii) No Adjustment of Conversion Price. Subject to the provisions of Section 4(d)(iv), no adjustment in the Conversion Price of the Series A Preferred or Series B Preferred shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Conversion Price for the Series A Preferred or Series B Preferred in effect on the date of, and immediately prior to, such issue.

(iii) Deemed Issue of Additional Shares of Common Stock. In the event the Corporation at any time or from time to time after the Original Issue Date shall issue any Options (other than the issuance of Options pursuant to the Option Pool or Senior Bridge Warrants) or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the exercise of such Options and conversion or exchange of such Convertible Securities shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that Additional Shares of Common Stock shall not be deemed to have been issued, subject to the provisions of Section 4(d)(iv), unless the consideration per share (determined pursuant to Section 4(d)(v) hereof) of such Additional Shares of Common Stock would be less than the Conversion Price for the Series A Preferred or Series B Preferred in effect on the date of and immediately prior to such issue, or such record date, as the case may be, and provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(1) except as provided in Section 4(d)(iii)(2), no further adjustment in the Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any change in the consideration payable to the Corporation, or change in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof (other than under or by reason of provisions designed to protect against dilution), the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto) and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities; and

(3) no readjustment pursuant to clause (2) above shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (A) the Conversion Price on the original adjustment date or (B) the Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4(d)(iii)), then and in each such event the Conversion Price of the Series A Preferred and Series B Preferred shall be reduced to a price (calculated to the nearest cent) determined as follows:

(1) if any such Additional Shares of Common Stock are issued on or prior to six (6) months subsequent to the Original Issue Date, regardless of the consideration received by the Corporation for the issuance of such Additional Shares of Common Stock, then the Conversion Price of the Series A Preferred and/or the number of shares of fully paid and nonassessable shares of Common Stock into which the Series A Preferred is exercisable shall be adjusted so that the number of shares of fully paid and nonassessable shares of Common Stock into which the total number of shares of Series A Preferred are convertible in the aggregate shall at all times equal 23.51% of the fully diluted Common Stock of the Corporation (such percentage shall be increased or decreased, as applicable, to account for the total proceeds from sales of Series A Preferred pursuant to the Stock Purchase Agreement being greater than or less than \$22,000,000 by multiplying such percentage by a fraction, the numerator of which is the total proceeds from the sales of Series A Preferred pursuant to the Stock Purchase Agreement and the denominator of which is \$22,000,000) (notwithstanding anything else contained herein, there shall be no adjustment to the Conversion Price of the Series A Preferred or the Series B Preferred upon the issuance of the Senior Bridge Warrants or upon their exercise or conversion); and

(2) if any such Additional Shares of Common Stock are issued on or prior to six (6) months subsequent to the Original Issue Date, regardless of the consideration received by the Company for the issuance of such Additional Shares of Common Stock, then the Conversion Price of the Series B Preferred and/or the number of shares of fully paid and nonassessable shares of Common Stock into which the Series B Preferred is exercisable shall be adjusted so that the number of shares of fully paid and nonassessable shares of Common Stock into which the total number of shares of Series B Preferred are convertible in the aggregate shall at all times equal 5.305% of the fully diluted Common Stock of the Corporation (such percentage shall be increased or decreased, as applicable, to account for the total proceeds from sales of Series B Preferred being greater than or less than \$4,964,200 by multiplying such percentage by a fraction, the numerator of which is the total proceeds from the sales of Series B Preferred and the denominator of which is \$4,964,200) (notwithstanding anything else contained herein, there shall be no adjustment to the Conversion Price of the Series A Preferred or the Series B

Preferred upon the issuance of the Senior Bridge Warrants or upon their exercise or conversion); and

(3) if any such Additional Shares of Common Stock are issued after six (6) months subsequent to the Original Issue Date, then the Conversion Price of Series A Preferred and Series B Preferred shall be reduced to the consideration per share received by the Corporation for the issuance of such Additional Shares of Common Stock; provided, however, that such reduction shall never result in a Conversion Price of less than \$2.00, subject to the adjustment as set forth in Section 4(d)(vi) below.

(v) **Determination of Consideration.** For purposes of this Section 4(d), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(1) **Cash and Property:** Such consideration shall be computed as follows:

(A) insofar as it consists of cash, such consideration shall be computed at the aggregate amount of cash received by the Corporation;

(B) insofar as it consists of property other than cash, such consideration shall be computed at the fair value thereof at the time of such issue, as determined by the Board of Directors in the good faith exercise of its reasonable business judgment; and

(C) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, such consideration shall be the proportion of such consideration so received, computed as provided in clauses (A) and (B) above, as determined by the Board of Directors in the good faith exercise of its reasonable business judgment.

(2) **Options and Convertible Securities.** The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 4(d)(iii), relating to Options and Convertible Securities, shall be determined by dividing

(A) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for

Convertible Securities and the conversion or exchange of such Convertible Securities, by

(B) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(vi) Other Adjustments.

(1) Subdivisions, Combinations, or Consolidate of Common Stock.

In the event the outstanding shares of Common Stock shall be subdivided, combined or consolidated, by stock split, stock dividend, combination or like event, into a greater or lesser number of shares of Common Stock, the Conversion Price of the Series A Preferred and Series B Preferred in effect immediately prior to such subdivision, combination, consolidation or stock dividend shall, concurrently with the effectiveness of such subdivision, combination or consolidation, be proportionately adjusted.

(2) Reclassifications. In the case, at any time after the date hereof, of any capital reorganization or any reclassification of the stock of the Corporation (other than as a result of a stock dividend or subdivision, split-up or combination of shares), or the consolidation or merger of the Corporation with or into another person (other than a consolidation or merger (A) in which the Corporation is the continuing entity and which does not result in any change in the Common Stock or (B) which is treated as a Liquidation pursuant to Section 3(b) above), the shares of Series A Preferred and Series B Preferred shall, after such reorganization, reclassification, consolidation or merger be convertible into the kind and number of shares of stock or other securities or property of the Corporation or otherwise to which such holder would have been entitled if immediately prior to such reorganization, reclassification, consolidation or merger such holder had converted his shares of Series A Preferred or Series B Preferred into Common Stock. The provisions of this Section 4(d)(vi)(2) shall similarly apply to successive reorganizations, reclassifications, consolidations or mergers.

(e) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price of the Series A Preferred or Series B Preferred pursuant to this Section 4, the Corporation at its expense shall promptly thereafter compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series A Preferred and Series B Preferred a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred or Series B Preferred, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, if any, (ii) the Conversion Price of the Series A Preferred and Series B Preferred at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of the Series A Preferred or Series B Preferred.

(f) **Status of Converted Stock.** In case any shares of Series A Preferred or Series B Preferred shall be converted pursuant to Section 4 hereof, the shares so converted shall be canceled, shall not be reissuable and shall cease to be a part of the authorized capital stock of the Corporation.

(g) **Fractional Shares.** In lieu of any fractional shares in the aggregate to which the holder of Series A Preferred or Series B Preferred would otherwise be entitled upon conversion, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of one share of Common Stock as determined by the Board of Directors in the good faith exercise of its reasonable business judgment.

(h) **Miscellaneous.**

(i) All calculations under this Section 4 shall be made to the nearest cent or to the nearest one hundredth (1/100) of a share, as the case may be.

(ii) The holders of at least fifty percent (50%) of the outstanding Series A Preferred shall have the right to challenge any determination by the Board of Directors of fair market value pursuant to this Section 4, in which case such determination of fair market value shall be made by an independent appraiser selected jointly by the Board of Directors and the challenging parties, the cost of such appraisal to be borne (a) by the challenging parties, if the fair market value as determined by such appraisal does not exceed the determination of fair market value by the Board of Directors by more than ten percent (10%) and (b) by the Corporation, if the fair market value as determined by such appraisal exceeds the determination of fair market value by the Board of Directors by more than ten percent (10%).

(iii) No adjustment in the Conversion Price of the Series A Preferred or Series B Preferred will be made if such adjustment would result in a change in such Conversion Price of less than \$0.01. Any adjustment of less than \$0.01 which is not made shall be carried forward and shall be made at the time of and together with any subsequent adjustment which, on a cumulative basis, amounts to an adjustment of \$0.01 or more in such Conversion Price.

(i) **No Impairment.** The Corporation will not through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all action as may be necessary or appropriate in order to protect the conversion rights of the holders of Series A Preferred and Series B Preferred against impairment.

(j) **Reservation of Stock Issuable Upon Conversion.** The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of Series A Preferred and Series B Preferred, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series A Preferred and Series B Preferred. If at any

time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Series A Preferred or Series B Preferred, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

5. Voting Rights.

(a) General. (i) Except as otherwise required by law, by Section 5(b) hereof or by Section 8 hereof, the holder of each share of Series A Preferred will be entitled to vote on all matters with the Common Stock as a single class, and not as a separate class or series. Each share of Series A Preferred will entitle the holder to the number of votes per share equal to the full number of shares of Common Stock into which each share of Series A Preferred is convertible on the record date for such vote. The holders of Series A Preferred shall receive notice of and shall be entitled to attend in person or by proxy any meeting of the holders of Common Stock, (ii) Except as otherwise required by law, the holder of each share of Series B Preferred will be entitled to vote on all matters with the Common Stock as a single class, and not as a separate class or series. Each share of Series B Preferred will entitle the holder to the number of votes per share equal to the full number of shares of Common Stock into which each share of Series B Preferred is convertible on the record date for such vote. The holders of Series B Preferred shall receive notice of and shall be entitled to attend in person or by proxy any meeting of the holders of Common Stock. If the holders of preferred stock are required to vote as a class for any reason, then the holders of Series B Preferred shall vote as a single class with the holders of Series A Preferred, and not as a separate class or series.

(b) Election of Directors. For so long as there are any shares of Series A Preferred outstanding, the holders of a majority of the Series A Preferred shall be entitled to nominate and elect two (2) directors, and the holders of the Series A Preferred shall otherwise also be entitled to vote in the election of directors pursuant to the terms of Section 5(a) above. Notwithstanding the foregoing sentence, if (i) the Corporation shall breach any of its obligations and/or agreements under Section 4 of the Stock Purchase Agreement, (ii) the Corporation shall breach its payment obligations pursuant to the terms of the Senior Bridge Financing, or (iii) a Put is initiated pursuant to Section 7 of the Stockholders' Agreement, and such breach under (i) or (ii) above shall remain uncured for a period of one hundred and eighty (180) days after written notice of such breach by any holder of Series A Preferred or until the Put is consummated, then in any such event, the holders of the Series A Preferred shall be entitled then and thereafter to nominate and elect one (1) additional director, until such time as the later of (x) twelve (12) months from the election of such director or (y) such time that the applicable breach has been cured (with respect to the election of an additional director as a result of clauses (i) and (ii) above), or until the Put is consummated. Any vacancy on the Board occurring because of the death, resignation or removal of a director elected by the holders of the Series A Preferred, shall be filled by the vote or written consent of the holders of a majority of the Series A Preferred; provided, however, that any designee of a particular holder of Series A Preferred shall be replaced by the designee of such holder.

6. Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive

any other right, the Corporation shall mail to each holder of Series A Preferred and Series B Preferred, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the anticipated amount and character of such dividend, distribution or right.

7. **Notices.** Any notice required by the provisions of this Certificate to be given to the holders of Series A Preferred or Series B Preferred shall be deemed given when deposited in the United States mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the books of the Corporation.

8. **Approval of Certain Transactions While Any Series A Preferred is Outstanding.** So long as any shares of Series A Preferred are outstanding, the Corporation shall not, without first obtaining the written approval of the holders of greater than fifty percent (50%) of the Series A Preferred then outstanding (which such holders must include NationsBanc Capital Corporation, a Texas corporation ("NBCC"), and, at such time as they become a holder of Series A Preferred, 589531 Saskatchewan, Ltd., a Saskatchewan corporation ("SaskTel"); provided, however, that such group need not include NBCC or SaskTel, respectively, at such time as NBCC or SaskTel or their respective Affiliates fail to own at least fifty percent (50%) of the Series A Preferred purchased by them pursuant to the Stock Purchase Agreement) voting as a separate class:

(a) alter the rights, preferences or privileges of the Series A Preferred or Series B Preferred;

(b) increase or decrease the authorized number of shares of Series A Preferred or Series B Preferred;

(c) create any new class or series of shares, or issue any such shares or Options or Convertible Securities exercisable or convertible into such shares, that have a preference over or are on a parity with the Series A Preferred with respect to voting, dividends or liquidation preferences (other than the Series B Preferred being on a parity with the Series A Preferred with respect to dividends and liquidation preferences, and except that the Corporation may grant voting rights to shares of a series of preferred stock which have the right to vote with holders of Common Stock on an as-converted basis, but in any event not in preference to shares of Series A Preferred);

(d) reclassify stock into shares having a preference over or parity with the Series A Preferred with respect to voting, dividends or liquidation preferences (except that the Corporation may grant voting rights to shares of a series of preferred stock which have the right to vote with holders of Common Stock on an as-converted basis, but in any event not in preference to shares of Series A Preferred);

(e) authorize any dividend or other distribution (other than a stock dividend) with respect to the Preferred Stock or the Common Stock (other than the cash dividends payable to the holders of Series A Preferred); or

(f) repurchase, redeem or retire any shares of capital stock of the Corporation other than pursuant to contractual rights to repurchase shares of Common Stock held by employees, directors or consultants of the Corporation or its subsidiaries upon termination of their employment

or services or pursuant to the exercise of a contractual right of first refusal held by the Corporation and as otherwise permitted by the Stock Purchase Agreement.

9. Headings of Subdivisions. The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

10. Severability of Provisions. If any voting powers, preferences and relative, participating, optional and other special rights of the Series A Preferred or Series B Preferred and qualifications, limitations and restrictions thereof set forth in this resolution (as such resolution may be amended from time to time) are invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other voting powers, preferences and relative, participating, optional and other special rights of Series A Preferred or Series B Preferred and qualifications, limitations and restrictions thereof set forth in this resolution (as so amended) which can be given effect without the invalid, unlawful or unenforceable voting powers, preferences and relative, participating, optional and other special rights of Series A Preferred or Series B Preferred and qualifications, limitations and restrictions thereof shall, nevertheless, remain in full force and effect, and no voting powers, preferences and relative, participating, optional or other special rights of Series A Preferred or Series B Preferred and qualifications, limitations and restrictions thereof herein set forth shall be deemed dependent upon any other such voting powers, preferences and relative, participating, optional or other special rights of Series A Preferred or Series B Preferred and qualifications, limitations and restrictions thereof unless so expressed herein.

IN WITNESS WHEREOF, Z-TEL TECHNOLOGIES, INC. has caused this Certificate of Designations, Preferences and Relative Rights, Qualifications, Limitations and Restrictions of the Series A Convertible Preferred Stock and Series B Convertible Preferred Stock to be signed this 4th day of November, 1998.

Z-TEL TECHNOLOGIES, INC.

By: Russell T. Alba
Name: Russell T. Alba
Title: Senior Vice President, Secretary

Office of the Secretary of State

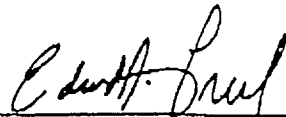
I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "Z-TEL TECHNOLOGIES, INC.", FILED IN THIS OFFICE ON THE TWENTIETH DAY OF SEPTEMBER, A.D. 1999, AT 11 O'CLOCK A.M.

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



2873445 8100

991391772


Edward J. Freel, Secretary of State

AUTHENTICATION:

9980502

DATE:

09-21-99

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF DESIGNATIONS, PREFERENCES,
AND RELATIVE RIGHTS, QUALIFICATIONS, LIMITATIONS AND RESTRICTIONS
OF THE
SERIES A CONVERTIBLE PREFERRED STOCK
AND
SERIES B CONVERTIBLE PREFERRED STOCK
OF
Z-TEL TECHNOLOGIES, INC.

Z-Tel Technologies, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), DOES HEREBY CERTIFY:

FIRST: That the Board of Directors of the Corporation, at a meeting duly held on September 9, 1999, duly adopted a resolution amending the Certificate of Designations, Preferences and Relative Rights, Qualifications, Limitations and Restrictions of the Series A Convertible Preferred Stock and Series B Convertible Preferred Stock of the Corporation (the "Certificate of Designations") to change the number of authorized shares of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock and directing its officers to obtain the written approval of the holders of greater than 50% of the outstanding Series A Convertible Preferred Stock, no other approval of stockholders being required. The resolution setting forth the proposed Amendment to the Certificate of Designations filed with the Secretary of State on November 4, 1998 read as follows:

"WHEREAS, the Board of Directors of this Corporation adopted on October 30, 1998 a Certificate of Designations, Preferences and Relative Rights, Qualifications, Limitations and Restrictions of the Series A Convertible Preferred Stock and Series B Convertible Preferred Stock of this Corporation designating 5,930,749 shares of Series A Convertible Preferred Stock and 1,338,208 shares of Series B Convertible Preferred Stock;

WHEREAS, only 2,695,795 shares of Series A Convertible Preferred Stock have been issued and the Corporation desires to reduce the number of authorized shares Series A Convertible Preferred Stock; and

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WHEREAS, all 1,338,208 shares of Series B Convertible Preferred Stock have been issued and the Corporation desires to increase the number of authorized shares of Series B Convertible Preferred Stock.

RESOLVED, that the number of authorized shares of preferred stock, having a par value of \$0.01 per share, which are designated as "Series A Convertible Preferred Stock" shall be 2,695,795 shares and the number of authorized shares of preferred stock, having a par value of \$0.01 per share, which are designated as "Series B Convertible Preferred Stock" shall be 4,034,003 shares.

RESOLVED FURTHER, that the officers of this Corporation are hereby authorized and directed to obtain the approval of the holders of the Series A Convertible Preferred Stock to the foregoing changes in authorized preferred stock.

RESOLVED FURTHER, that upon obtaining the approval of the Series A Convertible Preferred Stock, the officers of this Corporation are hereby authorized and directed to file a Certificate of Amendment of Certificate of Designations with the Delaware Secretary of State.


RESOLVED FURTHER, that the officers of this Corporation are hereby authorized and directed to take such actions and execute such documents as they shall deem necessary or desirable to carry out the purposes and intent of the foregoing resolutions."

SECOND: That, thereafter by written consent holders of more than 50% of the outstanding Series A Convertible Preferred Stock approved the amendment.

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

IN WITNESS WHEREOF, Z-TEL TECHNOLOGIES, INC. has caused this Certificate of Amendment to Certificate of Designation to be signed this 20th day of September, 1999.

Z-TEL TECHNOLOGIES, INC.

By 
Mark H. Johnson
Secretary

AMENDED
CERTIFICATE OF DESIGNATIONS, PREFERENCES
AND RELATIVE RIGHTS, QUALIFICATIONS,
LIMITATIONS AND RESTRICTIONS

OF THE

SERIES A CONVERTIBLE PREFERRED STOCK,

SERIES B CONVERTIBLE PREFERRED STOCK

AND

SERIES C CONVERTIBLE PREFERRED STOCK

OF

Z-TEL TECHNOLOGIES, INC.

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

Z-Tel Technologies, Inc., a Delaware corporation (the "Corporation"), certifies that pursuant to the authority contained in Article FOURTH of its Certificate of Incorporation (the "Certificate of Incorporation") and in accordance with the provisions of Section 151 of the General Corporation Law of the State of Delaware, the Board of Directors of the Corporation, at a Special Meeting held on September 9, 1999, adopted the following resolution which resolution remains in full force and effect on the date hereof:

WHEREAS, at a Special Meeting on October 30, 1998, the Board of Directors of the Corporation adopted (i) a series of preferred stock, having a par value of \$0.01 per share, which series was designated as "Series A Convertible Preferred Stock" (the "Series A Preferred"), consisting of 5,930,749 shares and (ii) a series of preferred stock, having a par value of \$0.01 per share, which series was designated as "Series B Convertible Preferred Stock" (the "Series B Preferred"), consisting of 1,338,208 shares, with the Series A Preferred and the Series B Preferred having the powers, designations, preferences and relative, participating, optional and other rights, and qualifications, limitations and restrictions set forth in a Certificate of Designations, Preferences and Relative Rights, Qualifications, Limitations and Restrictions filed with the Secretary of State of the State of Delaware on November 4, 1998 (the "Original Certificate");

WHEREAS, at a Special Meeting on September 9, 1999, the Board of Directors of the Corporation declared the advisability of and approved an amendment to the Original Certificate, subject to attaining the approval of the holders of a majority of the outstanding shares of the Series A Preferred, to reduce the authorized number of shares of Series A Preferred to 2,695,795 and increase the authorized number of shares of Series B Preferred to 4,034,003 (the "Amended Certificate");

WHEREAS, at a Special Meeting on September 9, 1999, the Board of Directors of the Corporation determined it to be in the best interests of the Corporation and its stockholders to effect a recapitalization of the Corporation involving the issuance of a new series of preferred stock; and

WHEREAS, the Board of Directors of the Corporation, together with the holders of a majority of the outstanding shares of each of the Series A Preferred and the Series B Preferred, have adopted the following amendments to the Original Certificate and the Amended Certificate.

NOW, THEREFORE, BE IT RESOLVED, that the Original Certificate and the Amended Certificate shall be amended and restated in its entirety (the "Amended and Restated Certificate") (i) to establish a new series of authorized preferred stock, having a par value of \$0.01 per share, which series shall be designated as "Series C Convertible Preferred Stock" (the "Series C Preferred"), shall consist of 2,794,800 shares and shall have the powers, designations, preferences and relative, participating, optional and other special rights, and qualifications, limitations and restrictions as set forth herein and (ii) to amend and restate the powers, designations, preferences and relative, participating, optional and other special rights and qualifications, limitations and restrictions of the Series A Preferred and the Series B Preferred as set forth herein.

1. Certain Definitions. Unless the context otherwise requires, in addition to the terms defined elsewhere herein, the terms defined in this Section 1 shall have, for all purposes of this resolution, the meanings herein specified when used herein with initial capital letters (with terms defined in the singular having comparable meanings when used in the plural).

"Stock Purchase Agreement" shall mean (i) in the case of the Series A Preferred, the Stock Purchase Agreement, dated as of November 4, 1998, by and among the Corporation, BA Capital Partners, L.P. (formerly known as NationsBanc Capital Corporation, a Texas corporation ("BACC")), and the other parties signatory thereto and (ii) in the case of the Series C Preferred, the Amended and Restated Stock Purchase Agreement, dated as of September 30, 1999, by and between the Corporation and Gramercy Z-Tel LLC, a Delaware limited liability company ("Gramercy").

"Stockholders' Agreement" shall mean the Amended and Restated Stockholders' Agreement, dated as of the Original Issue Date of the Series C Preferred, by and among the Corporation, BACC, Gramercy and the other parties signatory thereto.

2. Dividends and Distributions. (a) Series A Dividends. The holders of record of shares of Series A Preferred shall be entitled to receive dividends at a rate of eight percent (8%) of the Conversion Value (as defined herein) per annum per share of Series A Preferred (the "Series A Dividend"). which shall be fully cumulative, prior and in preference to any declaration or payment of any dividend or other distribution on any other class or series of Preferred Stock (other than as set forth herein) or the Common Stock (and excluding any stock splits and subdivisions for which an adjustment is made under Section 4(d)(vi)(1) below). The foregoing dividend on the Series A Preferred shall accrue from the date of issuance of each share until the earlier of (i) the conversion of such share of Series A Preferred to Common Stock, (ii) a Liquidation (as defined herein), or (iii) the repurchase or redemption of such share of Series A Preferred (including pursuant to Section 7 of the Stockholders' Agreement). Such dividend shall be payable annually on December 31 of each year (each a "Series A Annual Dividend Date") commencing on December 31, 1999, except that if any such date is a Saturday, Sunday or legal holiday (a "Non-Business Day") then such dividend shall be payable on the next day that is not a Saturday, Sunday or legal holiday on which banks in the State of Delaware are permitted to be closed (a "Business Day") to holders of record as they appear on the stock ledger of the Corporation on the applicable record date, which shall be not more than sixty (60) nor less than ten (10) days preceding the payment date for such dividends, as fixed by the Board of Directors (the "Series A Record Date"). The dividends shall be payable only when, as and if declared by the Board of Directors out of funds legally available therefor. The dividends shall either (i) accrue, (ii) be payable in cash, or (iii) be payable in shares of Common Stock, as provided in the next paragraph. The dividends shall automatically accrue in the absence of an election by the Board of Directors within sixty (60) days after each Series A Annual Dividend Date to pay the dividends in cash or in shares of Common Stock, as provided in the next paragraph. The amount of dividends payable for any period that is shorter or longer than a full annual dividend shall be computed on the basis of a 360-day year and the actual number of days elapsed (including the first day but excluding the last day) occurring in the period for which such amount is payable. All accrued but unpaid dividends (whether declared or undeclared) shall accrue interest at a rate of eight percent (8%) per annum computed on the basis of a 360-day year and the actual number of days elapsed (including the first day but excluding the last day) occurring in the period for which such amount is payable, but with interest on such dividend compounded on a quarterly basis (on each March 31, June 30, September 30 and December 31) for the year during which such dividend was payable, and thereafter until paid. Notwithstanding anything else contained herein to the contrary, the Series A Dividend shall be pari passu with the Series B Dividend (as defined herein) and the Series C Dividend (as defined herein). If the Series A Dividend, the Series B Dividend and the Series C Dividend cannot be paid in full, dividends shall be paid, to the maximum possible extent, to the holders of the Series A Preferred, the Series B Preferred and the Series C Preferred on a pari passu basis, on the basis of the amount of accrued and unpaid dividends outstanding on each share. No dividend shall be paid to holders of Series A Preferred, Series B Preferred or Series C Preferred unless dividends are paid to all holders of Series A Preferred, Series B Preferred and Series C Preferred pursuant to the terms hereof.

The Board of Directors of the Corporation may, within sixty (60) days after each Series A Annual Dividend Date, elect (the "Series A Dividend Election") to pay the annual cash dividends payable for such year on such Series A Annual Dividend Date in shares of Common Stock (each, a "Series A Payment-in-Kind", or more than one, the "Series A Payments-in-Kind") rather than cash. If such an election is made, the Corporation shall promptly notify the holders of record of the Series A Preferred entitled to such annual dividend of the election to make the Series A

Payments-in-Kind in lieu of cash dividends for such Series A Annual Dividend Date. A Series A Dividend Election for any particular Series A Annual Dividend Date shall operate only for such Series A Annual Dividend Date. Series A Payments-in-Kind shall be payable as of the Series A Annual Dividend Date of each year for which the election is made. Each Series A Payment-in-Kind shall be equal in amount to that number of shares of Common Stock that is equal in number to the aggregate cash dividend payable on any such dividend date divided by the fair market valuation for such Common Stock determined by the Board of Directors at such time in good faith, and shall be allocated on a pro rata basis to each holder entitled to receive such dividend. Certificates representing the shares of Common Stock issuable on payment of any Series A Payment-in-Kind (together with dividends, if any, on such shares of Common Stock with a record date on or after the Series A Annual Dividend Date and a payment date prior to the date such certificates have been delivered to the holder entitled to receive such Series A Payment-in-Kind) shall be delivered or paid, as the case may be, to each holder entitled to receive such Series A Payment-in-Kind (in appropriate denominations) on or before the ninetieth (90th) day following the Series A Annual Dividend Date for which such Series A Payment-in-Kind is elected to be made hereunder (or such later date as the independent determination of fair market value has been made pursuant to Section 2(d)). Notwithstanding anything else contained herein to the contrary, if, in respect of any Series A Dividend (I) a Series A Dividend Election is made by the Board of Directors of the Corporation and such Series A Dividend is paid by a Series A Payment-in-Kind, then the Corporation shall make a Series B Dividend Election (as defined herein) and Series C Dividend Election (as defined herein) with respect to the corresponding Series B Dividend and Series C Dividend and such Series B Dividend and Series C Dividend shall be paid by a Series B Payment-in-Kind (as defined herein) and a Series C Payment-in-Kind (as defined herein), as the case may be, and (II) such Series A Dividend is accrued or paid in cash, then the corresponding Series B Dividend and Series C Dividend shall also be accrued or paid in cash, as the case may be, in order that the holders of Series A Preferred, Series B Preferred and Series C Preferred receive the same type of consideration with respect to each Series A Dividend, Series B Dividend and Series C Dividend, as the case may be.

(b) Series B Dividends. The holders of record of shares of Series B Preferred shall be entitled to receive dividends at a rate of eight percent (8%) of the Conversion Value per annum per share of Series B Preferred (the "Series B Dividend"), which shall be fully cumulative, prior and in preference to any declaration or payment of any dividend or other distribution on any other class or series of Preferred Stock (other than as set forth herein) or the Common Stock (and excluding any stock splits and subdivisions for which an adjustment is made under Section 4(d)(vi)(1) below). The foregoing dividend on the Series B Preferred shall accrue from the date of issuance of each share until the earlier of (i) the conversion of such share of Series B Preferred to Common Stock, (ii) a Liquidation, or (iii) the repurchase or redemption of such share of Series B Preferred (including pursuant to Section 7 of the Stockholders' Agreement). Such dividend shall be payable annually on December 31 of each year (each a "Series B Annual Dividend Date") commencing on December 31, 1999, except that if any such date is a Non-Business Day then such dividend shall be payable on the next day that is a Business Day to holders of record as they appear on the stock ledger of the Corporation on the applicable record date, which shall be not more than sixty (60) nor less than ten (10) days preceding the payment date for such dividends, as fixed by the Board of Directors (the "Series B Record Date"). The dividends shall be payable only when, as and if declared by the Board of Directors out of funds legally available therefor. The dividends shall either (i) accrue, (ii) be payable in cash, or (iii) be payable in shares

of Common Stock, as provided in the next paragraph. The dividends shall automatically accrue in the absence of an election by the Board of Directors within sixty (60) days after each Series B Annual Dividend Date to pay the dividends in cash or in shares of Common Stock, as provided in the next paragraph. The amount of dividends payable for any period that is shorter or longer than a full annual dividend shall be computed on the basis of a 360-day year and the actual number of days elapsed (including the first day but excluding the last day) occurring in the period for which such amount is payable. All accrued but unpaid dividends (whether declared or undeclared) shall accrue interest at a rate of eight percent (8%) per annum computed on the basis of a 360-day year and the actual number of days elapsed (including the first day but excluding the last day) occurring in the period for which such amount is payable, but with interest on such dividend compounded on a quarterly basis (on each March 31, June 30, September 30 and December 31) for the year during which such dividend was payable, and thereafter until paid. Notwithstanding anything else contained herein to the contrary, the Series B Dividend shall be pari passu with the Series A Dividend and the Series C Dividend. If the Series A Dividend, the Series B Dividend and the Series C Dividend cannot be paid in full, dividends shall be paid, to the maximum possible extent, to the holders of the Series A Preferred, the Series B Preferred and the Series C Preferred on a pari passu basis, on the basis of the amount of accrued and unpaid dividends outstanding on each share. No dividend shall be paid to holders of Series A Preferred, Series B Preferred or Series C Preferred unless dividends are paid to all holders of Series A Preferred, Series B Preferred and Series C Preferred pursuant to the terms hereof.

The Board of Directors of the Corporation may, within sixty (60) days after each Series B Annual Dividend Date, elect (the "Series B Dividend Election") to pay the annual cash dividends payable for such year on such Series B Annual Dividend Date in shares of Common Stock (each, a "Series B Payment-in-Kind", or more than one, the "Series B Payments-in-Kind") rather than cash. If such an election is made, the Corporation shall promptly notify the holders of record of the Series B Preferred entitled to such annual dividend of the election to make the Series B Payments-in-Kind in lieu of cash dividends for such Series B Annual Dividend Date. A Series B Dividend Election for any particular Series B Annual Dividend Date shall operate only for such Series B Annual Dividend Date. Series B Payments-in-Kind shall be payable as of the Series B Annual Dividend Date of each year for which the election is made. Each Series B Payment-in-Kind shall be equal in amount to that number of shares of Common Stock that is equal in number to the aggregate cash dividend payable on any such dividend date divided by the fair market valuation for such Common Stock determined by the Board of Directors at such time in good faith, and shall be allocated on a pro rata basis to each holder entitled to receive such dividend. Certificates representing the shares of Common Stock issuable on payment of any Series B Payment-in-Kind (together with dividends, if any, on such shares of Common Stock with a record date on or after the Series B Annual Dividend Date and a payment date prior to the date such certificates have been delivered to the holder entitled to receive such Series B Payment-in-Kind) shall be delivered or paid, as the case may be, to each holder entitled to receive such Series B Payment-in-Kind (in appropriate denominations) on or before the ninetieth (90th) day following the Series B Annual Dividend Date for which such Series B Payment-in-Kind is elected to be made hereunder (or such later date as the independent determination of fair market value has been made pursuant to Section 2(d)). Notwithstanding anything else contained herein to the contrary, if, in respect of any Series B Dividend (i) a Series B Dividend Election is made by the Board of Directors of the Corporation and such Series B Dividend is paid by a Series B Payment-in-Kind, then the Corporation shall make a Series A Dividend Election and Series C Dividend Election with respect to the corresponding Series A

Dividend and Series C Dividend and such Series A Dividend and Series C Dividend shall be paid by a Series A Payment-in-Kind and a Series C Payment-in-Kind, as the case may be, and (II) such Series B Dividend is accrued or paid in cash, then the corresponding Series A Dividend and Series C Dividend shall also be accrued or paid in cash, as the case may be, in order that the holders of Series B Preferred, Series A Preferred and Series C Preferred receive the same type of consideration with respect to each Series B Dividend, Series A Dividend and Series C Dividend, as the case may be.

(c) Series C Dividends. The holders of record of shares of Series C Preferred shall be entitled to receive dividends at a rate of eight percent (8%) of the Conversion Value per annum per share of Series C Preferred (the "Series C Dividend"), which shall be fully cumulative, prior and in preference to any declaration or payment of any dividend or other distribution on any other class or series of Preferred Stock (other than as set forth herein) or the Common Stock (and excluding any stock splits and subdivisions for which an adjustment is made under Section 4(d)(vi)(1) below). The foregoing dividend on the Series C Preferred shall accrue from the date of issuance of each share until the earlier of (i) the conversion of such share of Series C Preferred to Common Stock, (ii) a Liquidation, or (iii) the repurchase or redemption of such share of Series C Preferred (including pursuant to Section 7 of the Stockholders' Agreement). Such dividend shall be payable annually on December 31 of each year (each a "Series C Annual Dividend Date") commencing on December 31, 1999, except that if any such date is a Non-Business Day then such dividend shall be payable on the next day that is a Business Day to holders of record as they appear on the stock ledger of the Corporation on the applicable record date, which shall be not more than sixty (60) nor less than ten (10) days preceding the payment date for such dividends, as fixed by the Board of Directors (the "Series C Record Date"). The dividends shall be payable only when, as and if declared by the Board of Directors out of funds legally available therefor. The dividends shall either (i) accrue, (ii) be payable in cash, or (iii) be payable in shares of Common Stock, as provided in the next paragraph. The dividends shall automatically accrue in the absence of an election by the Board of Directors within sixty (60) days after each Series C Annual Dividend Date to pay the dividends in cash or in shares of Common Stock, as provided in the next paragraph. The amount of dividends payable for any period that is shorter or longer than a full annual dividend shall be computed on the basis of a 360-day year and the actual number of days elapsed (including the first day but excluding the last day) occurring in the period for which such amount is payable. All accrued but unpaid dividends (whether declared or undeclared) shall accrue interest at a rate of eight percent (8%) per annum computed on the basis of a 360-day year and the actual number of days elapsed (including the first day but excluding the last day) occurring in the period for which such amount is payable, but with interest on such dividend compounded on a quarterly basis (on each March 31, June 30, September 30 and December 31) for the year during which such dividend was payable, and thereafter until paid. Notwithstanding anything else contained herein to the contrary, the Series C Dividend shall be pari passu with the Series A Dividend and the Series B Dividend. If the Series A Dividend, the Series B Dividend and the Series C Dividend cannot be paid in full, dividends shall be paid, to the maximum possible extent, to the holders of the Series A Preferred, the Series B Preferred and the Series C Preferred on a pari passu basis, on the basis of the amount of accrued and unpaid dividends outstanding on each share. No dividend shall be paid to holders of Series A Preferred, Series B Preferred or Series C Preferred unless dividends are paid to all holders of Series A Preferred, Series B Preferred and Series C Preferred pursuant to the terms hereof.

The Board of Directors of the Corporation may, within sixty (60) days after each Series C Annual Dividend Date, elect (the "Series C Dividend Election") to pay the annual cash dividends payable for such year on such Series C Annual Dividend Date in shares of Common Stock (each, a "Series C Payment-in-Kind", or more than one, the "Series C Payments-in-Kind") rather than cash. If such an election is made, the Corporation shall promptly notify the holders of record of the Series C Preferred entitled to such annual dividend of the election to make the Series C Payments-in-Kind in lieu of cash dividends for such Series C Annual Dividend Date. A Series C Dividend Election for any particular Series C Annual Dividend Date shall operate only for such Series C Annual Dividend Date. Series C Payments-in-Kind shall be payable as of the Series C Annual Dividend Date of each year for which the election is made. Each Series C Payment-in-Kind shall be equal in amount to that number of shares of Common Stock that is equal in number to the aggregate cash dividend payable on any such dividend date divided by the fair market valuation for such Common Stock determined by the Board of Directors at such time in good faith, and shall be allocated on a pro rata basis to each holder entitled to receive such dividend. Certificates representing the shares of Common Stock issuable on payment of any Series C Payment-in-Kind (together with dividends, if any, on such shares of Common Stock with a record date on or after the Series C Annual Dividend Date and a payment date prior to the date such certificates have been delivered to the holder entitled to receive such Series C Payment-in-Kind) shall be delivered, or paid, as the case may be, to each holder entitled to receive such Series C Payment-in-Kind (in appropriate denominations) on or before the ninetieth (90th) day following the Series C Annual Dividend Date for which such Series C Payment-in-Kind is elected to be made hereunder (or such later date as the independent determination of fair market value has been made pursuant to Section 2(d)). Notwithstanding anything else contained herein to the contrary, if, in respect of any Series C Dividend (I) a Series C Dividend Election is made by the Board of Directors of the Corporation and such Series C Dividend is paid by a Series C Payment-in-Kind, then the Corporation shall make a Series A Dividend Election and Series B Dividend Election with respect to the corresponding Series A Dividend and Series B Dividend and such Series A Dividend and Series B Dividend shall be paid by a Series A Payment-in-Kind and a Series B Payment-in-Kind, as the case may be, and (II) such Series C Dividend is accrued or paid in cash, then the corresponding Series A Dividend and Series B Dividend shall also be accrued or paid in cash, as the case may be, in order that the holders of Series C Preferred, Series A Preferred and Series B Preferred receive the same type of consideration with respect to each Series C Dividend, Series A Dividend and Series B Dividend, as the case may be.

(d) Determination of Fair Market Value of Common Stock. Notwithstanding anything else to the contrary in this Section 2, the holders of at least a majority of the outstanding shares of the Series A Preferred or the holders of at least a majority of the outstanding shares of the Series C Preferred shall have the right to challenge any determination by the Board of Directors of fair market value of the Common Stock pursuant to this Section 2, in which case the determination of fair market value of the Common Stock shall be made by an independent appraiser or investment banker, mutually acceptable to the Board of Directors and the challenging parties, who is qualified in the fair market appraisal of companies, the cost of such appraisal to be borne (i) by the challenging parties, if the fair market value as determined by such appraisal does not exceed the determination of fair market value by the Board of Directors by more than ten percent (10%) and (ii) by the Corporation, if the fair market value as determined by such appraisal exceeds the determination of fair market value by the Board of Directors by more than ten percent (10%).

(e) Other Permitted Distributions. Notwithstanding Section 2(a), 2(b) and 2(c) hereof, the Corporation may at any time, out of funds legally available therefor, repurchase shares of Common Stock of the Corporation issued to or held by any person pursuant to the Corporation's right of first refusal to purchase such shares contained in the Stockholders' Agreement, whether or not dividends on the Series A Preferred, Series B Preferred or Series C Preferred shall have been declared and paid or funds set aside therefor, in each event subject to any other contractual restrictions entered into by the Corporation and the terms of this Amended and Restated Certificate.

(f) Fractional Shares. In lieu of any fractional shares in the aggregate to which the holder of Series A Preferred, Series B Preferred or Series C Preferred would otherwise be entitled upon payment of Series A Payment-in-Kind, Series B Payment-in-Kind or Series C Payment-in-Kind, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of one share of Common Stock as determined by the Board of Directors in the good faith exercise of its reasonable business judgment or pursuant to Section 2(d), if applicable.

3. Liquidation Rights. In the event of any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary (a "Liquidation"), distributions shall be made to the holders of Series A Preferred, Series B Preferred and Series C Preferred in respect of such Series A Preferred, Series B Preferred and Series C Preferred before any amount shall be paid to the holders of any other class or series of capital stock of the Corporation in the following manner:

(a) Liquidation Amount. The holders of the Series A Preferred, Series B Preferred and Series C Preferred, subject to the other terms contained herein, shall be entitled to be paid first out of the assets of the Corporation available for distribution to holders of its capital stock an amount (the "Liquidation Value") equal to (i) the applicable Conversion Value, plus (ii) all accrued but unpaid dividends (whether declared or undeclared including any interest accrued thereon calculated through the date of Liquidation), prior to any distribution to the holders of any other Preferred or Common Stock. If the proceeds from a Liquidation are not sufficient to pay to the holders of Series A Preferred, Series B Preferred and Series C Preferred the full preference amount set forth above, then such holders shall instead be entitled to receive the entire assets and funds of the Corporation legally available for distribution to the holders of capital stock, which assets and funds shall be distributed pro rata among the holders of the Series A Preferred, Series B Preferred and Series C Preferred on the basis of the amounts per share to be paid to each.

(b) Events Deemed a Liquidation. For purposes of this Section 3, the holders of a majority of the outstanding shares of the Series A Preferred (which must include BACC so long as it holds any Series A Preferred) or the holders of a majority of the outstanding shares of the Series C Preferred (which must include Gramercy so long as it holds any Series C Preferred) may elect to have treated as a Liquidation the consolidation or merger of the Corporation with or into any other corporation or the sale or other transfer in a single transaction or a series of related transactions of all or substantially all of the assets of the Corporation, or any other reorganization or business combination of the Corporation. If such election is made by such requisite holders of Series A Preferred or Series C Preferred, then and only then, the holders of Series B Preferred may elect to have such events treated as a Liquidation.

(c) Valuation of Securities and Property. In the event the Corporation proposes to distribute assets other than cash in connection with any Liquidation, the value of the assets to be distributed to the holders of shares of Series A Preferred, Series B Preferred and Series C Preferred shall be determined in good faith by the Board of Directors. Any securities not subject to an investment letter or similar restrictions on free marketability shall be valued as follows:

(i) if traded on a national securities exchange or the NASDAQ National Market System ("NASDAQ"), the value shall be deemed to be the average of the security's closing prices on such exchange or NASDAQ over the thirty (30) trading day period ending three (3) days prior to the distribution;

(ii) if actively traded over-the-counter (other than NASDAQ), the value shall be deemed to be the average of the closing bid prices over the thirty (30) day period ending three (3) days prior to the distribution; or

(iii) if there is no active public market, the value shall be the fair market value thereof as determined in good faith by the Board of Directors.

The method of valuation of securities subject to an investment letter or other restrictions on free marketability shall be adjusted to make an appropriate discount from the market value determined as above in clauses (i), (ii) or (iii) to reflect the fair market value thereof as determined in good faith by the Board of Directors. The holders of a majority of the outstanding shares of the Series A Preferred or the holders of a majority of the outstanding shares of the Series C Preferred shall have the right to challenge any determination by the Board of Directors of fair market value pursuant to this Section 3(c), in which case the determination of fair market value shall be made by an independent appraiser or investment banker selected jointly by the Board of Directors and the challenging parties, the cost of such appraisal to be borne (I) by the challenging parties, if the fair market value as determined by such appraisal does not exceed the determination of fair market value by the Board of Directors by more than ten percent (10%) and (II) by the Corporation, if the fair market value as determined by such appraisal exceeds the determination of fair market value by the Board of Directors by more than ten percent (10%).

4. Conversion. The holders of Series A Preferred, Series B Preferred and Series C Preferred have conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert. Each share of Series A Preferred, Series B Preferred and Series C Preferred shall initially be convertible, at the option of the holder thereof, at any time on or after the date of issuance thereof, into the number of fully paid and nonassessable shares of Common Stock which results from dividing the applicable Conversion Price (as hereinafter specified) per share in effect at the time of conversion into the applicable per share Conversion Value in effect at the time of conversion. The initial Conversion Price of the Series A Preferred and Series B Preferred shall be \$3.7094803 per share, and the Conversion Value of the Series A Preferred and Series B Preferred shall be \$3.7094803 per share. The initial Conversion Price of the Series C Preferred shall be \$5.3671104 per share, and the Conversion Value of the Series C Preferred shall be \$5.3671104 per share. The initial Conversion Price of the Series A Preferred, Series B Preferred and Series C Preferred shall be subject to adjustment from time to time as provided in Section 4(d) hereof. The Conversion Value shall not be subject to adjustment. Upon conversion, all accrued or declared but unpaid dividends (including any interest accrued thereon calculated as

of the date of conversion) on the Series A Preferred, Series B Preferred and Series C Preferred so converted shall be paid in cash or Common Stock, at the option of the Corporation, and in the case of cash, to the extent permitted by applicable law (and if not then permitted by applicable law, at such time as the Corporation is permitted by applicable law to pay any such dividends).

(b) Automatic Conversion. Each share of Series A Preferred, Series B Preferred and Series C Preferred shall automatically be converted into shares of Common Stock upon the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of securities for the account of the Corporation to the public: (i) the gross proceeds of which equal or exceed \$20,000,000 at a per share price of at least \$12; and (ii) in the case of the Series A Preferred and the Series B Preferred whereby the aggregate value of the shares of Common Stock issuable on conversion of each share of Series A Preferred and Series B Preferred (utilizing the offering price in such underwriting) is at least two (2) times the Conversion Value of the Series A Preferred and Series B Preferred and (iii) in the case of the Series C Preferred whereby the aggregate value of the shares of Common Stock issuable on conversion of each share of Series C Preferred (utilizing the offering price in such underwriting) is at least two (2) times the Conversion Value of the Series C Preferred (in each case, such event, as applicable, a "Qualified Public Offering"). Upon conversion, all accrued but unpaid dividends (whether declared or undeclared) on the Series A Preferred, Series B Preferred and Series C Preferred shall be paid in cash, to the extent permitted by applicable law (and if not then permitted by applicable law, at such time as the Corporation is permitted by applicable law to pay any such dividends).

(c) Mechanics of Conversion. Before any holder of Series A Preferred, Series B Preferred or Series C Preferred shall be entitled to convert the same into shares of Common Stock and to receive certificates therefore, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the principal office of the Corporation or of any transfer agent for the Series A Preferred, Series B Preferred and Series C Preferred, and shall give written notice to the Corporation at such office that such holder elects to convert the same; provided, however, that in the event of an automatic conversion pursuant to Section 4(b) hereof, the outstanding shares of Series A Preferred, Series B Preferred and Series C Preferred, as applicable, shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; and provided further, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such automatic conversion unless and until the certificates evidencing such shares of Series A Preferred, Series B Preferred and Series C Preferred, as appropriate, are either delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement reasonably satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. The Corporation shall as soon as practicable after such delivery, or after such agreement and indemnification, issue and deliver at such office to such holder of Series A Preferred, Series B Preferred or Series C Preferred, as appropriate, a certificate or certificates for the number of shares of Common Stock to which it, he or she shall be entitled as aforesaid and a check payable to the holder in the amount of any accrued or declared but unpaid dividends (including any interest accrued thereon calculated as of the date of conversion) payable pursuant to Section 2 hereof, if any. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of

Series A Preferred, Series B Preferred or Series C Preferred to be converted, or, in the case of automatic conversion, simultaneously upon the occurrence of the event leading to such automatic conversion, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date. If the Corporation fails to pay all such dividends (and interest thereon) within twenty (20) days of the date of conversion, the holder entitled to such dividends (and interest thereon) may elect to have the Corporation issue to such holder, in lieu of such cash payment, additional shares of Common Stock calculated by dividing the total amount payable on such date by the applicable Conversion Price.

(d) Adjustments to Conversion Price.

(i) Special Definitions. For purposes of this Section 4(d), the following definitions shall apply:

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

(2) "Convertible Securities" shall mean any evidences of indebtedness, shares or other securities convertible into or exchangeable for Common Stock.

(3) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Section 4(d)(iii), deemed to be issued) by the Corporation after the Original Issue Date of the Series C Preferred, other than shares of Common Stock issued or issuable:

(A) upon conversion of shares of Series A Preferred, Series B Preferred or Series C Preferred;

(B) pursuant to a stock grant, option plan or purchase plan, other employee stock incentive program or agreement that in the aggregate does not exceed 218,659 shares (as adjusted for recapitalizations, stock splits, stock dividends and the like and cancellations of options that have not otherwise expired) (the "Option Pool"), or other options in existence on the Original Issue Date and set forth in Schedule 2.5 of the Series C Preferred Stock Purchase Agreement, other than the warrant set forth in clause (C) below;

(C) pursuant to a Warrant dated March 15, 1999 issued to CMB Capital, LLC in existence on the Original Issue Date, not to exceed 474,393 shares of Common Stock (as adjusted to reflect any stock split, stock dividend, combination or recapitalization after the Original Issue Date of the Series C Preferred);

(D) as a dividend or distribution on shares of Series A Preferred, Series B Preferred or Series C Preferred;

(E) in a transaction described in Section 4(d)(vi); or

(F) by way of dividend or other distribution on shares of Common Stock excluded from the definition of Additional Shares of Common Stock by the foregoing clauses (A), (B), (C), (D), (E) or this clause (F).

(4) "Original Issue Date" shall mean October 8, 1999.

(ii) No Adjustment of Conversion Price. Subject to the provisions of Section 4(d)(iv), no adjustment in the applicable Conversion Price of the Series A Preferred, Series B Preferred or Series C Preferred shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the applicable Conversion Price for the Series A Preferred, Series B Preferred or Series C Preferred, as the case may be, in effect on the date of, and immediately prior to, such issue.

(iii) Deemed Issue of Additional Shares of Common Stock. In the event the Corporation at any time or from time to time after the Original Issue Date of the Series C Preferred shall issue any Options (other than the issuance of Options pursuant to the Option Pool) or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the exercise of such Options and conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that Additional Shares of Common Stock shall not be deemed to have been issued, subject to the provisions of Section 4(d)(iv), unless the consideration per share (determined pursuant to Section 4(d)(v) hereof) of such Additional Shares of Common Stock would be less than the applicable Conversion Price for the Series A Preferred, Series B Preferred or Series C Preferred, as the case may be, in effect on the date of and immediately prior to such issue, or such record date, as the case may be, and provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(1) except as provided in Section 4(d)(iii)(2), no further adjustment in the Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any change in the consideration payable to the Corporation, or change in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof (other than under or by reason of provisions designed to protect against dilution), the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto) and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it

affects such Options or the rights of conversion or exchange under such Convertible Securities; and

(3) no readjustment pursuant to clause (2) above shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (A) the Conversion Price on the original adjustment date or (B) the Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4(d)(iii)), then and in each such event the applicable Conversion Price of the Series A Preferred, Series B Preferred and Series C Preferred, as the case may be, shall be recomputed by multiplying the applicable Conversion Price then in effect by a fraction:

(1) the numerator of which will be the sum of (A) the aggregate number of shares of Common Stock issued and outstanding on the date of issuance of the Additional Shares of Common Stock (assuming the conversion on such date of all of the outstanding shares of Series A Preferred, Series B Preferred and Series C Preferred) plus (B) the quotient of the aggregate consideration received by the Corporation for the issuance of such Additional Shares of Common Stock divided by the then applicable Conversion Price; and

(2) the denominator of which will be the sum of (A) the aggregate number of shares of Common Stock issued and outstanding on the date of issuance of the Additional Shares of Common Stock (assuming the conversion on such date of all of the outstanding shares of Series A Preferred, Series B Preferred and Series C Preferred) plus (B) the aggregate number of such Additional Shares of Common Stock.

(v) Determination of Consideration. For purposes of this Section 4(d), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(1) Cash and Property: Such consideration shall be computed as follows:

(A) insofar as it consists of cash, such consideration shall be computed at the aggregate amount of cash received by the Corporation;

(B) insofar as it consists of property other than cash, such consideration shall be computed at the fair value thereof at the time of such issue, as determined by the Board of Directors in the good faith exercise of its reasonable business judgment; and

(C) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, such consideration shall be the

proportion of such consideration so received, computed as provided in clauses (A) and (B) above, as determined by the Board of Directors in the good faith exercise of its reasonable business judgment.

(2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 4(d)(iii), relating to Options and Convertible Securities, shall be determined by dividing

(A) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(B) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(vi) Other Adjustments.

(1) Subdivisions, Combinations, or Consolidations of Common Stock. In the event that, with respect to the Series C Preferred, at any time after the Original Issue Date of the Series C Preferred, or with respect to the Series A Preferred and the Series B Preferred, at any time after their respective applicable original issue dates, the outstanding shares of Common Stock shall be subdivided, combined or consolidated, by stock split, stock dividend, combination or like event, into a greater or lesser number of shares of Common Stock, the applicable Conversion Price of the Series A Preferred, Series B Preferred and Series C Preferred in effect immediately prior to such subdivision, combination, consolidation or stock dividend shall, concurrently with the effectiveness of such subdivision, combination or consolidation, be proportionately adjusted.

(2) Reclassifications. In the case, at any time after the Original Issue Date of the Series C Preferred, of any capital reorganization or any reclassification of the stock of the Corporation (other than as a result of a stock dividend or subdivision, split-up or combination of shares), or the consolidation or merger of the Corporation with or into another person (other than a consolidation or merger (A) in which the Corporation is the continuing entity and which does not result in any change in the Common Stock or (B) which is treated as a Liquidation pursuant to Section 3(b) above), the shares of Series A Preferred, Series B Preferred and Series C Preferred shall, after such reorganization, reclassification, consolidation or merger, be convertible into the kind and number of

shares of stock or other securities or property of the Corporation or otherwise to which such holder would have been entitled if immediately prior to such reorganization, reclassification, consolidation or merger such holder had converted his shares of Series A Preferred, Series B Preferred or Series C Preferred into Common Stock. The provisions of this Section 4(d)(vi)(2) shall similarly apply to successive reorganizations, reclassifications, consolidations or mergers.

(c) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the applicable Conversion Price of the Series A Preferred, Series B Preferred or Series C Preferred pursuant to this Section 4, the Corporation at its expense shall promptly thereafter compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series A Preferred, Series B Preferred and Series C Preferred a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred, Series B Preferred or Series C Preferred, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, if any, (ii) the applicable Conversion Price of the Series A Preferred, Series B Preferred and Series C Preferred at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of the Series A Preferred, Series B Preferred or Series C Preferred.

(f) Status of Converted Stock. In case any shares of Series A Preferred, Series B Preferred or Series C Preferred shall be converted pursuant to Section 4 hereof, the shares so converted shall be canceled, shall not be reissuable and shall cease to be a part of the authorized capital stock of the Corporation.

(g) Fractional Shares. In lieu of any fractional shares in the aggregate to which the holder of Series A Preferred, Series B Preferred or Series C Preferred would otherwise be entitled upon conversion, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of one share of Common Stock as determined by the Board of Directors in the good faith exercise of its reasonable business judgment or pursuant to Section 4(h)(ii), if applicable.

(h) Miscellaneous.

(i) All calculations under this Section 4 shall be made to the nearest cent or to the nearest one hundredth (1/100) of a share, as the case may be.

(ii) The holders of a majority of the outstanding shares of Series A Preferred or the holders of a majority of the outstanding shares of Series C Preferred, as the case may be, shall have the right to challenge any determination by the Board of Directors of fair market value pursuant to this Section 4, in which case such determination of fair market value shall be made by an independent appraiser selected jointly by the Board of Directors and the challenging parties, the cost of such appraisal to be borne (I) by the challenging parties, if the fair market value as determined by such appraisal does not exceed the determination of fair market value by the Board of Directors by more than ten percent (10%) and (II) by the Corporation, if the fair market

value as determined by such appraisal exceeds the determination of fair market value by the Board of Directors by more than ten percent (10%).

(iii) No adjustment in the applicable Conversion Price of the Series A Preferred, Series B Preferred or Series C Preferred will be made if such adjustment would result in a change in such Conversion Price of less than \$0.01. Any adjustment of less than \$0.01 which is not made shall be carried forward and shall be made at the time of and together with any subsequent adjustment which, on a cumulative basis, amounts to an adjustment of \$0.01 or more in such Conversion Price.

(i) No Impairment. The Corporation will not through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all action as may be necessary or appropriate in order to protect the conversion rights of the holders of Series A Preferred, Series B Preferred and Series C Preferred against impairment.

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

5. Voting Rights. (a) General. (i) Except as otherwise required by law, by Section 5(b) hereof or by Section 8 hereof, the holder of each share of Series A Preferred will be entitled to vote on all matters with the holders of the Common Stock as a single class, and not as a separate class or series. Each share of Series A Preferred will entitle the holder to the number of votes per share equal to the full number of shares of Common Stock into which each share of Series A Preferred is convertible on the record date for such vote. The holders of Series A Preferred shall receive notice of and shall be entitled to attend in person or by proxy any meeting of the holders of Common Stock.

(ii) Except as otherwise required by law, the holder of each share of Series B Preferred will be entitled to vote on all matters with the Common Stock as a single class, and not as a separate class or series. Each share of Series B Preferred will entitle the holder to the number of votes per share equal to the full number of shares of Common Stock into which each share of Series B Preferred is convertible on the record date for such vote. The holders of Series B Preferred shall receive notice of and shall be entitled to attend in person or by proxy any meeting of the holders of Common Stock. If the holders of preferred stock are required to vote as a class for any reason, then the holders of Series B Preferred shall vote as a single class with the holders of Series A Preferred and Series C Preferred, and not as a separate class or series, and the holders

of Series B Preferred shall be entitled to one vote for each share of Series B Preferred held by them and the holders of Series A Preferred and the holders of Series C Preferred shall be entitled to five (5) votes for each share of Series A Preferred and Series C Preferred held by them, as applicable, in connection with any such vote.

(iii) Except as otherwise required by law, by Section 5(c) hereof or by Section 8 hereof, the holder of each share of Series C Preferred will be entitled to vote on all matters with the Common Stock as a single class, and not as a separate class or series. Each share of Series C Preferred will entitle the holder to the number of votes per share equal to the full number of shares of Common Stock into which each share of Series C Preferred is convertible on the record date for such vote. The holders of Series C Preferred shall receive notice of and shall be entitled to attend in person or by proxy any meeting of the holders of Common Stock.

(b) Election of Directors by Series A Preferred. For so long as there are any shares of Series A Preferred outstanding, the holders of a majority of the outstanding shares of Series A Preferred shall be entitled to nominate and elect as a single class separately from all other classes and series of capital stock of the Corporation, by a majority vote of such class, two (2) directors to the Board of Directors of the Corporation, and the holders of the Series A Preferred shall otherwise also be entitled to vote in the election of directors pursuant to the terms of Section 5(a) above. Notwithstanding the foregoing, for so long as there are any shares of Series A Preferred outstanding, if (i) the Corporation shall breach any of its obligations and/or agreements under Section 4 of the Stock Purchase Agreement relating to the Series A Preferred and such breach shall remain uncured for a period of one hundred and eighty (180) days after written notice of such breach by any holder of Series A Preferred, (ii) a Put is initiated pursuant to Section 7 of the Stockholders' Agreement, or (iii) the Corporation shall not have closed a Qualified Public Offering on or prior to the second anniversary of the Original Issue Date of the Series C Preferred, then in any such event, the holders of the Series A Preferred shall be entitled then and thereafter to nominate and elect as a single class separately from all other classes and series of capital stock, by a majority vote of such class at a special meeting called by the holders of at least 10% of the outstanding shares of the Series A Preferred, one (1) additional director to the Board of Directors of the Corporation. If a special meeting is called by the holders of the Series C Preferred pursuant to the provisions of Section 5(c), then the holders of Series A Preferred shall be entitled to nominate and elect any additional director at such meeting without the necessity of calling another special meeting. The term of office of such additional director shall immediately terminate upon the later of (w) twelve (12) months from the election of such director, (x) such time that the applicable breach has been cured, (y) if a Put Notice has been delivered pursuant to the Stockholders' Agreement, the date all of the shares subject to the Put have been repurchased for cash, or (z) the closing of the Qualified Public Offering. Any vacancy on the Board of Directors of the Corporation occurring because of the death, resignation or removal of a director elected by the holders of the Series A Preferred shall be filled by the vote or written consent of the holders of a majority of the outstanding shares of the Series A Preferred.

(c) Election of Directors by Series C Preferred. For so long as there are any shares of Series C Preferred outstanding, the holders of a majority of the outstanding shares of the Series C Preferred shall be entitled to nominate and elect as a single class separately from all other classes and series of capital stock of the Corporation, by a majority vote of such class, one (1) director to the Board of Directors of the Corporation, and the holders of the Series C Preferred shall otherwise also be entitled to vote in the election of directors pursuant to the terms of Section 5(a)

above. Notwithstanding the foregoing, for so long as there are any shares of Series C Preferred outstanding, if (i) the Corporation shall breach any of its obligations and/or agreements under Section 4 of the Stock Purchase Agreement relating to the Series C Preferred and such breach shall remain uncured for a period of one hundred and eighty (180) days after written notice of such breach by any holder of Series C Preferred, (ii) a Put is initiated pursuant to Section 7 of the Stockholders' Agreement, or (iii) the Corporation shall not have closed a Qualified Public Offering on or prior to the second anniversary of the Original Issue Date of the Series C Preferred, then in any such event, the holders of the Series C Preferred shall be entitled then and thereafter to nominate and elect as a single class separately from all other classes and series of capital stock, by a majority vote of such class at a special meeting called by the holders of at least 10% of the outstanding shares of the Series C Preferred, one (1) additional director to the Board of Directors of the Corporation. If a special meeting is called by the holders of the Series A Preferred pursuant to the provisions of Section 5(b), then the holders of Series C Preferred shall be entitled to nominate and elect an additional director at such meeting without the necessity of calling another special meeting. The term of office of such additional director shall immediately terminate upon the later of (w) twelve (12) months from the election of such director, (x) such time that the applicable breach has been cured, (y) if a Put Notice has been delivered pursuant to the Stockholders' Agreement, the date all of the shares subject to the Put have been repurchased for cash, or (z) the closing of the Qualified Public Offering. Any vacancy on the Board of Directors of the Corporation occurring because of the death, resignation or removal of a director elected by the holders of the Series C Preferred shall be filled by the vote or written consent of the holders of a majority of the outstanding shares of the Series C Preferred.

6. Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Series A Preferred, Series B Preferred and Series C Preferred, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the anticipated amount and character of such dividend, distribution or right.

7. Notices. Any notice required by the provisions of this Amended or Restated Certificate to be given to the holders of Series A Preferred, Series B Preferred or Series C Preferred shall be deemed given (i) when made, if made by hand delivery, (ii) upon confirmation, if made by fax, or (iii) one business day after being deposited with a reputable next-day courier, postage prepaid, and in each case, addressed to each holder of record at such holder's address or fax number appearing on the books of the Corporation.

8. Approval of Certain Transactions While Any Series A Preferred or Series C Preferred is Outstanding. So long as any shares of Series A Preferred or Series C Preferred are outstanding, the Corporation shall not, without first obtaining the written approval of (a) the holders of a majority of the outstanding shares of Series A Preferred (which must include BACC, until such time as BACC or its Affiliates fail to own at least fifty percent (50%) of the Series A Preferred purchased by it pursuant to the Stock Purchase Agreement relating to the Series A Preferred), voting as a separate class, and (b) the holders of a majority of the outstanding shares of Series C Preferred (which must include Gramercy, until such time as Gramercy or its

Affiliates fail to own at least fifty percent (50%) of the Series C Preferred purchased by them pursuant to the Stock Purchase Agreement relating to the Series C Preferred), voting as a separate class:

(i) amend this Amended and Restated Certificate, or the Certificate of Incorporation or bylaws of the Corporation or take any other action so as to alter or adversely affect the rights, preferences or privileges of the Series A Preferred, Series B Preferred or Series C Preferred, including by merger, consolidation or otherwise;

(ii) increase or decrease the authorized number of shares of Series A Preferred, Series B Preferred, Series C Preferred or Common Stock, including by merger, consolidation or otherwise;

(iii) create any new class or series of shares, or issue any such shares or Options or Convertible Securities exercisable or convertible into such shares, that have a preference over or are on a parity with the Series A Preferred or Series C Preferred with respect to voting, dividends or liquidation preferences (other than the Series B Preferred being on parity with the Series A Preferred and the Series C Preferred with respect to dividends and liquidation preferences, and except that the Corporation may grant voting rights to shares of a series of preferred stock which have the right to vote with holders of Common Stock on an as-converted basis, but in any event not in preference to shares of Series A Preferred or Series C Preferred);

(iv) reclassify stock into shares of capital stock of the Corporation having a preference over or parity with the Series A Preferred or Series C Preferred with respect to voting, dividends or liquidation preferences (except that the Corporation may grant voting rights to shares of a series of preferred stock which have the right to vote with holders of Common Stock on an as-converted basis, but in any event not in preference to shares of Series A Preferred or Series C Preferred);

(v) authorize any dividend or other distribution with respect to the Preferred Stock or the Common Stock (other than dividends payable to the holders of Series A Preferred, Series B Preferred and Series C Preferred and stock dividends for which an adjustment is made pursuant to Section 4(d)(vi)(1));

(vi) repurchase, redeem or retire any shares of capital stock of the Corporation, other than pursuant to contractual rights to repurchase shares of Common Stock held by employees, directors or consultants of the Corporation or its subsidiaries upon termination of their employment or services (which purchase has been approved by the Board) or pursuant to the exercise of the Put pursuant to Section 7 of the Stockholders' Agreement; or

(vii) merge or consolidate with any other corporation or entity or sell or exchange all or substantially all of its assets or authorize or effect any reorganization, dissolution, liquidation or winding up of the Corporation.

9. Headings of Subdivisions. The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

10. Severability of Provisions. If any voting powers, preferences and relative, participating, optional and other special rights of the Series A Preferred, Series B Preferred or Series C Preferred and qualifications, limitations and restrictions thereof set forth in this resolution (as such resolution may be amended from time to time) are invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other voting powers, preferences and relative, participating, optional and other special rights of the Series A Preferred, Series B Preferred or Series C Preferred and qualifications, limitations and restrictions thereof set forth in this resolution (as so amended) which can be given effect without the invalid, unlawful or unenforceable voting powers, preferences and relative, participating, optional and other special rights of the Series A Preferred, Series B Preferred or Series C Preferred and qualifications, limitations and restrictions thereof shall, nevertheless, remain in full force and effect, and no voting powers, preferences and relative, participating, optional or other special rights of the Series A Preferred, Series B Preferred or Series C Preferred and qualifications, limitations and restrictions thereof herein set forth shall be deemed dependent upon any other such voting powers, preferences and relative, participating, optional or other special rights of the Series A Preferred, Series B Preferred or Series C Preferred and qualifications, limitations and restrictions thereof unless so expressed herein.

IN WITNESS WHEREOF, Z-TEL TECHNOLOGIES, INC. has caused this Amended
and Restated Certificate to be signed this 8th day of October, 1999.

Z-TEL TECHNOLOGIES, INC.

By: 

Name:

Title:

Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "Z-TEL TECHNOLOGIES, INC.", FILED IN THIS OFFICE ON THE THIRTEENTH DAY OF DECEMBER, A.D. 1999, AT 4 O'CLOCK P.M.

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



2873445 8100

991536023

A handwritten signature in cursive script, reading "Edward J. Freel".

Edward J. Freel, Secretary of State

AUTHENTICATION: 0138952

DATE: 12-14-99

CERTIFICATE OF AMENDMENT
TO THE
AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
Z-TEL TECHNOLOGIES, INC.

I, the undersigned, Secretary of Z-Tel Technologies, Inc., a corporation existing under the laws of the State of Delaware (the "Corporation"), does hereby certify as follows:

FIRST: That the Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on March 19, 1998 and the Amended and Restated Certificate of Incorporation was filed on October 21, 1998.

SECOND: That this amendment to the Amended and Restated Certificate of Incorporation is hereby amended, for the purposes of increasing the Corporation's authorized capital stock, as follows: by striking out ARTICLE IV thereof as it now exists and inserting in lieu thereof a new ARTICLE IV reading in its entirety, as follows:

"ARTICLE IV

The total number of shares that the Corporation shall have authority to issue is 200,000,000 shares, consisting of 150,000,000 shares of common stock, par value \$0.01 per share (the "Common Stock"), and 50,000,000 shares of preferred stock, par value \$0.01 per share (the "Preferred Stock")."

THIRD: That such amendment was proposed by the board of directors and duly adopted by the stockholders of the Corporation in the manner and by the vote prescribed by Sections 228, 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, I have subscribed this document on the date set forth below and do hereby affirm, under the penalties of perjury, that the statements contained herein have been examined by me and are true and correct.

Date: November 23, 1999

Z-TEL TECHNOLOGIES, INC.

/s/ Mark Johnson

Mark Johnson

Secretary

Office of the Secretary of State

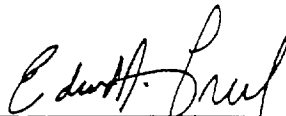
I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "Z-TEL TECHNOLOGIES, INC.", FILED IN THIS OFFICE ON THE THIRTIETH DAY OF MAY, A.D. 2000, AT 1:30 O'CLOCK P.M.

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



2873445 8100

001285349



Edward J. Freel, Secretary of State

AUTHENTICATION: 0487605

DATE: 06-09-00

CERTIFICATE OF AMENDMENT
TO THE
AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
Z-TEL TECHNOLOGIES, INC.

The undersigned Chief Executive Officer and President of Z-Tel Technologies, Inc., a corporation existing under the laws of the State of Delaware (the "Corporation"), does hereby certify as follows:

FIRST: That this Certificate of Amendment to the Amended and Restated Certificate of Incorporation, filed on October 21, 1998 (the "Amended Certificate"), hereby further amends the Amended Certificate, for purposes of dividing the board of directors of the corporation into three classes, as follows: by striking out ARTICLE VI thereof in its entirety and inserting in its place a new ARTICLE VI, as follows:

"ARTICLE VI

Directors

A. The management of the business and the conduct of the affairs of the corporation shall be vested in a board of directors.

B. The directors, other than those who may be elected by the holders of any class or series of stock having a preference over the Common Shares as to dividends or upon liquidation, shall be classified, with respect to the time for which they severally hold office, into three classes, as nearly equal in number as possible, one class to be originally elected for a term expiring at the annual meeting of stockholders to be held in 2001, another class to be originally elected for a term expiring at the annual meeting of stockholders to be held in 2002, and another class to be originally elected for a term expiring at the annual meeting of stockholders to be held in 2003. At each annual meeting of stockholders following the initial classification and election, the respective successors of each class shall be elected for three-year terms.

C. The directors of the corporation need not be elected by written ballot unless the bylaws of the corporation so provide. A director shall hold office until the annual meeting for the year in which his term expires and until his successor shall be elected and

shall qualify, subject, however, to prior death, resignation, retirement, disqualification or removal from office.

D. The number of directors of the corporation shall be fixed and may be changed from time to time by resolution of the board of directors. If the number of directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as possible.

E. Any vacancies on the board of directors resulting from death, resignation, disqualification, removal, increase in the number of directors constituting the board of directors, or other causes, unless the board of directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, and except as otherwise provided by law, shall be filled only by the affirmative vote of a majority of the remaining directors then in office, or by a sole remaining director, even though less than a quorum of the board of directors, and not by the stockholders. If any applicable provision of the General Corporation Law of the State of Delaware expressly confers power on stockholders to fill such a directorship at a special meeting of stockholders, such a directorship may be filled at such meeting only by the affirmative vote of at least 80 percent of the voting power of all shares of the corporation entitled to vote generally in the election of directors voting as a single class.

F. Any additional director of any class elected to fill a newly created directorship shall hold office for a term that shall coincide with the remaining term of that class, but in no case shall a decrease in the number of directors constituting the board of directors remove or shorten the term of any incumbent director. Any director elected to fill a vacancy not resulting from an increase in the number of directors shall have the same remaining term as that of his predecessor.

G. Directors may be removed only for cause, and only by the affirmative vote of at least 80 percent in voting power of all shares of the corporation entitled to vote generally in the election of directors, voting as a single class.

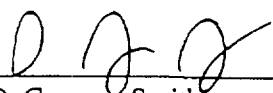
H. Notwithstanding the foregoing, whenever the holders of any one or more class or series of capital stock issued by the corporation shall have the right, voting separately as a class or series or with one or more such other classes or series, to elect directors at an annual or special meeting of stockholders, the election, term of office, removal, filling of vacancies and other features of such directorships shall be governed by the terms of this certificate of incorporation (including any certificate of designations relating to any class or series of capital stock) applicable thereto, and such directors so elected shall not be divided into classes pursuant to this Article VI unless expressly provided by such terms."

SECOND: That this Certificate of Amendment was proposed by the board of directors and duly adopted by the stockholders of the corporation in the manner and by the vote prescribed by Sections 141(d) and 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, I have subscribed this document on the date set forth below and do hereby affirm, under the penalties of perjury, that the statements contained herein have been examined by me and are true and correct.

Date: May 30, 2000

Z-TEL TECHNOLOGIES, INC.



D. Gregory Smith
Chief Executive Officer and President

State of Delaware
Office of the Secretary of State

PAGE 1

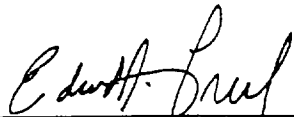
I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF DESIGNATION OF "Z-TEL TECHNOLOGIES, INC.", FILED IN THIS OFFICE ON THE THIRTEENTH DAY OF JULY, A.D. 2000, AT 4:30 O'CLOCK P.M.

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



2873445 8100

001357471


Edward J. Freel, Secretary of State

AUTHENTICATION: 0559374

DATE: 07-14-00

Z-TEL TECHNOLOGIES, INC.

CERTIFICATE OF DESIGNATIONS, PREFERENCES
AND RELATIVE RIGHTS, QUALIFICATIONS,
LIMITATIONS AND RESTRICTIONS

SERIES D CONVERTIBLE PREFERRED STOCK

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

Z-Tel Technologies, Inc., a Delaware corporation (the "Corporation"), certifies that pursuant to the authority contained in Article FOURTH of its Certificate of Incorporation (the "Certificate of Incorporation") and in accordance with the provisions of Section 151 of the General Corporation Law of the State of Delaware, by authority of the Board of Directors of the Corporation, the Pricing Committee of the Board of Directors of the Corporation, at a Special Meeting held on June 30, 2000, adopted the following resolution, which resolution remains in full force and effect on the date hereof:

WHEREAS, in connection with the execution by the Corporation of the Stock Purchase Agreement, it is deemed to be in the best interests of the Corporation and its stockholders to create a new series of convertible preferred stock;

NOW, THEREFORE, BE IT RESOLVED, that the Corporation hereby establishes a new series of authorized preferred stock, having a par value of \$0.01 per share, which series shall be designated as "Series D Convertible Preferred Stock" (the "Series D Preferred"), and which series shall consist of five million (5,000,000) shares and shall have the powers, designations, preferences and relative, participating, optional and other special rights, qualifications, limitations and restrictions set forth herein.

1. **Certain Definitions.** Unless the context otherwise requires, in addition to the terms defined elsewhere herein, the terms defined in this Section 1 shall have, for all purposes of this resolution, the meanings herein specified when used herein with initial capital letters (with terms defined in the singular having comparable meanings when used in the plural).

"Common Stock" shall mean the common stock, \$0.01 par value per share, of the Corporation.

"Junior Stock" means the Common Stock and any other capital stock of the Corporation the terms of which do not expressly provide that such capital stock is on a parity with or senior to the Series D Preferred as to dividend rights and rights upon liquidation.

"Stock Purchase Agreement" means the Stock Purchase Agreement, dated July 6, 2000, by and among the Corporation, the Holder and the other investors named on Schedule I thereto.

2. Dividends and Distributions.

(a) Series D Dividends. The holders of record of shares of Series D Preferred shall be entitled to receive dividends at a rate of eight percent (8%) of the Liquidation Preference (as defined herein) per annum per share of Series D Preferred (the "Series D Dividend"), which shall be fully cumulative, prior and in preference to any declaration or payment of any dividend or other distribution on any Junior Stock (and excluding any stock splits and subdivisions for which an adjustment is made under Section 4(c)(v)(1) below). The Series D Dividend shall accrue from the date of issuance of each share until the earlier of (i) the conversion of such share of Series D Preferred to Common Stock, (ii) a Liquidation (as defined herein), or (iii) the repurchase or redemption of such share of Series D Preferred. Such dividend shall be payable quarterly in arrears on March 31, June 30, September 30 and December 31 of each year (each a "Series D Dividend Date") commencing on September 30, 2000, except that if any such date is a Saturday, Sunday or legal holiday (a "Non-Business Day"), then such dividend shall be payable on the next day that is not a Saturday, Sunday or legal holiday on which banks in the State of Delaware are permitted to be closed (a "Business Day") to holders of record as they appear on the stock ledger of the Corporation on the applicable record date, which shall be not more than sixty (60) nor less than ten (10) days preceding the payment date for such dividends, as fixed by the Board of Directors (the "Series D Record Date"). Series D Dividends shall be payable only when, as and if declared by the Board of Directors out of funds legally available therefor. The dividends shall either (i) accrue, (ii) be payable in cash, or (iii) be payable in shares of Series D Preferred, as provided in the next paragraph. The dividends shall automatically accrue in the absence of an election by the Board of Directors within sixty (60) days after each Series D Dividend Date to pay the dividends. The amount of dividends payable for any period that is shorter or longer than a full annual dividend shall be computed on the basis of a 360-day year and the actual number of days elapsed (including the first day but excluding the last day) occurring in the period for which such amount is payable. All accrued but unpaid dividends (whether declared or undeclared) shall accrue interest at a rate of ten percent (10%) per annum computed on the basis of a 360-day year and the actual number of days elapsed (including the first day but excluding the last day) occurring in the period for which such amount is payable, but with interest on such dividend compounded on a quarterly basis (on each March 31, June 30, September 30 and December 31) for the year during which such dividend was payable, and thereafter until paid. If the Series D Dividend cannot be paid in full, dividends shall be paid, to the maximum possible extent, to the holders of the Series D Preferred pro rata on the basis of the amount of accrued and unpaid dividends outstanding on each share.

(b) Cash Dividends; In-Kind Dividends. Dividends that are declared and payable on each September 30 shall be paid in cash. Until the fifth anniversary of the Original Issue Date (or, if such day is not a business day, on the first business day thereafter), dividends that are declared and payable on each March 31, June 30 and December 31 shall be paid in shares of Series D Preferred (each, a "Series D Payment-in-Kind") rather than cash, valuing each

such share issued at the Liquidation Preference. Thereafter, all dividends that are declared and payable shall be paid in cash.

(c) So long as any shares of the Series D Preferred are outstanding, no dividend, except as described in the last sentence of Section 2(d) below and except as described in the next succeeding sentence, shall be declared or paid or set apart for payment on any parity securities, nor shall any parity securities be redeemed, purchased or otherwise acquired for any consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any shares of any such stock) by the Corporation, directly or indirectly (except by conversion into or exchange for parity securities or Junior Stock), unless in each case all accrued and unpaid dividends have been or contemporaneously are declared and paid or, if payable in cash, declared and a sum sufficient for the payment thereof is set apart for such payment on the Series D Preferred for all dividend periods terminating on or prior to the date of payment of the dividend on, or the date of redemption, purchase, or acquisition for consideration of, such parity securities. When all accrued and unpaid dividends on the Series D Preferred are not paid in full or a sum sufficient for such payment is not set apart, as aforesaid, any dividends and additional amounts declared upon shares of the Series D Preferred and any dividends and additional amounts declared upon any other parity securities shall be declared ratably in proportion to the respective amounts of accrued and unpaid dividends and additional amounts accumulated and unpaid on the Series D Preferred and dividends and additional amounts accumulated and unpaid on such parity securities.

(d) So long as any shares of the Series D Preferred are outstanding, no dividends shall be declared or paid or set apart for payment and no other distribution shall be declared or made upon Junior Stock, nor shall any Junior Stock be redeemed, purchased or otherwise acquired (any such dividend, distribution, redemption, purchase or acquisition being hereinafter referred to as a "Junior Stock Distribution") for any consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any shares of any such stock) by the Corporation, directly or indirectly (except by conversion into or exchange for Junior Stock), unless in each case (i) all accrued and unpaid dividends and additional amounts on all outstanding shares of the Series D Preferred shall have been paid or set apart for payment for all past dividend periods with respect to the Series D Preferred and (ii) sufficient funds shall have been paid or set apart for the payment of the dividend for the current dividend period with respect to the Series D Preferred. Notwithstanding anything in this Certificate of Designation to the contrary, the Corporation may declare and pay dividends on parity stock which are payable solely in additional shares of, or by the increase in the liquidation value of, parity stock or on Junior Stock which are payable in additional shares of, or by the increase in the liquidation value of, Junior Stock, as applicable, or repurchase, redeem or otherwise acquire Junior Stock in exchange for Junior Stock, and Parity Stock in exchange for Parity Stock or Junior Stock.

3. Liquidation Rights. In the event of any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary (a "Liquidation"), distributions shall be made to the holders of Series D Preferred, before any amount shall be paid to the holders of Junior Stock, in the following manner:

(a) Liquidation Preference; Liquidation Amount. The Liquidation Preference of the Series D Preferred shall be \$12.00 per share. The Liquidation Preference shall not be subject to adjustment. In the event of a Liquidation, the holders of the outstanding Series D Preferred, subject to the other terms contained herein, shall be entitled to be paid first out of the assets of the Corporation available for distribution to holders of its capital stock an amount (the "Liquidation Value") equal to (i) the applicable Liquidation Preference, plus (ii) all accrued but unpaid dividends (whether declared or undeclared including any interest accrued thereon calculated through the date of Liquidation), prior to any distribution to the holders of any Junior Stock. If the proceeds from a Liquidation are not sufficient to pay to the holders of Series D Preferred then such holders shall instead be entitled to receive the entire assets and funds of the Corporation legally available for distribution to the holders of capital stock, which assets and funds shall be distributed pro rata among the holders of the Series D Preferred on the basis of the amounts per share to be paid to each. After payment of the full preferential amount, such holders shall not be entitled to any further participation in any distribution of assets of the Corporation.

(b) Events Deemed a Liquidation. For purposes of this Section 3, the holders of a majority of the outstanding shares of the Series D Preferred may elect to have treated as a Liquidation the consolidation or merger of the Corporation with or into any other corporation or the sale or other transfer in a single transaction or a series of related transactions of all or substantially all of the assets of the Corporation, or any other reorganization or business combination of the Corporation or a Change of Control. A "Change of Control" will be deemed to have occurred at such time as any person or persons acting together that would constitute a "group" for purposes of Section 13(d) of the Exchange Act shall beneficially own (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision thereto) more than 50% of the aggregate voting power of all classes of capital stock having the power to vote for the election of directors or other members of the governing body of the Corporation.

4. Conversion. The Series D Preferred are subject to conversion rights as follows (the "Conversion Rights"):

(a) Conversion at Option of the Holder; Conversion at Option of the Company. Each share of Series D Preferred shall initially be convertible, at the option of the holder thereof, at any time on or after the date of issuance thereof and up to and including the day immediately preceding the Mandatory Redemption Date, into the number of fully paid and nonassessable shares of Common Stock which results from dividing the applicable Conversion Price (as hereinafter specified) per share in effect at the time of conversion into the applicable per share Liquidation Preference in effect at the time of conversion. The initial Conversion Price of the Series D Preferred shall be \$12.00 per share. The initial Conversion Price of the Series D Preferred shall be subject to adjustment from time to time as provided in Section 4(c) hereof. Upon conversion, all accrued or declared but unpaid dividends (including any interest accrued thereon calculated as of the date of conversion) on the Series D Preferred so converted shall be paid in cash or Common Stock, as applicable, and in the case of cash, to the extent permitted by applicable law (and if not then permitted by applicable law, at such time as the Corporation is permitted by applicable law to pay any such dividends).

At any time that the closing price of the Common Stock on The Nasdaq Stock Market (or on the exchange or quotation system on which the Corporation's Common Stock is then traded) as reported in *The Wall Street Journal* (such price on a given day, referred to as the "Current Market Price" for such day) equals or exceeds two (2) times the then-applicable Conversion Price for twenty (20) or more consecutive trading days beginning on or after July 13, 2002 then, beginning on the day following the 20th such consecutive trading day and ending sixty (60) calendar days after the last such consecutive trading day, the Corporation shall have the right to convert all, but not less than all, of the shares of Series D Preferred into shares of Common Stock, with each share of Series D Preferred converting into the number of fully paid and nonassessable shares of Common Stock which results from dividing the applicable Conversion Price per share in effect at the time of conversion into the applicable per share Liquidation Preference in effect at the time of conversion.

(b) Mechanics of Conversion at the Option of the Holder. Before any holder of Series D Preferred shall be entitled to convert the same into shares of Common Stock and to receive certificates therefor, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the principal office of the Corporation or of any transfer agent for the Series D Preferred and shall give written notice to the Corporation at such office that such holder elects to convert the same. The Corporation shall as soon as practicable after such delivery issue and deliver at such office to such holder of Series D Preferred a certificate or certificates for the number of shares of Common Stock to which it, he or she shall be entitled as aforesaid and a check payable to the holder in the amount of any accrued or declared but unpaid dividends (including any interest accrued thereon calculated as of the date of conversion) payable pursuant to Section 2 hereof, if any. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series D Preferred and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date. If the Corporation fails to pay all such dividends (and interest thereon) within twenty (20) days of the date of conversion, the holder entitled to such dividends (and interest thereon) may elect to have the Corporation issue to such holder, in lieu of such cash payment, additional shares of Common Stock calculated by dividing the total amount payable on such date by the applicable Conversion Price.

(c) Adjustments to Conversion Price.

(i) Special Definitions. For purposes of this Section 4(c), the following definitions shall apply:

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

(2) "Convertible Securities" shall mean any evidences of indebtedness, shares or other securities convertible into or exchangeable for Common Stock.

(3) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Section 4(c)(iii), deemed to be issued) by the Corporation after the Original Issue Date of the Series D Preferred, other than shares of Common Stock issued or issuable:

(A) upon conversion of shares of Series D Preferred;

(B) pursuant to any stock grant, option plan or purchase plan, other employee stock incentive program or agreement of the Corporation;

(C) pursuant to convertible securities of the Company outstanding as of the Original Issue Date;

(D) as a dividend or distribution on shares of Series D Preferred;

(E) in a transaction described in Section 4(c)(v); or

(F) by way of dividend or other distribution on shares of Common Stock excluded from the definition of Additional Shares of Common Stock by the foregoing clauses (A), (B), (C), (D), (E) or this clause (F).

(4) "Original Issue Date" shall mean July 13, 2000.

(5) "Derivative Securities" shall mean securities, other than Options and Convertible Securities, issued for cash by the Corporation or an Affiliate of the Corporation, the value of which is directly based upon or derived by reference to the market value of the Common Stock. The consideration received by the Corporation for Additional Shares of Common Stock deemed to be issued in connection with the issuance of Derivative Securities shall be determined by a recognized financial institution agreeable to the Corporation and holders of at least two-thirds of the outstanding shares of Series D Preferred.

(ii) No Adjustment of Conversion Price. No adjustment in the applicable Conversion Price of the Series D Preferred shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the greater of (i) the Current Market Price in effect on the date of such issue or (ii) the then-existing Conversion Price.

(iii) Deemed Issue of Additional Shares of Common Stock. In the event the Corporation at any time or from time to time after the Original Issue Date of the Series D Preferred shall issue any Options or Convertible Securities or Derivative Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities or Derivative Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the exercise of such

Options and conversion or exchange of such Convertible Securities, or in the case of Derivative Securities, the settlement of such Derivative Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share of such Additional Shares of Common Stock (such consideration, in the case of Derivative Securities, determined as set forth in Section 4(c)(i)(5)) would be less than the greater of the Current Market Price and the applicable Conversion Price for the Series D Preferred in effect on the date of and immediately prior to such issue, or such record date, as the case may be, and provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(1) except as provided in Section 4(c)(iii)(2), no further adjustment in the Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities or settlement of such Derivative Securities;

(2) if such Options or Convertible Securities or Derivative Securities by their terms provide, with the passage of time or otherwise, for any change in the consideration payable to the Corporation, or change in the number of shares of Common Stock issuable, upon the exercise, conversion, settlement or exchange thereof (other than under or by reason of provisions designed to protect against dilution), the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto) and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities or settlement rights under such Derivative Securities; and

(3) no readjustment pursuant to clause (2) above shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (A) the Conversion Price on the original adjustment date or (B) the Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4(c)(iii)) for a consideration per share that is less than the greater of (i) the Current Market Price in effect on the trading day immediately prior to the date of such issue and (ii) the then-applicable Conversion Price, then and in each such event the applicable Conversion Price of the Series D Preferred shall be recomputed by multiplying the applicable Conversion Price then in effect by a fraction:

(1) the numerator of which will be the sum of (A) the aggregate number of shares of Common Stock issued and outstanding on the date of issuance of the Additional Shares of Common Stock (assuming the conversion on such date of all of the outstanding shares of Series D Preferred) plus (B) the quotient of the aggregate consideration received by the Corporation for the issuance of such Additional Shares of Common Stock divided by the greater of (1) the Current Market Price in effect on the trading day immediately prior to the date of such issue and (2) the then-applicable Conversion Price; and

(2) the denominator of which will be the sum of (A) the aggregate number of shares of Common Stock issued and outstanding on the date of issuance of the Additional Shares of Common Stock (assuming the conversion on such date of all of the outstanding shares of Series D Preferred) plus (B) the aggregate number of such Additional Shares of Common Stock.

(v) Other Adjustments.

(1) Subdivisions, Combinations, or Consolidations of Common Stock. In the event that, at any time after the Original Issue Date of the Series D Preferred, the outstanding shares of Common Stock shall be subdivided, combined or consolidated, by stock split, stock dividend, combination or like event, into a greater or lesser number of shares of Common Stock, the applicable Conversion Price of the Series D Preferred in effect immediately prior to such subdivision, combination, consolidation or stock dividend shall, concurrently with the effectiveness of such subdivision combination or consolidation, be proportionately adjusted.

(2) Reclassifications. In the case, at any time after the Original Issue Date of the Series D Preferred, of any capital reorganization or any reclassification of the stock of the Corporation (other than as a result of a stock dividend or subdivision, split-up or combination of shares), or the consolidation or merger of the Corporation with or into another person (other than a consolidation or merger (A) in which the Corporation is the continuing entity and which does not result in any change in the Common Stock or (B) which is treated as a Liquidation pursuant to Section 3(b) above), the shares of Series D Preferred shall, after such reorganization, reclassification, consolidation or merger, be convertible into the kind and number of shares of stock or other securities or property of the Corporation or otherwise to which such holder would have been entitled if immediately prior to such reorganization, reclassification, consolidation or merger such holder had converted his shares of Series D Preferred into Common Stock. The provisions of this Section 4(c)(v)(2) shall similarly apply to successive reorganizations, reclassifications, consolidations or mergers.

(3) If the Corporation shall hereafter pay a dividend or make a distribution to all holders of the outstanding shares of Common Stock in shares of Common Stock, the Conversion Price in effect at the opening of business on the date following the date fixed for the determination of shareholders entitled to receive such dividend or other distribution shall be reduced by multiplying such Conversion Price by a

fraction of which the numerator shall be the number of shares of Common Stock outstanding at the close of business on the record date fixed for such determination and the denominator shall be the sum of such number of shares and the total number of shares constituting such dividend or other distribution, such reduction to become effective immediately after the opening of business on the day following such record date. If any dividend or distribution of the type described in this Section is declared but not so paid or made, the Conversion Price shall again be adjusted to the Conversion Price which would then be in effect if such dividend or distribution had not been declared.

(4) If the Corporation shall offer or issue rights or warrants to all holders of its outstanding shares of Common Stock entitling them to subscribe for or purchase shares of Common Stock at a price per share less than the greater of (i) the Current Market Price on the record date fixed for the determination of shareholders entitled to receive such rights or warrants or (ii) the then-existing Conversion Price, the Conversion Price shall be adjusted so that the same shall equal the price determined by multiplying the Conversion Price in effect at the opening of business on the date after such Common Stock record date by a fraction of which the numerator shall be the number of shares of Common Stock outstanding at the close of business on the record date plus the number of shares of Common Stock which the aggregate offering price of the total number of shares of Common Stock subject to such rights or warrants would purchase at such Current Market Price and of which the denominator shall be the number of shares of Common Stock outstanding at the close of business on such record date plus the total number of additional shares of Common Stock subject to such rights or warrants for subscription or purchase. Such adjustment shall become effective immediately after the opening of business on the day following the record date fixed for determination of shareholders entitled to purchase or receive such rights or warrants. To the extent that shares of Common Stock are not delivered pursuant to such rights or warrants, upon the expiration or termination of such rights or warrants the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect had the adjustments made upon the issuance of such rights or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights or warrants are not so issued, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such date fixed for the determination of shareholders entitled to receive such rights or warrants had not been fixed. In determining whether any rights or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than such Current Market Price or Conversion Price, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account (x) any consideration received for such rights or warrants, with the value of such consideration and the amount of such exercise or subscription price, if other than cash, to be determined by the Board of Directors and (y) the amount of any exercise price or subscription price required to be paid upon exercise of such warrants or rights.

(d) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price of the Series D Preferred pursuant to this Section 4, the Corporation at its expense shall promptly thereafter compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series D Preferred a certificate

setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series D Preferred furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, if any, (ii) the applicable Conversion Price of the Series D Preferred at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of the Series D Preferred

(e) Status of Converted Stock. In case any shares of Series D Preferred shall be converted pursuant to Section 4 hereof, the shares so converted shall be canceled, shall not be reissuable and shall cease to be a part of the authorized capital stock of the Corporation.

(f) Fractional Shares. In lieu of any fractional shares in the aggregate to which the holder of Series D Preferred would otherwise be entitled upon conversion, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of one share of Common Stock.

(g) Miscellaneous.

(i) All calculations under this Section 4 shall be made to the nearest cent or to the nearest one hundredth (1/100) of a share, as the case may be.

(ii) The holders of a majority of the outstanding shares of Series D Preferred shall have the right to challenge any determination by the Board of Directors of fair market value pursuant to this Section 4, in which case such determination of fair market value shall be made by an independent appraiser selected jointly by the Board of Directors and the challenging parties, the cost of such appraisal to be borne (I) by the challenging parties, if the fair market value as determined by such appraisal does not exceed the determination of fair market value by the Board of Directors by more than ten percent (10%) and (II) by the Corporation, if the fair market value as determined by such appraisal exceeds the determination of fair market value by the Board of Directors by more than ten percent (10%).

(iii) No adjustment in the applicable Conversion Price of the Series D Preferred will be made if such adjustment would result in a change in such Conversion Price of less than \$0.01. Any adjustment of less than \$0.01 which is not made shall be carried forward and shall be made at the time of and together with any subsequent adjustment which, on a cumulative basis, amounts to an adjustment of \$0.01 or more in such Conversion Price.

(h) No Impairment. The Corporation will not through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all action as may be necessary or appropriate in order to protect the conversion rights of the holders of Series D Preferred against impairment.

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

5. Voting Rights. Except as otherwise required by law or by Section 8 hereof, the holder of each share of Series D Preferred will be entitled to vote on all matters with the holders of the Common Stock as a single class, and not as a separate class or series. Each share of Series D Preferred will entitle the holder to the number of votes per share equal to the full number of shares of Common Stock into which such share of Series D Preferred is convertible on the record date for such vote. The holders of Series D Preferred shall receive notice of and shall be entitled to attend in person or by proxy any meeting of the holders of Common Stock.

6. Notices of Certain Record Dates. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Series D Preferred at least twenty (20) days prior to the record date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the anticipated amount and character of such dividend, distribution or right.

7. Notices. Any notice required by the provisions of this Amended or Restated Certificate to be given to the holders of Series D Preferred shall be deemed given (i) when made, if made by hand delivery, (ii) upon confirmation, if made by fax, or (iii) one business day after being deposited with a reputable next-day courier, postage prepaid, and in each case, addressed to each holder of record at such holder's address or fax number appearing on the books of the Corporation.

8. Approval of Certain Transactions. So long as any shares of Series D Preferred are outstanding, the Corporation shall not, without first obtaining the written approval of the holders of seventy percent (70%) of the outstanding shares of Series D Preferred voting as a separate class,

(i) amend this Certificate or the Certificate of Incorporation or bylaws of the Corporation or take any other action, in each case which adversely affects the rights, preferences or privileges of the Series D Preferred;

(ii) increase or decrease the authorized number of shares of Series D Preferred;

(iii) create any new class or series of shares, or issue any such shares or Options or Convertible Securities exercisable or convertible into such shares, that have a preference over or are on a parity with the Series D Preferred with respect to voting, dividends or liquidation preferences; or

(iv) reclassify stock into shares of capital stock of the Corporation having a preference over or parity with the Series D Preferred with respect to voting, dividends or liquidation preferences (except that the Corporation may grant voting rights to shares of a series of preferred stock which have the right to vote with holders of Common Stock on an as converted basis);

9. Redemption.

(a) The Series D Preferred shall not be redeemed by the Corporation prior to the third anniversary of the Original Issue Date. The Corporation may at its option redeem the Series D Preferred in whole or in part on or after the third anniversary of the Original Issue Date, at any time or from time to time, upon at least thirty days' prior notice, at a redemption price equal to the percentage of the Liquidation Preference per share of Series D Preferred set forth below, plus any accumulated unpaid dividends (whether or not declared) up to but excluding such redemption date. Shares so redeemed shall be cancelled and upon such cancellation shall be deemed to be authorized and unissued shares of Preferred Stock, without par value, of the Corporation but shall not be reissued as shares of the same series.

<u>If Redeemed On or After the Anniversary of the Original Issue Date Occurring In</u>	<u>And Redeemed Before the Anniversary of the Original Issue Date Occurring In</u>	<u>Percent of Liquidation Preference</u>
2003	2004	105%
2004	2005	104%
2005	2006	103%
2006	2007	102%
2007	2008	101%

(b) Mandatory Redemption. To the extent permitted by law, the Corporation shall redeem, on the eighth anniversary of the Original Issue Date (or, if such day is not a business day, on the first business day thereafter) (the "Mandatory Redemption Date"), all remaining shares of Series D Preferred then outstanding, for an amount equal to the Liquidation Preference for each share outstanding, plus an amount in cash equal to all accrued but unpaid dividends thereon to the Mandatory Redemption Date (the "Redemption Price"). Prior to authorizing or making such redemption with respect to the Series D Preferred, the Corporation, by resolution of the Board of Directors shall, to the extent of funds legally available therefor, declare a dividend on the Series D Preferred payable on the Mandatory Redemption Date in an amount equal to any accrued and unpaid dividends on the Series D Preferred as of such date and, if the Corporation does not have sufficient legally available funds to declare and pay all dividends accrued at the time of such redemption, any remaining accrued and unpaid dividends

shall be added to the redemption price. After paying any accrued and unpaid dividends pursuant to the foregoing sentence, if the funds of the Corporation legally available for redemption of shares of the Series D Preferred then required to be redeemed are insufficient to redeem the total number of such shares then outstanding, those funds which are legally available shall be used to redeem the maximum possible number of shares of the Series D Preferred, which shares to be redeemed shall be allocated pro rata among the holders of the Series D Preferred based on the number of shares of Series D Preferred held by such holders. At any time and from time to time thereafter, when additional funds of the Corporation are legally available to discharge its obligation to redeem all of the outstanding shares of Series D Preferred required to be redeemed pursuant to this section (the "Mandatory Redemption Obligation"), such funds shall be immediately used to discharge such Mandatory Redemption Obligation until the balance of such shares have been redeemed. If and so long as the Mandatory Redemption Obligation shall not be fully discharged, dividends on any remaining outstanding shares of Series D Preferred shall continue to accrue and be added to the dividend payable pursuant to the second preceding sentence.

(c) Notice. The Corporation will provide notice of any redemption of shares of Series D Preferred to holders of record of the Series D Preferred to be redeemed not less than 30 nor more than 60 days prior to the date fixed for such redemption. Such notice shall be provided by first-class mail postage prepaid, to each holder of record of the Series D Preferred to be redeemed, at such holder's address as it appears on the stock transfer books of the Corporation. Each such mailed notice shall state, as appropriate, the following:

- (i) the redemption date;
- (ii) the number of shares of Series D Preferred to be redeemed and, if fewer than all the shares held by any holder are to be redeemed, the number of such shares to be redeemed from such holder;
- (iii) the Redemption Price;
- (iv) the place or places where certificates for such shares are to be surrendered for redemption;
- (v) the amount of full cumulative dividends per share of Series D Preferred to be redeemed accrued and unpaid up to but excluding such redemption date, and that dividends on shares of Series D Preferred to be redeemed will cease to accrue on such redemption date unless the Corporation shall default in payment of the Redemption Price plus such full cumulative dividends accrued and unpaid thereon;
- (vi) the name and location of any bank or trust company with which the Corporation will deposit redemption funds pursuant to subsection (e) below;
- (vii) the then-effective Conversion Price; and

(viii) that the right of holders to convert shares of Series D Preferred to be redeemed will terminate at the close of business on the business day next preceding the date fixed for redemption (unless the Corporation shall default in the payment of the Redemption Price and such full cumulative dividends accrued and unpaid thereon).

Any notice that is mailed as set forth above shall be conclusively presumed to have been duly given, whether or not the holder of shares of Series D Preferred receives such notice, and failure to give such notice by mail, or any defect in such notice, to the holders of any shares designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series D Preferred.

(d) Mechanics of Redemption. Upon surrender in accordance with the aforesaid notice of the certificate for any shares so redeemed (duly endorsed or accompanied by appropriate instruments of transfer if so required by the Corporation), the holders of record of such shares shall be entitled to receive the redemption price, without interest, plus full cumulative dividends thereon accrued and unpaid up to but excluding such redemption date out of funds legally available therefor. If fewer than all the shares represented by any such certificate are redeemed, a new certificate representing the unredeemed shares shall be issued without cost to the holder thereof.

(e) Redemption Funds. On the date of any redemption being made pursuant to this Section, the Corporation shall, and at any time after notice of such redemption shall have been mailed and before the date of redemption the Corporation may, deposit for the benefit of the holders of shares of Series D Preferred to be redeemed the funds necessary for such redemption with a bank or trust company having a capital and surplus of at least \$1 billion, with instructions to such bank or trust company to pay the full redemption amounts as provided herein to the holders of shares of Series D Preferred upon surrender of certificates for such shares; provided, however, that the making of such deposit shall not release the Corporation from any of its obligations hereunder. Any moneys so deposited by the Corporation and unclaimed at the end of two years from the date designated for such redemption shall revert to the general funds of the Corporation and, upon demand, such bank or trust company shall pay over to the Corporation such unclaimed amounts and thereupon such bank or trust company shall be relieved of all responsibility in respect thereof and any holder of shares of Series D Preferred so redeemed shall look only to the Corporation for the payment of the full redemption amounts, as provided herein.

(f) Rights After Redemption. Notice of redemption having been given as aforesaid, upon the deposit pursuant to subsection (e) of the full redemption amounts as provided herein in respect of all shares of Series D Preferred then to be redeemed, notwithstanding that any certificates for such shares shall not have been surrendered in accordance with subsection (d), from and after the date of redemption designated in the notice of redemption: (i) the shares represented thereby shall no longer be deemed outstanding, (ii) the rights to receive dividends thereon shall cease to accrue, and (iii) all rights of the holders of such shares of Series D Preferred shall cease and terminate, excepting only the right to receive the full redemption amounts as provided herein without interest thereon. If the funds deposited are not sufficient for redemption of the shares of the Series D Preferred that were to be redeemed, then no certificates evidencing such shares shall be deemed surrendered and such shares shall remain outstanding

and the rights of holders of shares of Series D Preferred shall continue to be those of holders of shares of the Series D Preferred.

10. Headings and Subdivisions. The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

11. Severability of Provisions. If any voting powers, preferences and relative, participating, optional and other special rights of the Series D Preferred and qualifications, limitations and restrictions thereof set forth in this resolution (as such resolution may be amended from time to time) are invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other voting powers, preferences and relative, participating, optional and other special rights of the Series D Preferred and qualifications, limitations and restrictions thereof set forth in this resolution (as so amended) which can be given effect without the invalid, unlawful or unenforceable voting powers, preferences and relative, participating, optional and other special rights of the Series D Preferred and qualifications, limitations and restrictions thereof shall, nevertheless, remain in full force and effect, and no voting powers, preferences and relative, participating, optional or other special rights of the Series D Preferred and qualifications, limitations and restrictions thereof herein set forth shall be deemed dependent upon any other such powers, preferences and relative, participating, optional or other special rights of the Series D Preferred and qualifications, limitations and restrictions thereof unless so expressed herein.

IN WITNESS WHEREOF, Z-TEL TECHNOLOGIES, INC. has caused this Certificate of Designations, Preferences and Relative Rights, Qualifications, Limitations and Restrictions to be signed this 13th day of July 2000.

Z-TEL TECHNOLOGIES, INC.


By: 
Name: D. Gregory Smith
Title: President and CEO

Exhibit C

Tennessee Authority

05/05/1998 13:05 813-273-6861

Z-TEL TECHNOLOGIES

Secretary of State
Corporations Section
James K. Polk Building, Suite 1800
Nashville, Tennessee 37243-0306

DATE: 05/04/98
REQUEST NUMBER: 3503-2626
TELEPHONE CONTACT: (615) 741-0537
FILE DATE/TIME: 05/04/98 1108
EFFECTIVE DATE/TIME: 05/04/98 1108
CONTROL NUMBER: 0350204

TO:
Z-TEL COMMUNICATIONS INC
777 S HARBOUR ISLAND
BLVD S-990
TAMPA, FL 33602

RE:
Z-TEL COMMUNICATIONS, INC.
APPLICATION FOR CERTIFICATE OF AUTHORITY -
FOR PROFIT

WELCOME TO THE STATE OF TENNESSEE. THE ATTACHED CERTIFICATE OF
AUTHORITY HAS BEEN FILED WITH AN EFFECTIVE DATE AS INDICATED ABOVE.

A CORPORATION ANNUAL REPORT MUST BE FILED WITH THE SECRETARY OF STATE
ON OR BEFORE THE FIRST DATE OF THE FOURTH MONTH FOLLOWING THE CLOSE OF THE
CORPORATION'S FISCAL YEAR. PLEASE PROVIDE THIS OFFICE WITH WRITTEN
NOTIFICATION OF THE CORPORATION'S FISCAL YEAR. THIS OFFICE WILL MAIL THE
REPORT DURING THE LAST MONTH OF SAID FISCAL YEAR TO THE CORPORATION AT THE
ADDRESS OF ITS PRINCIPAL OFFICE OR TO A MAILING ADDRESS PROVIDED TO THIS
OFFICE IN WRITING. FAILURE TO FILE THIS REPORT OR TO MAINTAIN A REGISTERED
AGENT AND OFFICE WILL SUBJECT THE CORPORATION TO ADMINISTRATIVE REVOCATION
OF ITS CERTIFICATE OF AUTHORITY.

WHEN CORRESPONDING WITH THIS OFFICE OR SUBMITTING DOCUMENTS FOR
FILING, PLEASE REFER TO THE CORPORATION CONTROL NUMBER GIVEN ABOVE.

FOR: APPLICATION FOR CERTIFICATE OF AUTHORITY -
FOR PROFIT

ON DATE: 05/04/98

FROM:
C T CORPORATION SYSTEM (1200 S PINE ISLA
1200 S PINE ISLAND R
PLANTATION, FL 33324-0000

RECEIVED: FEES \$300.00 \$300.00
TOTAL PAYMENT RECEIVED: \$600.00
RECEIPT NUMBER: 0000230488
ACCOUNT NUMBER: 00000008



Riley C. Darnell

RILEY C. DARNELL
SECRETARY OF STATE

05/05/1998 13:06 813-273-6861

Z-TEL TECHNOLOGIES

PAGE 22

APPLICATION FOR CERTIFICATE OF AUTHORITY FOR

FILED

Z-Tel Communications, Inc.

To the Secretary of State of the State of Tennessee:

Pursuant to the provisions of Section 48-25-103 of the Tennessee Business Corporation Act, the undersigned corporation hereby applies for a certificate of authority to transact business in the State of Tennessee, and for that purpose sets forth:

1. The name of the corporation is Z-Tel Communications, Inc.

If different, the name under which the certificate of authority is to be obtained is _____

(NOTE: The Secretary of State of the State of Tennessee may not issue a certificate of authority to a foreign corporation for profit if its name does not comply with the requirements of Section 48-14-101 of the Tennessee Business Corporation Act. If obtaining a certificate of authority under an assumed corporate name, an application must be filed pursuant to Section 48-14-101(d).)

2. The state or country under whose law it is incorporated is Delaware

3. The date of its incorporation is January 15, 1998 (must be month, day, and year), and the period of duration, if other than perpetual, is _____

4. The complete street address (including zip code) of its principal office is _____

777 S. Harbour Island Blvd., Ste. 990, Tampa, Florida 33602

Street City State/Country Zip Code

5. The complete street address (including the county and the zip code) of its registered office in this state is _____

c/o C T Corporation System, 530 Gay Street, Knoxville, Tennessee, County of Knox

Street City/State County Zip Code

The name of its registered agent at that office is _____

C T Corporation System

6. The names and complete business addresses (including zip code) of its current officers are: (Attach separate sheet if necessary.)

D. Gregory Smith, 777 S. Harbour Island Blvd., Ste. 990, Tampa, Florida 33602.

President/COO

Russell T. Alba, 777 S. Harbour Island Blvd., Ste. 990, Tampa, Florida 33602.

Vice President/Secretary

Jeffrey A. Bowden, 777 S. Harbour Island Blvd., Ste. 990, Tampa, Florida 33602.

CO-Treasurer

7. The names and complete business addresses (including zip code) of its current board of directors are: (Attach separate sheet if necessary.)

D. Gregory Smith, 777 S. Harbour Island Blvd., Ste. 990, Tampa, Florida 33602

8. The corporation is a corporation for profit.

9. If the document is not to be effective upon filing by the Secretary of State, the delayed effective date/time is _____

N/A, 19____ (date), _____ (time).

[NOTE: A delayed effective date shall not be later than the 90th day after the date this document is filed by the Secretary of State.]

[NOTE: This application must be accompanied by a certificate of existence (or a document of similar import) duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose law it is incorporated. The certificate shall not bear a date of more than two (2) months prior to the date the application is filed in this state.]

April 27, 1998

Signature Date

President

Signer's Capacity

Z-Tel Communications, Inc.

Name of Corporation

Signature

D. Gregory Smith

Name (typed or printed)



SS-4431 (Rev. 7/93)

ROA 1678

Exhibit D

Management Profiles

Z-Tel Communications, Inc.

MANAGERIAL AND TECHNICAL CAPABILITIES

D. Gregory Smith

Mr. Smith is a founder of the Company and has served as a Director, President and Chief Executive Officer since its inception in January 1998. Mr. Smith was a director of Premiere Technologies, Inc. from 1991 to 1997, executive vice president from 1994 to 1997 and vice president from 1991 to 1994. From 1987 to 1991, Mr. Smith was a management and financial consultant with Olympus Telecommunications, Inc. and Olympus Partners, Inc., companies that he founded. Mr. Smith has also held positions with NationsBank of Florida, N.A. and Chase Bank of Florida. Mr. Smith received his B.S. in Commerce from the University of Virginia.

John M. Hutchens

Mr. Hutchens has served as Senior Vice President - Chief Financial Officer since September 1999. From 1982 through 1999 he was an employee and then a partner at Arthur Anderson LLP. Mr. Hutchens received a B.S. in Accountancy from the University of Illinois, and a Masters of Health Administration from the Ohio State University. Mr. Hutchens is a Certified Public Accountant licensed in Florida.

Charles W. McDonough

Mr. McDonough has served as Senior Vice President - Chief Technology Officer since August 1998. From 1975 through 1998, he was an employee and then a partner at Anderson Consulting LLP. Mr. McDonough received a B.A. in Industrial Engineering and a M.S. in Industrial Administration from Carnegie Mellon University.

J. Bryan Bunting

Mr. Bunting has served as Senior Vice President - Engineering and Technical Services since January 1999. Mr. Bunting served as senior vice president - Z-Tel Business Networks from August 1998 to January 1999. From 1968 through 1998, he was an officer of NationsBank, serving most recently as senior vice president of direct banking. Mr. Bunting attended Old Dominion University.

Mark H. Johnson

Mr. Johnson has served as Secretary and Treasurer of Z-Tel since August 1999. From May 1998 until his arrival at Z-Tel, Mr. Johnson was an employee of Olympus Management, a venture firm. From 1991 until 1998, Mr. Johnson was an employee of First Union National Bank. Mr. Johnson holds a B.A. from the University of Virginia.

Robert A. Curtis

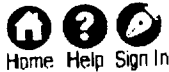
Mr. Curtis has served as Senior Vice President - Strategic Planning since July 1999. From May 1998 to June 1999, Mr. Curtis was Vice President - Business Development and Legal Affairs at Z-Tel. From September 1995 to April 1998, Mr. Curtis was an attorney at the Houston office of Fulbright & Jaworski, LLP, where he specialized in antitrust and complex federal litigation. Mr. Curtis graduated from the Duke University School of Law in 1995; received his B.A. in Philosophy from Trinity University and his Doctor of Philosophy from the University of Oxford, England.

Doug W. Jackson

Mr. Jackson has served as Vice President - Marketing of Z-Tel since June 1999. From 1996 through 1999 he held the position of senior brand manager for the Coca-Cola Company and prior to that from 1992 to 1996 he was an associate product manager for Kraft General Foods Corp. Mr. Jackson received his B.A. from the University of Virginia and his M.B.A. from the University of Michigan.

Exhibit E-1

Current Financial Statements



[Products](#) [Features & Options](#) [Special Offers](#) [Customer Care](#) [About Us](#) [Investor Info](#) [Members](#)

[Overview](#) Z-Tel Technologies Inc. (ticker: ZTEL, exchange: NASDAQ) News Release -
Wednesday, August 02, 2000

[Z-Tel
Management
Team](#)

[Stock Quote](#)
[Stock Chart](#)

[Fundamentals](#)

[In The News](#)

[Earnings
Estimates](#)

[Analyst
Coverage](#)

[SEC Filings](#)

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[Calendar of
Events](#)

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Z-Tel's Second Quarter Revenues Nearly Triple From First Quarter to \$40 Million, Substantially Exceeding Expectations

Faster-Than-Expected Growth to Critical Mass of Z-Line Subscribers Accelerates Anticipated Positive EBITDA to First Half of 2001

84,000 New Subscribers - Up 98%, Gross Margins Increase to 37% from 30% During Q2

TAMPA, Fla.--(BUSINESS WIRE)--Aug. 2, 2000--Gregg Smith, Chief Executive Officer of Z-Tel Technologies, Inc. (Nasdaq/NMS: ZTEL), today announced that the Company's revenues for the second quarter of 2000 again substantially exceeded expectations and nearly tripled sequentially to \$40,157,000 from \$13,976,000 for the first quarter of 2000. In addition, the Company's Z-Line subscriber base essentially doubled on a sequential basis for the second consecutive quarter, rising to 170,000 at the quarter's end from 86,000 at the end of the first quarter. Because Z-Tel has obtained subscribers more rapidly than anticipated, the Company now expects that it will achieve positive EBITDA during the first half of 2001, significantly ahead of previous expectations.

Mr. Smith said, "The extraordinary growth of Z-Tel's subscriber base continues to demonstrate the strong consumer demand that exists for Z-Line, our innovative, Internet enhanced alternative to traditional consumer telephone services. We are very pleased with the key metrics of our business, reflecting the smooth roll out of Z-Line to date.

"Among these metrics, our subscriber base is larger, our geographic expansion has come more quickly, our provisioning times are better, our churn, and subscriber acquisition costs are lower, and our average revenue per subscriber is higher than anticipated. Other key metrics are tracking as anticipated. As a result, we believe that our negative EBITDA has peaked. Furthermore, we currently believe that our negative EBITDA will improve during the second half of 2000 and turn positive during the first half of 2001."

For the second quarter, which ended June 30, 2000, revenues were \$40,157,000 compared with \$761,000 for the second quarter of 1999. The Company had negative EBITDA of \$18,283,000 for the latest quarter compared with \$3,625,000 for the same period in 1999 and a net loss of \$23,055,000, or \$0.70 per share, versus \$6,025,000, or \$0.42 per share.

Revenues for the first six months of 2000 were \$54,133,000 compared with \$1,425,000 for the first half of 1999. The Company's net loss for latest six months was \$38,531,000, or \$1.19 per share, compared with \$12,156,000, or \$0.84 per share, for the comparable period in 1999.

Z-Tel also has continued to improve the functionality of Z-Line by adding additional enhanced features to the basic Z-Line package. Among these improvements, the Company added Palm VII integration and its first Voice Over Internet Protocol products. Z-Tel also recently announced a relationship with Strategy.com that will soon enable its subscribers to receive timely, personalized alerts about a variety of subjects via e-mail, wireless devices or telephone.

Mr. Smith added, "By improving the functionality of Z-Line, we further differentiate ourselves from traditional consumer telephone services and demonstrate our commitment to making the telephone an Internet appliance and the computer a telephone. We believe this ongoing innovation contributes to the consumer excitement about Z-Line and the continuing expansion of our subscriber base. We enter the second half of 2000 with the belief that we have the people, the product, the back office infrastructure and the financing in place for the further implementation of our growth strategies."

About Z-Tel Technologies, Inc.(TM)

Z-Tel Technologies, Inc. provides consumers bundled local and long distance telephone services, combined with enhanced, Internet-based communications features that enable them to manage all of their voice communications needs. Z-Tel currently sells this bundle as "Z-Line Home Edition(TM)" in New York, Texas, Pennsylvania, Georgia and Massachusetts, and has over 170,000 active customers. For more information about this innovative new service or about Z-Tel, please visit the Company's web site at www.z-tel.com.

Z-Tel Technologies, Inc., Z-Line and Z-Line Home Edition are trademarks of Z-Tel Technologies, Inc.

This press release contains forward-looking statements that are based upon current expectations and involve a number of risks and uncertainties. In order for Z-Tel to utilize the "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995, you are hereby cautioned, and Z-Tel hereby notes, that these statements may be affected by the risk that favorable growth and financial trends may not continue, the risk that the Company may not achieve positive EBITDA in the anticipated time frame or at all, the risk that the Company will be unable to efficiently and successfully enter new markets, the risk that unbundled network elements will cease to be available in their present form in states that have adopted favorable pricing rules for such elements and the risk that additional state regulatory commissions will not adopt favorable pricing rules for unbundled network elements, the risk that the Company's existing financing will not be sufficient to fund anticipated growth and that additional financing may not be available on favorable terms or at all, as well as the risk factors described in detail in Z-Tel's 1999 Annual Report on Form 10-K, filed March 28, 2000; and in Z-Tel's other filings with the Securities and Exchange Commission. Z-Tel undertakes no obligation to update or revise any such forward-looking statements. -0-

Z-TEL TECHNOLOGIES, INC.
Unaudited Financial Highlights
(In thousands, except share and per share data)

Three Months Ended June 30,	
2000	1999

Revenue	\$ 40,157	\$ 761
EBITDA	\$ (18,283)	\$ (3,625)
Net profit (loss)	\$ (23,055)	\$ (6,025)
Basic and diluted loss per share	\$ (0.70)	\$ (0.42)
Weighted average common shares outstanding	33,042	14,411

Six Months Ended
June 30,

	2000	1999
Revenue	\$ 54,133	\$ 1,425
EBITDA	\$ (32,716)	\$ (8,667)
Net profit (loss)	\$ (38,531)	\$ (12,156)
Basic and diluted loss per share	\$ (1.19)	\$ (0.84)
Weighted average common shares outstanding	32,500	14,411

Z-TEL TECHNOLOGIES, INC. AND SUBSIDIARIES
Condensed Consolidated Statements of Operations
(In thousands, except share and per share data)
(Unaudited)

Three Months Ended
June 30,

	2000	1999
Revenues	\$ 40,157	\$ 761
Operating expenses:		
Network operations	25,137	978
Sales and marketing	10,635	666
Research and development	1,790	352
General and administrative	20,878	2,390
Depreciation and amortization	4,404	863
Total operating expenses	62,844	5,249
Operating loss	(22,687)	(4,488)
Nonoperating income (expense):		
Interest income	455	114
Interest expense	(823)	(1,237)
Total nonoperating income (expense)	(368)	(1,123)
Net loss	(23,055)	(5,611)
Less mandatorily convertible redeemable preferred stock dividends	--	(414)
Net loss attributable to common stockholders	\$ (23,055)	\$ (6,025)

Weighted average common shares outstanding	33,042,008 =====	14,411,100 =====
Basic and diluted net loss per share	\$ (.70) =====	\$ (.42) =====
Six Months Ended June 30,		
	2000	1999
Revenues	\$ 54,133	\$ 1,425
Operating expenses:		
Network operations	34,967	1,792
Sales and marketing	17,454	1,848
Research and development	3,089	1,465
General and administrative	31,339	4,987
Depreciation and amortization	6,492	1,664
Total operating expenses	93,341	11,756
Operating loss	(39,208)	(10,331)
Nonoperating income (expense):		
Interest income	1,741	232
Interest expense	(1,064)	(1,451)
Total nonoperating income (expense)	677	(1,219)
Net loss	(38,531)	(11,550)
Less mandatorily convertible redeemable preferred stock dividends	--	(606)
Net loss attributable to common stockholders	\$ (38,531) =====	\$ (12,156) =====
Weighted average common shares outstanding	32,499,640 =====	14,411,100 =====
Basic and diluted net loss per share	\$ (1.19) =====	\$ (.84) =====

Z-TEL TECHNOLOGIES, INC. AND SUBSIDIARIES
Condensed Consolidated Balance Sheets
(In thousands, except share data)
(Unaudited)

	June 30, 2000	December 31, 1999
Assets		
Current assets:		
Cash and cash equivalents	\$ 10,656	\$ 101,657

Accounts receivable, net of allowance for doubtful accounts of approximately \$3,451 at June 30, 2000 and \$54 at December 31, 1999	36,476	4,245
Prepaid expenses and other current assets	5,074	2,304
	-----	-----
Total current assets	52,206	108,206
Property and equipment, net	52,018	28,549
Available for sale securities	6,038	-
Intangible assets	65,918	-
Other	4,270	922
	-----	-----
Total assets	\$ 180,450	\$ 137,677
	=====	=====
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable and accrued liabilities	\$ 34,586	\$ 9,165
Current portion of long-term debt and capital lease obligations	4,835	3,726
	-----	-----
Total current liabilities	39,421	12,891
Long-term debt and capital lease obligations	17,216	10,408
	-----	-----
Total liabilities	56,637	23,299
	-----	-----
Stockholders' equity:		
Common stock, \$.01 par value; 150,000,000 shares authorized; 33,681,175 and 32,159,911 shares issued; 33,401,497 and 31,880,236 outstanding, respectively	337	322
Notes receivable from stockholders	(539)	(1,683)
Unearned stock compensation	(494)	(2,487)
Additional paid-in capital	206,414	167,637
Accumulated deficit	(87,624)	(49,093)
Accumulated other comprehensive income	6,037	-
Treasury stock, 279,675 shares at cost	(318)	(318)
	-----	-----
Total stockholders' equity	123,813	114,378
	-----	-----
Total liabilities and stockholders' equity	\$ 180,450	\$ 137,677
	=====	=====

CONTACT: Z-Tel Technologies, Inc.
Mark H. Johnson, 813/233-4610

Exhibit E-2

Projected Financial Statements

To be filed under separate cover

Exhibit F

Small & Minority-Owned Telecommunications Business Participation Plan

Z-TEL COMMUNICATIONS, INC.

Exhibit V

**TENNESSEE
SMALL AND MINORITY-OWNED TELECOMMUNICATIONS BUSINESS
PARTICIPATION PLAN**

**SUBMITTED TO
TENNESSEE REGULATORY AUTHORITY**

August 2000

Z-Tel Communications, INC.

**SMALL AND MINORITY-OWNED TELECOMMUNICATIONS BUSINESS
PARTICIPATION PLAN**

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**SMALL AND MINORITY-OWNED TELECOMMUNICATIONS BUSINESS
PARTICIPATION PLAN**

PURPOSE

- 1.1 This small and minority-owned telecommunications business participation plan ("Plan") is submitted by Z-Tel Communications, Inc. ("Z-Tel") as required by T.C.A. §65-5-212.
- 1.2 The administration of this Plan is the responsibility of Z-Tel.

2. DEFINITIONS

- 2.1 Z-Tel is a wholly owned subsidiary of Z-Tel Technologies, Inc. a public company incorporated in the state of Delaware. Z-Tel is a reseller of interexchange telecommunications services and a provider of facilities-based local exchange services in the state of Tennessee. The company is based in Tampa, Florida and has no employees, property, or equipment in Tennessee at this time.
- 2.2 As a competitive vendor of telecommunications service, Z-Tel is non-dominant in its industry. The nature of Z-Tel's business limits their opportunity to support the use of Small and Minority Business in Tennessee. However, let the submission of this Plan evidence their desire to participate as practically possible.
- 2.3 Small and Minority Business - For the purpose of this Plan, "minority business" means a business that is solely owned, or at least fifty-one (51%) of the assets or outstanding stock of which is owned, by an individual who personally manages and controls the daily operations of such business and who is impeded from normal entry into the economic mainstream because of race, religion, sex or national origin and such business has annual gross receipts of less than four million dollars (\$4,000,000) per T.C.A. §65-5-212.

**Z-TEL COMMUNICATIONS'S RESPONSIBILITY FOR SMALL AND MINORITY-OWNED
TELECOMMUNICATION BUSINESS PARTICIPATION PLAN AND POLICY STATEMENT**

3.1 Z-Tel intends to afford Small and Minority-Owned Telecommunications Businesses the maximum practicable opportunity to participate in the performance of contracts in accordance with T.C.A. §65-5-212.

3.2 Z-Tel is a facilities-based provider of local exchange telecommunications service whose business operations include:

- ***Sale and Marketing of Telecommunications Services***
 - ***Customer Care***

Z-Tel Communications uses vendors and suppliers to support their reseller business in the following areas:

- ***Telecommunications Service Providers***
- ***Sales Agents of Telecommunications Services***
- ***Telecommunications Billing and Collection Services***

3.3 Timothy Seat would coordinate Small and Minority-Owned Telecommunications Business referrals.

3.4 Initial Small and Minority-Owned Telecommunications Business contacts for Z-Tel Communications would be made through their Coordinator who will seek to identify and include firms in Tennessee through the Department of Economic and Community Development's office of Minority Business Enterprise and Small Business office.

**4. SMALL AND MINORITY-OWNED TELECOMMUNICATIONS BUSINESS
PARTICIPATION PLAN PERIOD OF EFFECTIVENESS**

4.1 Z-Tel Communications will maintain a proactive and continuous approach toward inclusion of such firms in their supplier in their supplier base. Consequently, their Plan and the associated duties and activities would not have a fixed time period for effective, but rather represent Z-Tel's ongoing policies and procedures. Z-Tel has no physical presence in Tennessee. When and if their business condition changes in Tennessee, the effectiveness of this Plan would be enhanced.

5. PLAN ADMINISTRATION

5.1 Z-Tel Communications's Plan Administrator is:

**Timothy Seat
Z-Tel Communications, Inc.
777 South Harbour Island Boulevard
Suite 990
Tampa, Florida 33602**

5.2. The Administrator manages the Plan, as described below in the Administrator's duties. The Administrator has direct interface with procurement personnel, contract administrators, and program and project personnel to ensure compliance with the provisions of the Plan.

5.3 The Administrator's specific job duties, as they relate to this Plan and Z-Tel's business operations in the state of Tennessee, are as follows:

- (a) Developing and maintaining the Z-Tel Supplier Master List which would include a listing of Small and Minority-Owned Telecommunications Businesses in Tennessee who are deemed eligible to be suppliers for Z-Tel.**
 - (a) Reviewing Z-Tel policies and procedures in to ensure that Small and Minority-Owned Telecommunications Businesses in Tennessee have an equitable opportunity to be awarded contracts when possible.**
 - (b) Allowing for inclusion of Small and Minority-Owned Telecommunications Businesses in those solicitations for products or service which they are capable of providing.**
 - (c) Coordinating activities during the conduct of any compliance review by Tennessee state agencies.**
 - (d) Preparing and submitting periodic contracting reports as required.**

6. PLAN TO ASSURE EQUITABLE OPPORTUNITY

6.1. The Administrator shall ensure that appropriate source listings and services are properly utilized in support of the Plan. Sources/listings include but are not limited to the following:

- (e) The Z-Tel approved Master Supplier List.**
- (a) Sourcing information received from the Department of Economic and Community Development's Office of Minority Business Enterprise and Small Business Office in Nashville.**

6.2. Outreach efforts will be made as follows:

- (a) The Administrator shall cultivate and maintain a relationship with the Community Development's Office of Minority Business Enterprise and Small Business Office in an effort to locate and qualify capable Small and Minority-Owned Telecommunications Businesses for participation in contracting opportunities.**
- (b) The Administrator shall ensure that Z-Tel provides adequate and timely consideration of the potentialities of Small and Minority-Owned Telecommunications Businesses in "make-or-buy" decisions.**
- (c) The Administrator shall ensure that Z-Tel counsels and discusses contracting opportunities with representatives of Small and Minority-Owned Telecommunications Businesses.**
- (d) The Administrator shall ensure that Z-Tel offers assistance to Small and Minority-Owned Telecommunications Businesses to explain: requests for quotations, progress payments, technical and quality assurance programs, advice on types of business typically being contracted, and the mechanics of procurement requirements and quality expectations.**

7. PLAN REPORTING

7.1 Z-Tel will submit such periodic reports and cooperate in those studies or surveys as may be required to determine the extent of compliance with this Plan.

7.2 Z-Tel Supplier Master List will identify Small and Minority-Owned Telecommunications Businesses in Tennessee. The Supplier Master List shall be utilized in identifying potential contractors.

Exhibit G

Notice of Filing

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of October, 2000, I caused to be served a copy of the application of Z-Tel Communications, Inc. for a Certificate to Provide Competing Local Telecommunications service upon those companies listed below, by first class mail, postage prepaid, or equivalent service.

- | | |
|--|---|
| 1. Ardmore Telephone Company, Inc.
Terry Wales, General Manager
P.O. Box 549
517 Ardmore Avenue
Ardmore, TN 38449 | 10. Sprint-United
Steve Parott, Director Regulatory
Affairs
United Telephone Southeast, Inc.
14111 Capital Boulevard
Wake Forrest, NC 27587-5900 |
| 2. BellSouth Telecommunications, Inc.
Guy M. Hicks, General Counsel
333 Commerce Street
Nashville, TN 37201-3300 | 11. Concord Telephone Exchange, Inc. |
| 3. CenturyTel of Adamsville | 12. Humphreys County Telephone
Company |
| 4. CenturyTel of Claiborne | 13. Tellico Telephone Company |
| 5. CenturyTel of Ooltewah-Collegedale
G. Clay Balley
Director of Regulatory Affairs
P.O. Box 4065
Monroe, LA 71211-4065 | 14. Tennessee Telephone Company
John D. Feehan, Manager External
Relations
P.O. Box 22995
Knoxville, TN 37933-0995 |
| 6. Citizens Telecommunications Company
of Tennessee | 15. Crockett Telephone Company, Inc. |
| 7. Citizens Telecommunications Company
of the Volunteer State
Mike Swatts
State Regulatory Director, South
P.O. Box 770
300 Bland Street
Bluefield, WV 24701 | 16. People's Telephone Company, Inc. |
| 8. Loretto Telephone Company, Inc.
Louise Brown, President
P.O. Box 130
Loretto, TN 38469 | 17. West Tennessee Telephone Company,
Inc.
Jim Wingo, General Manager
P.O. Box 7
Friendship, TN 38034 |
| 9. Millington Telephone Company, Inc.
W.S. Howard, President
4880 Navy Road
Millington, TN 38053 | 18. United Telephone Company
Herbert Bivens, General Manager
P.O. Box 38
120 Taylor Street
Chapel Hill, TN 37034 |

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of Z-Tel Communications, Inc. local application upon the enclosed listing of incumbent LECs operating in the state of Tennessee, by mailing such copy by first class mail, postage prepaid.

Dated at Wyatt, Tarrant & Combs, Attorneys for Z-Tel Communications, Inc., 2525 West End Avenue, Suite 1500, Nashville, Tennessee, this 3rd day of September, 2000.

Wyatt, Tarrant & Combs

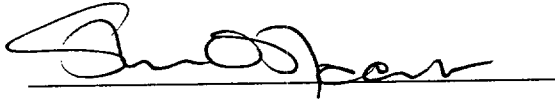
A handwritten signature in black ink, appearing to read "J. O. [unclear]", is written over a horizontal line.

Exhibit H

Toll Dialing Parity Plan

**Z-Tel Communications, Inc.
IntraLATA Toll Dialing Parity Plan
For Tennessee**

1. Purpose

In compliance with FCC Order 96-333,38, Z-Tel Communications, Inc. Z-Tel Communications, Inc. ("Z-Tel") hereby files its plan for implementing IntraLATA Toll Dialing Parity. The intent of this Plan is to provide a proposal that, upon implementation, would provide customers the ability to select the telecommunications carrier of their choice for routing their intraLATA toll calls.

Z-Tel will be following their established guidelines and procedures for implementation of intraLATA Parity of toll calls.

2. Implementation Date and Areas of Availability

Upon commencement of service, Z-Tel will offer 2-PIC service in all BellSouth states including Tennessee.

For services provided via a Z-Tel switch, all switchlines will offer 2-PIC capability.

3. Method of Selection Process and costs

Z-Tel will follow the 2-PIC strategy established by BellSouth. With the 2-PIC methodology, customers will be able to presubscribe to one telecommunications carrier for interLATA toll calls and presubscribe to the same or different carrier, including their existing local exchange company, for all intraLATA toll calls.

Existing Customers

Z-Tel has no existing customers in Tennessee. Z-Tel proposes to provide intraLATA equal access as a feature of the company's Tennessee local exchange service upon launch of that service. Therefore, no notification to existing Customers is required. Existing customers have a 90-day grace period to make a free intraLATA presubscription selection. No charge applies to carrier changes made within this time limit.

New Customers

Processes will be in place to provide new customers with an opportunity to choose their intraLATA toll carrier from a list of available carriers. The list of intraLATA toll carriers, including Z-Tel, will be presented in a competitively neutral manner to new customers who do not make a positive choice for an intraLATA carrier. Customers who do not choose a carrier for intraLATA toll calls will be identified as a "no-PIC" and will have to dial an access code to make intraLATA calls. New customers will have 30 days from the date they order local exchange service to make their free selection. No charge applies to PIC selections made within this time limit. After the time limit expires, the tariffed rate of \$5.00 for PIC changes will apply.

4. Customer Notifications

Customers will be advised the opportunity to choose an intraLATA toll carrier separate from their interLATA carrier at the time they place an order initiating service. They will also be advised that they may choose a carrier other than their local exchange carrier and that a list of available intraLATA toll carriers is available upon request from customer service. Z-Tel also believes that promotional material by other carriers will make customers aware of the choices available to them.

Cost Recovery

Z-Tel does not anticipate any charges from BellSouth to implement their Parity Plan and therefor will not be assessing the customer any additional charges.

Miscellaneous Items

Slamming - Z-Tel will be subject to rules relating to slamming as indicated in Tennessee Regulatory Authority Rule 1220-4-2-. 56, Sections (2) - (19) and 1220-4-2.58, Sections (1)-(16).

Nondiscriminatory Access - Z-Tel will provide nondiscriminatory access for their customers, including any Resellers, as it relates to access of telephone numbers; operator assistance; directory assistance; and directory listings.

Rules – Z-Tel will fully comply with all rules and regulations set forth by the FCC and the TRA.

Z-Tel has no applicable rules.

LATA Associations

Area	LATA	Prefix
Tennessee	Memphis	468
	Nashville	470
	Chattanooga	472
	Knoxville	474

Exchange Coverage for Services

423-207 423-336 423-480 423-584 423-717 423-886 615-219 615-313 615-395 615-599
423-208 423-337 423-481 423-585 423-718 423-892 615-220 615-314 615-399 615-604
423-209 423-338 423-482 423-586 423-719 423-893 615-221 615-315 615-401 615-612
423-212 423-339 423-483 423-587 423-733 423-894 615-222 615-316 615-402 615-631
423-213 423-344 423-485 423-588 423-744 423-899 615-223 615-317 615-406 615-643
423-215 423-345 423-487 423-590 423-745 423-902 615-226 615-319 615-407 615-646
423-217 423-351 423-488 423-594 423-746 423-903 615-227 615-320 615-412 615-650
423-219 423-354 423-490 423-595 423-751 423-904 615-228 615-321 615-415 615-654
423-220 423-358 423-493 423-599 423-752 423-905 615-230 615-322 615-416 615-660
423-221 423-359 423-494 423-602 423-755 423-906 615-231 615-323 615-417 615-661
423-222 423-365 423-495 423-603 423-756 423-907 615-232 615-325 615-418 615-662
423-226 423-373 423-496 423-605 423-757 423-908 615-234 615-327 615-419 615-664
423-227 423-374 423-499 423-608 423-763 423-909 615-235 615-329 615-421 615-665
423-228 423-376 423-501 423-609 423-766 423-916 615-237 615-330 615-426 615-672
423-231 423-379 423-504 423-613 423-769 423-918 615-239 615-331 615-428 615-673
423-235 423-380 423-507 423-614 423-774 423-919 615-240 615-332 615-430 615-696
423-237 423-382 423-509 423-616 423-775 423-920 615-241 615-333 615-432 615-702
423-240 423-386 423-510 423-617 423-778 423-921 615-242 615-335 615-441 615-708
423-248 423-387 423-513 423-618 423-780 423-923 615-244 615-336 615-443 615-714
423-250 423-389 423-514 423-619 423-784 423-924 615-248 615-337 615-444 615-717
423-255 423-395 423-515 423-622 423-785 423-927 615-251 615-340 615-445 615-720
423-258 423-397 423-516 423-623 423-802 423-932 615-252 615-341 615-446 615-726
423-263 423-403 423-517 423-624 423-804 423-933 615-253 615-342 615-449 615-731
423-265 423-408 423-521 423-625 423-805 423-942 615-254 615-343 615-451 615-733
423-266 423-413 423-522 423-629 423-806 423-954 615-255 615-344 615-452 615-734
423-267 423-414 423-523 423-631 423-809 423-961 615-256 615-347 615-453 615-735
423-268 423-417 423-524 423-632 423-810 423-970 615-257 615-350 615-457 615-736
423-269 423-420 423-525 423-633 423-814 423-971 615-258 615-351 615-458 615-737

423-272 423-425 423-527 423-634 423-818 423-974 615-259 615-352 615-459 615-740
423-275 423-426 423-531 423-637 423-819 423-977 615-262 615-353 615-460 615-741
423-280 423-428 423-539 423-642 423-821 423-980 615-264 615-354 615-463 615-742
423-281 423-429 423-540 423-645 423-822 423-981 615-269 615-355 615-476 615-743
423-284 423-430 423-541 423-656 423-825 423-982 615-271 615-356 615-477 615-744
423-285 423-435 423-544 423-658 423-827 423-983 615-272 615-360 615-478 615-746
423-289 423-436 423-545 423-661 423-837 423-984 615-274 615-361 615-481 615-747
423-290 423-442 423-546 423-667 423-842 423-985 615-275 615-365 615-482 615-748
423-296 423-448 423-549 423-670 423-843 423-986 615-279 615-366 615-483 615-749
423-301 423-450 423-550 423-673 423-846 423-987 615-282 615-367 615-494 615-763
423-304 423-451 423-558 423-674 423-847 423-988 615-284 615-370 615-504 615-770
423-309 423-452 423-559 423-681 423-850 423-991 615-291 615-371 615-505 615-771
423-310 423-453 423-562 423-686 423-855 423-992 615-292 615-372 615-508 615-778
423-312 423-457 423-563 423-687 423-856 423-993 615-295 615-373 615-512 615-780
423-315 423-458 423-564 423-688 423-867 423-995 615-297 615-374 615-513 615-781
423-317 423-463 423-565 423-689 423-869 423-996 615-298 615-376 615-516 615-782
423-318 423-470 423-566 423-690 423-870 615-201 615-299 615-377 615-518 615-783
423-321 423-471 423-567 423-691 423-873 615-202 615-302 615-382 615-519 615-789
423-326 423-472 423-570 423-692 423-874 615-206 615-303 615-383 615-524 615-790
423-327 423-473 423-573 423-693 423-875 615-207 615-304 615-384 615-531 615-791
423-329 423-475 423-577 423-694 423-876 615-210 615-305 615-385 615-532 615-792
423-330 423-476 423-579 423-697 423-877 615-214 615-307 615-386 615-542 615-794
423-332 423-478 423-581 423-698 423-882 615-217 615-308 615-390 615-591 615-797
423-334 423-479 423-583 423-701 423-883 615-218 615-309 615-391 615-595 615-799
615-804 615-929 901-278 901-380 901-494 901-605 901-738 901-831 931-358 931-638
615-806 615-930 901-279 901-381 901-495 901-606 901-743 901-832 931-359 931-639
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615-816 615-944 901-286 901-384 901-521 901-609 901-746 901-836 931-379 931-648
615-817 615-948 901-287 901-385 901-522 901-610 901-747 901-850 931-380 931-659
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615-826 615-960 901-309 901-391 901-526 901-616 901-752 901-861 931-389 931-684
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615-889 901-258 901-368 901-481 901-575 901-692 901-794 931-220 931-619
615-890 901-262 901-369 901-482 901-576 901-703 901-795 931-221 931-622
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615-898 901-266 901-373 901-486 901-580 901-724 901-820 931-270 931-626
615-902 901-267 901-374 901-487 901-581 901-725 901-821 931-281 931-627
615-904 901-268 901-375 901-488 901-583 901-726 901-824 931-285 931-628
615-907 901-269 901-376 901-489 901-584 901-728 901-825 931-290 931-629
615-912 901-272 901-377 901-490 901-593 901-729 901-826 931-296 931-632
615-918 901-274 901-378 901-491 901-603 901-734 901-827 931-318 931-636
615-923 901-276 901-379 901-493 901-604 901-737 901-828 931-326 931-637

Exhibit I

Pre-filed Testimony

TENNESSEE REGULATORY AUTHORITY

In the Matter of)
Z-Tel Communications, Inc.) TRA Docket No. _____
For a Certificate to Provide Competing)
Local Exchange Telecommunications Services)

TESTIMONY OF TIMOTHY SEAT

ON BEHALF OF

Z-TEL COMMUNICATIONS, INC.

1 I, Timothy Seat, do hereby testify as follows in support of the application of Z-Tel Communications,
2 Inc. (Z-Tel) for a Certificate of Convenience and Necessity as a competing telecommunications
3 services provider to provide telecommunications services throughout the State of Tennessee.
4

5 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

6 A. My name is Timothy Seat. My business address is 777 South Harbour Island Boulevard, Suite
7 990, Tampa, Florida 33602.
8

9 Q. WHAT IS YOUR POSITION WITH Z-TEL COMMUNICATIONS, INC.?

10 A. I am Vice President of Regulatory Affairs.
11

12 Q. WHAT ARE YOUR RESPONSIBILITIES AS VICE PRESIDENT - REGULATORY
13 AFFAIRS?

14 A. I am primarily responsible for regulatory compliance issues in the company, including applications,
15 tariffs and compliance reporting.
16

17 Q. PLEASE DESCRIBE YOUR PREVIOUS PROFESSIONAL EXPERIENCE.

18 A. In 1981, I graduated from Indiana University with a BA in Psychology. In 1984, I graduated from
19 Indiana University School of Law and was admitted to the Indiana Bar in 1985. After three years
20 of private law practice and work as a deputy prosecutor, I began my telecommunications career
21 with the Indiana Office of Utility Consumer Counselor. I became the office's chief
22 telecommunications attorney, litigating and settling cases with Ameritech Indiana and GTE
23 involving millions of dollars of rate reductions and substantial service quality improvements. I was

1 a member of the National Association of State Utility Consumer Advocates (NASUCA)
2 telecommunications committee from 1993 through 1999. I was largely responsible for developing
3 and implementing the intra-agency telecommunications team to deal with expedited procedural
4 schedules resulting from TA 96. As the OUCC telecommunications team's lead attorney, I was
5 responsible for educating technical staff members regarding the specifics of TA96, which proposed
6 to bring the benefits of competition to the local exchange market. In October of 1999, I left the
7 OUCC and accepted my current position with Z-Tel Communications, Inc. as Vice President of
8 Regulatory Affairs.
9

10 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

11 **A.** I submit this testimony on behalf of Z-Tel to demonstrate that Z-Tel's application for a certificate
12 to become a telecommunications carrier to provide local exchange services on a facilities basis
13 meets appropriate regulatory criteria and is in the public interest. I also explain the services, , that
14 Z-Tel proposes to offer in Tennessee.
15

16 **Q. ARE ALL STATEMENTS IN Z-TEL'S APPLICATION TRUE AND CORRECT TO THE**
17 **BEST OF YOUR KNOWLEDGE, INFORMATION AND BELIEF?**

18 **A.** I have reviewed the complete application package and believe it to be true and correct to the best
19 of my knowledge, information and belief.
20

21 **Q. PLEASE DESCRIBE THE AUTHORITY THAT Z-TEL SEEKS FROM THE**
22 **COMMISSION.**

23 **A.** Z-Tel seeks a certificate to become a telecommunications carrier to provide facilities-based local

1 exchange and interexchange telecommunications services in Tennessee. Initially, Z-Tel intends to
2 market its facilities-based local service exclusively to residential customers.

3
4 **Q. PLEASE DESCRIBE THE CURRENT CORPORATE STRUCTURE OF Z-TEL.**

5 **A.** Z-Tel is a Delaware corporation formed and is wholly owned by Z-Tel Technologies, Inc. The
6 parent company, Z-Tel Technologies, Inc. is a public company trading on the NASDAQ. An
7 organization chart is provided as Exhibit K of the company's application.

8
9 **Q. DOES Z-TEL POSSESS THE REQUISITE MANAGERIAL, FINANCIAL, AND**
10 **TECHNICAL ABILITIES TO PROVIDE THE SERVICES FOR WHICH IT HAS**
11 **APPLIED FOR AUTHORITY?**

12 **A.** Yes. Z-Tel has a proven track record of providing facilities-based local exchange services in several
13 states and possesses the requisite managerial, financial and technical abilities to provide the
14 services for which it is seeking authority in Tennessee.

15
16 **Q. PLEASE DESCRIBE Z-TEL'S FINANCIAL QUALIFICATIONS.**

17 **A.** Z-Tel has ample capital to develop, implement and operate its proposed Tennessee network and to
18 provide the services for which authority is requested. The attached financial information
19 demonstrates that Z-Tel Communications, Inc., the operating arm of Z-Tel Technologies, Inc.
20 (parent company) has sufficient financial capability to deploy its services, provide high quality
21 service, promote the public interest and advance the policy of the Tennessee Utility Regulatory
22 Commission. This information includes Z-Tel's latest 10K and the prospectus from its initial public
23 offering dated December 15, 1999. This information is attached and labeled for identification

1 purposes as Exhibit C of the company's Application.

2
3
4
5 **Q. PLEASE OUTLINE Z-TEL'S MANAGERIAL QUALIFICATIONS.**

6 **A.** Z-Tel has the managerial resources necessary to provide customers in the State of Tennessee with
7 high-quality telecommunications services. The members of Z-Tel's senior management team have
8 extensive management and telecommunications experience. Z-Tel is guided by D. Gregory Smith,
9 its President and CEO. Exhibit D of the company's Petition provides biographies for the Z-Tel
10 management team and demonstrates that Z-Tel has the managerial expertise to provide the services
11 for which authority is requested.
12

13 **Q. PLEASE DESCRIBE Z-TEL'S TECHNICAL QUALIFICATIONS.**

14 **A.** The senior management team of Z-Tel has a varied and detailed background in telecommunications.
15 In addition, Z-Tel has experience offering local exchange services on a facilities basis in New York,
16 Massachusetts, Pennsylvania and Texas.
17

18 **Q. PLEASE DESCRIBE THE TYPES OF SERVICES THAT Z-TEL WILL OFFER IN**
19 **TENNESSEE.**

20 **A.** Primarily Z-Tel will offer a bundled local and long distance service. The service includes local
21 exchange calling, long distance minutes, specific custom calling features, voice mail and optional
22 internet access. This service is unique and offers an alternative to separate plans by separate
23 providers currently available to Tennessee's residential customers.

1 **Q. WILL Z-TEL OFFER SERVICE TO ALL CONSUMERS WITHIN ITS SERVICE**
2 **AREA?**

3 **A.** Yes, Z-Tel will offer service to all consumers within its service area.
4

5 **Q. WHAT FACILITIES WILL Z-TEL USE TO PROVIDE ITS PROPOSED SERVICES?**

6 **A.** Z-Tel intends to offer services through a UNE-P arrangement with BellSouth. Currently, the
7 Company does not intend to purchase rights-of-way, install transmission facilities or a switch
8 in the state.
9

10 **Q. DOES Z-TEL CURRENTLY OFFER SERVICE IN TENNESSEE?**

11 **A.** Z-Tel currently offers interexchange service in Tennessee. The company received authority to
12 offer resold interexchange and local exchange service in 1998. The Company has embarked
13 on a nationwide strategy to offer residential local service through a unbundled network element
14 platform (USE-P) and is pursuing expanded facilities-based local authority in all states.
15

16 **Q. DOES Z-TEL CURRENTLY OFFER SERVICE IN OTHER JURISDICTIONS?**

17 **A.** Yes, Z-Tel currently offers interexchange service nationwide. In addition, the Company offers
18 local exchange service to residential consumers in Georgia, Massachusetts, New York,
19 Pennsylvania, Texas, Maryland and Oregon through UNE-P agreements with the incumbent
20 LECs. The Company currently has over 170,000 residential local exchange access lines. A
21 copy of its latest press release regarding local exchange access lines is attached and labeled
22 Exhibit J of the company's Application. The company intends to roll out service in Illinois,
23 Oregon and Washington during third quarter 2000.

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Q. DOES Z-TEL PLAN TO OFFER LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES IN AREAS SERVED BY ANY INCUMBENT LOCAL EXCHANGE TELEPHONE COMPANY WITH FEWER THAN 100,000 TOTAL ACCESS LINES?

6

7

8

A. No. Z-Tel will offer service in the territory currently served by BellSouth.

9

10

Q. PLEASE DESCRIBE THE PUBLIC INTEREST BENEFITS ASSOCIATED WITH Z-TEL'S PROPOSED OFFERING OF TELECOMMUNICATIONS SERVICES IN TENNESSEE.

11

12

13

A. Granting Z-Tel's application will introduce a telecommunications service provider committed to providing high quality, innovative, and technologically advanced services that will further increase telecommunications competition within the State of Tennessee. Z-Tel's network will utilize state-of-the art technology. Z-Tel's service offerings will increase consumer choice, improve the quality and efficiency in telecommunications services and will likely lead to the reduction of consumer costs, as well as stimulate development of additional services by providing competitive incentives to other providers. While Tennessee has experienced some of the benefits of competition, such competition has been mainly for large business customers. Z-Tel plans to bring the benefits of meaningful local exchange competition primarily and foremost to Tennessee's residential consumers, a first for Tennessee. Thus, granting Z-Tel's application is in the public interest.

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**Q. DOES Z-TEL INTEND TO COMPLY WITH ALL TRA RULES, STATUTES, AND
ORDERS PERTAINING TO THE PROVISION OF TELECOMMUNICATIONS
SERVICES IN TENNESSEE, INCLUDING THOSE FOR DISCONNECTION AND
RECONNECTION OF SERVICE?**

9

A. Yes, Z-Tel intends to comply with all TRA rules, statutes and order pertaining to the provision
of telecommunications services in Tennessee, including those for disconnection and
reconnection of service.

10

11

12

13

**Q. HAS ANY STATE EVER DENIED Z-TEL OR ONE OF ITS AFFILIATES
AUTHORIZATION TO PROVIDE INTRASTATE SERVICE?**

14

15

A. No. Z-Tel has never been denied authorization to provide intrastate service.

16

17

**Q. HAS ANY STATE EVER REVOKED THE CERTIFICATION OF Z-TEL OR ONE
OF ITS AFFILIATES?**

18

19

A. No. Z-Tel, nor any of its affiliates, has never had certification revoked in any jurisdiction.

20

21

**Q. HAS Z-TEL OR ONE OF ITS AFFILIATES EVER BEEN INVESTIGATED OR
SANCTIONED BY ANY REGULATORY AUTHORITY FOR SERVICE OR
BILLING IRREGULARITIES?**

22

23

1 A. No. Z-Tel has never been investigated or sanctioned by any regulatory authority for any reason
2 in any jurisdiction.
3

1 **Q. HAS Z-TEL EXPERIENCED CUSTOMER COMPLAINTS IN OTHER**
2 **JURISDICTIONS?**

3 **A.** Yes. Z-Tel will provide a comprehensive list of complaints under separate cover.

4 As the first exclusively residential UNE-P provider, Z-Tel experienced a number o f problems
5 in provisioning and processing customer orders. These problems included mistakes and/or
6 delays in order processing because of issues surrounding the interface with the incumbent LEC
7 systems. Mistakes and delays in provisioning customer orders invariably led to customer
8 complaints.

9
10 Further, when Z-Tel first roll out its product, it relied exclusively on telemarketing to offer its
11 services to the general public. Before its acquisition of Touch 1 Communications, Z-Tel was
12 forced to rely solely on outside telemarketing companies. One of the benefits of Z-Tel's
13 acquisition of Touch 1 in April of this year is that Z-Tel now can utilize the services of
14 Directel, a wholly owned subsidiary of Touch 1 and thus completely owned by Z-Tel. As a
15 result of this acquisition, Z-Tel terminated all relationships with outside telemarketing firms
16 and now relies exclusively on its wholly owned subsidiary for all telemarketing activities.

17
18 In addition, whereas in the beginning Z-Tel's sales from telemarketing were over 90% of total
19 sales, it now constitutes approximately 20-25% of total sales.

20

21 **Q. WHERE DID THE LARGE MAJORITY OF COMPLAINTS ALLEGING FROM**
22 **THE UNAUTHORIZED CHANGE OF SERVICE PROVIDERS COME FROM?**

23 **A.** From outside telemarketing firms that Z-Tel did not control.

1 **Q. WHY HAS THE PERCENTAGE OF TELEMARKETING SALES DROPPED SO**
2 **DRASTICALLY?**

3 **A.** For a number of reasons. As the company matures, it is developing alternative and additional
4 sales channels. For instance, Z-Tel is successfully using direct mail campaigns to reach
5 customers. Additionally, as Z-Tel grows, word of mouth regarding Z-Tel's consumer friendly
6 products at extremely competitive prices is a great source of business as the number of
7 unsolicited sales that simply call the company and request service is increasing at a very rapid
8 pace.

9
10 **Q. DOES Z-TEL EXPECT THE PERCENTAGE OF TELEMARKETING SALES TO**
11 **DROP EVEN FURTHER?**

12 **A.** Yes, this is very likely, as the company develops alternative marketing methods. For example,
13 Z-Tel soon will offer unlimited long distance calling between Z-Tel subscribers of the bundled
14 local and long distance service for one low flat rate monthly fee. Z-Tel plans to test market
15 product in Texas and will then roll out the product nationwide. This product will work in a
16 similar manner for the "Friends and Family"-type programs where Z-Tel subscribers will sign
17 up other family members and friends.

18
19 **Q. REGARDING COMPLAINTS, HAS Z-TEL IMPLEMENTED ADDITIONAL**
20 **PROCEDURES TO INSURE THAT ALL CHANGES IN SERVICE PROVIDERS**
21 **ARE AUTHORIZED AND VERIFIED?**

22 **A.** Yes. In addition to following all FCC and state rules, Z-Tel has proactively initiated a group
23 that independently verifies 100% of all third party verification (tpv) recordings. Thus, for a

1 telemarketing sale to go through, the sales channel must first determine that it is a valid sale,
2 the independent third party verifier must confirm that it is a valid sale, and finally the
3 independent auditing group within Z-Tel must determine the sale to be valid. The management
4 of the tpv relationship is now performed by an experienced manager who has no ties with Z-
5 Tel's sales organization. As far as I can determine, Z-Tel's proactive measures that guarantee
6 the validity of a change in service provider is unprecedented in the industry.

7
8 **Q. DOES Z-TEL EXPECT THE PROBLEMS AND COMPLAINTS IT PREVIOUSLY**
9 **EXPERIENCED IN OTHER JURISDICTIONS TO CONTINUE IN TENNESSEE?**

10 **A.** Absolutely not. In addition to the proactive measures to control telemarketing described above,
11 Z-Tel is taking additional steps to insure that previous problems don't get repeated in new
12 states. For example, Z-Tel is expending a large amount of capital to install state-of-the-art
13 OSS (Operation Support Systems) through an EDI (Electronic Data Interface) infrastructure.
14 In addition, Z-Tel has learned from past experiences and is now negotiating appropriate terms
15 to handle past problems in its interconnection agreements with the incumbent local exchange
16 companies.

17
18 **Q. WHO IS KNOWLEDGEABLE ABOUT Z-TEL'S OPERATIONS AND WILL SERVE**
19 **AS Z-TEL'S REGULATORY AND CUSTOMER SERVICE CONTACT?**

20 **A.** I am knowledgeable about the company's operations and as Vice President of Regulatory
21 Affairs will serve as Z-Tel's regulatory and customer service contact.

1

2

**Q. PLEASE EXPLAIN IN DETAIL Z-TEL'S PROPOSED PROCEDURES FOR
RESPONDING TO INFORMATION REQUESTS FROM THE TRA AND ITS
STAFF.**

4

5

A. Information requests will be handled through my organization. Responses are developed and
reviewed. A timely response will always be provided.

6

7

8

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

9

A. Yes, it does.

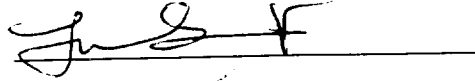
10

1 I swear that the foregoing testimony is true and correct to the best of my knowledge.

2

3

4



5

Timothy Seat
Vice President - Regulatory Affairs
Z-Tel Communications, Inc.

6

7

8

9

10 Subscribed and sworn to me on this 21 day of August, 2000

11

12

Notary Public

13

State of Florida

14

County of ~~Tampa~~

Hillsborough

15

16

My commission expires 4/10/04



Sarah Greenhawt

Tennessee Testimony of Timothy Seat

Exhibit J

Press Release



[Products](#) [Features & Options](#) [Special Offers](#) [Customer Care](#) [About Us](#) [Investor Info](#) [Members](#)

[Overview](#)

[Z-Tel Management Team](#)

[Stock Quote](#)

[Stock Chart](#)

[Fundamentals](#)

[In The News](#)

[Earnings Estimates](#)

[Analyst Coverage](#)

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Z-Tel Technologies Inc. (ticker: ZTEL, exchange: NASDAQ) News Release - Monday, July 10, 2000

Z-Tel Increases Subscribers by 97% During the Second Quarter to Reach a Total of 170,000

TAMPA, Fla.--(BUSINESS WIRE)--July 10, 2000--

Announces First Entry into Bell South

Territory by Initiating Test Marketing in Georgia

Gregg Smith, Chairman, President and Chief Executive Officer of Z-Tel Technologies, Inc. (Nasdaq/NM: ZTEL), today announced that Z-Tel's Home Edition subscriber count reached 170,000 as of June 30, 2000, the end of the Company's second quarter. This growth, which represents an addition of 84,000 subscribers during the quarter, is the best quarterly increase yet achieved by Z-Tel, nearly doubling the subscriber base at the end of the first quarter of 2000. The Company accomplished this expansion even as it continued to integrate new sales and provisioning resources acquired through the acquisition of Touch 1 Communications during the quarter.

Z-Tel also announced that it had begun provisioning Z-Line Home Edition subscribers in Georgia on a test basis. Pending the successful completion of these tests and associated training, the Company anticipates initiating a state-wide marketing campaign to ramp up sales in Georgia later in the third quarter. Georgia represents Z-Tel's first entry into a Bell South market and is the fifth state in which the Company has marketed its Z-Line Home Edition service. Georgia has approximately 2.8 million potential subscribers, bringing the current addressable market for Z-Tel's Home Edition to over 25 million potential subscribers.

Mr. Smith noted, "We are pleased to announce these subscriber numbers, which are ahead of our expectations. They reflect not only the growing popularity of our Z-Line service, but also the substantial strengthening and maturation of our internal systems. To provision 84,000 subscribers in three months is a significant achievement, which we believe indicates that Z-Tel is one of the country's most rapidly growing consumer communications companies.

"Our goal is to continue this growth, in part, by expanding into new markets, and we are excited by the opportunity to be operating in Georgia. We also continue to work toward initiating operations in additional states during 2000. With the financing agreements announced last week, we believe that we have the resources in place to execute these plans for expanding our business."

This press release contains forward-looking statements that are based upon current expectations and involve a number of risks and uncertainties. In order for the Company to utilize the "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995, you are hereby cautioned, and the Company hereby notes, that these statements may be affected by the risk factors described in detail in Z-Tel's 1999 Annual Report on Form 10-K, filed on March 28, 2000; and in the Company's other filings with the Securities and Exchange Commission, including, specifically, the risk that the Company will be unable to efficiently and successfully enter new markets, including Georgia, in the Company's desired time frame or at all; the risk that unbundled network elements will cease to be available in their present form in states that have adopted favorable pricing rules for such elements; the risk that additional state regulatory commissions will not adopt favorable pricing rules for unbundled network elements; the risk that present performance and growth trends may not continue; the risk that, should the Company require additional financing to fund its business, plan, such financing may not be available on attractive terms, or at all, or may be dilutive; and the risk that, if the Company is unable to obtain such financing or obtain it on terms that are not attractive, the Company may be required to modify, delay or abandon its current business plan, which is likely to materially and adversely affect its business. The Company undertakes no obligation to update or revise any such forward-looking statements.

About Z-Tel Technologies

Z-Tel Technologies, Inc. provides consumers bundled local and long distance telephone services, combined with enhanced, Internet-based communications features that enable them to manage all of their voice communications needs. Z-Tel currently sells this bundle as "Z-Line Home Edition" in New York, Texas, Georgia and Massachusetts, and has over 170,000 subscribers. For more information about this innovative new service or about Z-Tel, please visit the Company's web site at www.z-tel.com.

CONTACT: Z-Tel Technologies

Mark H. Johnson, 813/233-4610

mjohnson@z-tel.com

[Home](#) - [Sign In](#) - [Sign Up Now](#) - [Customer Care](#) - [Z-Line Access Numbers](#)
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Exhibit K

Corporate Structure

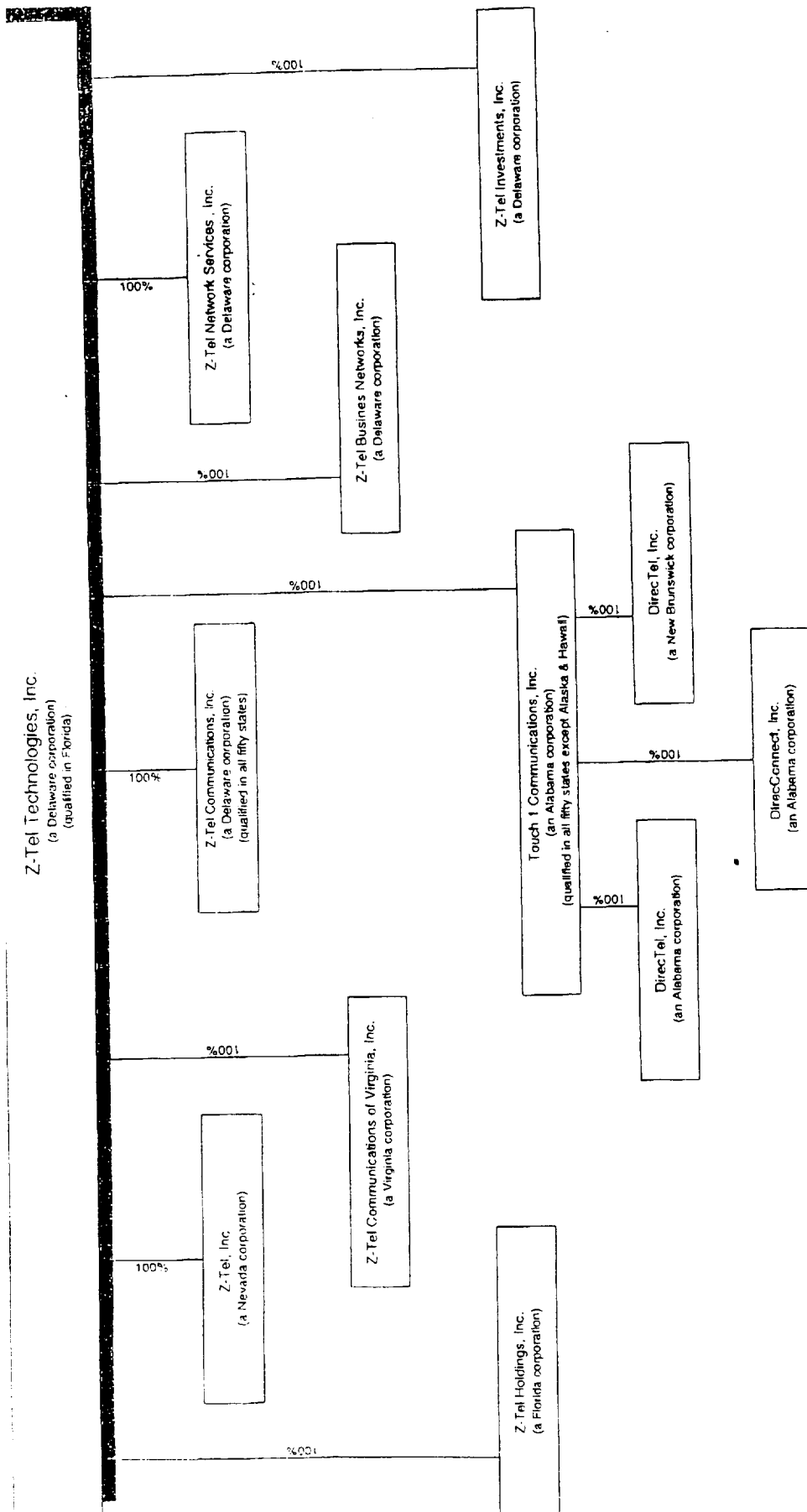


Exhibit L

Customer Complaints

To be filed under separate cover