505 Sansome Street
Suite 900
San Francisco
California 94111

GOODIN, MACBRIDE, SQUERI, RITCHIE & DAY, LLP

Attorneys at Law

Telephone
415/392-7900
Facsimile
415/398-4321

June 3, 2002

John L. Clark

Writer's Direct Line
415/765-8443

VIA FEDERAL EXPRESS

Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

02-00667

Re: Petition for Approval of Acquisition of Indirect Control Over Provider of Telecommunications Services

Dear Sir or Madam:

Enclosed please find:

1. An original and fourteen (14) copies of the above-referenced document; and

2. A check in the amount of $25.00 for the filing fee.

Please file-stamp the extra copy and return it in the self-addressed stamped envelope which has been provided. Should you have any questions with respect to this filing, please telephone Mr. Clark at (415) 392-7900. Thank you.

Very truly yours,

GOODIN, MACBRIDE,
SQUERI, RITCHIE & DAY, LLP

By Cynthia Addad

Cynthia Addad
Secretary to John L. Clark

Enclosures

2659/002/X34277-1

TENNESSEE REGULATORY AUTHORITY

Joint Petition of

U.S. TelePacific Corp.

and

SIPCO Limited

for approval of acquisition by SIPCO Limited of indirect control over U.S. TelePacific Corp.

Docket No.

PETITION FOR APPROVAL OF ACQUISITION OF INDIRECT CONTROL OVER PROVIDER OF TELECOMMUNICATIONS SERVICES

GOODIN, MACBRIDE, SQUERI,
RITCHIE & DAY, LLP
John L. Clark
505 Sansome Street, Suite 900
San Francisco, CA 94111
Telephone: (415) 392-7900
Facsimile: (415) 398-4321

Attorneys for Joint Petitioners

Date: May 22, 2002

TENNESSEE REGULATORY AUTHORITY

Joint Petition of **U.S. TelePacific Corp. d/b/a TelePacific Communications** and **SIPCO Limited** for approval of acquisition by SIPCO Limited of indirect control over U.S. TelePacific Corp.	Docket No.

PETITION FOR APPROVAL OF ACQUISITION OF INDIRECT CONTROL OVER PROVIDER OF TELECOMMUNICATIONS SERVICES

U.S. TelePacific Corp. d/b/a TelePacific Communications ("TelePacific)") and SIPCO Limited ("SIPCO") hereby apply for approval of the acquisition by SIPCO of indirect control over TelePacific, which was issued authority to provide competitive local exchange telephone service and other telecommunications services in Docket No. 00-00697.[1] As is explained in more detail below, the proposed change of control is taking place in connection with a substantial equity investment that has been made in TelePacific's parent company. No changes to TelePacific's current operations are contemplated.

TelePacific is a wholly-owned subsidiary of U.S. TelePacific Holdings Corp. ("Holdings"). Holding's stock is disbursed among a number of stockholders such that no single person or entity exercises control over Holdings by virtue of their stock ownership. Among these stockholders are TelePacific Holdings Limited ("THL"), Investcorp TPC L.P. ("ITPC"), and TelePacific Equity Limited ("TEL"). These three companies are all partially-owned

subsidiaries of Investcorp SA ("Investcorp"). Investcorp is a global investment group that acts as a principal and intermediary in international investment transactions. The company has offices in New York, London, and Bahrain and specializes in facilitating the flow of capital from individual and institutional clients into investments in the United States and Western Europe. Investcorp, in turn, is an indirect, partially-owned subsidiary of SIPCO.

As the result of a recent $40 million equity financing in which THL, ITPC, and TEL were the primary participants, these three companies now collectively own a majority of Holdings' voting stock. Investcorp's (and, therefore, SIPCO's) equity interests in these three companies are not sufficient to provide it with control over Holdings; however, through a combination of Investcorp's equity interests and management agreements with other investors in these companies, Investcorp (and, ultimately, SIPCO) has the ability to exercise *de facto* control over them. Although SIPCO's indirect control, through Investcorp, of THL, ITPC, and TEL places it in a position to control Holdings and TelePacific, the ability to vote Holdings' stock currently is restricted in such a manner as to preclude SIPCO from exercising control over Holdings and TelePacific until approval is obtained from this Commission and other state and federal regulatory agencies having jurisdiction over the parties. A diagram showing the current ownership structure of TelePacific is attached as Exhibit A.

In support of their application, Joint Petitioners provide the following information:

[1] TelePacific has not yet commenced operations in the State of Tennessee pursuant to the authority granted by the Commission.

I. Names and Addresses of Joint Petitioners

A. U.S. TelePacific Corp.

U.S. TelePacific Corp.
515 South Flower Street, 47th Floor
Los Angeles, CA 90071-2201
Tel: 213-213-3000.

The proposed change in control will not result in any change in the name, corporate structure, or operations of TelePacific, which is authorized to conduct business in Tennessee under the assumed name TelePacific Communications. A list of TelePacific's officers and directors is attached as Exhibit B.

B. SIPCO Limited

SIPCO Limited
c/o Investcorp SA
6 Rue Adolph Fischer
L-1520 Luxembourg
Tel: 352 (4025) 051
Fax: 352 (4025) 0577

SIPCO Limited is a corporation organized under the laws of the Cayman Islands. Through various affiliates and subsidiaries, SIPCO operates as a principal and intermediary in international investment transactions involving a variety of industries. As is explained above, following approval of this application and similar applications before other jurisdictions, SIPCO will have the power to exercise indirect *de facto* control over TelePacific through a combination of indirect equity holdings and management agreements with investors in certain partially-wholly-owned affiliates who, collectively, hold a majority of the voting stock of Holdings, TelePacific's parent company. (See Exhibit A.)

II. Contact Information

All correspondence and communications regarding this petition should be directed to Joint Applicant's counsel, as follows:

John L. Clark
Goodin, MacBride, Squeri, Ritchie and Day, LLP
505 Sansome Street, Ninth Floor
San Francisco, CA 94111
Tel: 415-765-8443
Fax: 415-398-4321
E-mail: jclark@gmssr.com

III. Description of Transaction

The change of control is being effected in connection with a recently-completed $40 million equity investment in Holdings (and, indirectly, TelePacific) involving companies in which SIPCO has significant, indirect interests. Petitioners have attached hereto as Exhibit C: (1) a copy of the Series D Preferred Stock Purchase Agreement, pursuant to which SIPCO's affiliates collectively acquired a majority voting interest in Holdings; and (2) a copy of the Amended and Restated Certificate of Incorporation of U.S. TelePacific Holdings Corp., which describes the respective rights of Holding's various classes of shareholders to vote and appoint directors.

IV. Public Interest Showing

Joint Petitioners do not contemplate any change in the operations of TelePacific as the result of the change of control for which approval is sought herein. The proposed acquisition of control results from the acquisition by SIPCO's partially-owned affiliates, collectively, of a majority of the voting stock in Holdings pursuant to very substantial equity investments, along with the decision by independent investors in these affiliates to rely on the experience and expertise of SIPCO's partially-owned subsidiary, InvestCorp, to manage the Holdings'

investment in the manner that Investcorp determines will best preserve and promote TelePacific's financial and operational viability..

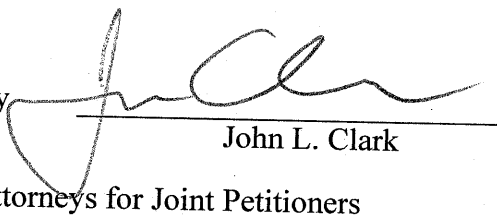
Given the very strong financial commitment that SIPCO and its affiliates have made toward ensuring that TelePacific has the resources it requires in order to properly carry out its operations, it is abundantly clear that the proposed acquisition and exercise of control by SIPCO is intended to be, and will be, consistent with applicable law and the public interest. Moreover, approval of the proposed acquisition of control by SIPCO will promote the ability of TelePacific to continue to raise capital. As noted above, SIPCO, through InvestCorp, is a global investment company that acts as a principal and intermediary in international investment transactions facilitating the flow of capital from individual and institutional clients into investments in the United States and Western Europe. Its indirect control of TelePacific will assure investors, whether affiliated with SIPCO or not, that TelePacific's operations and long term business strategies are subject to ultimate oversight by a highly experienced investment firm with a very substantial stake in the company's success.

V. Additional Information

Joint Petitioners will furnish such other and further information in support of this application as the Commission may require.

Respectfully submitted May 22, 2002.

GOODIN, MACBRIDE, SQUERI,
RITCHIE & DAY, LLP

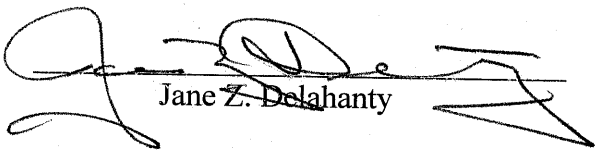
By 
John L. Clark

Attorneys for Joint Petitioners

AFFIDAVIT

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

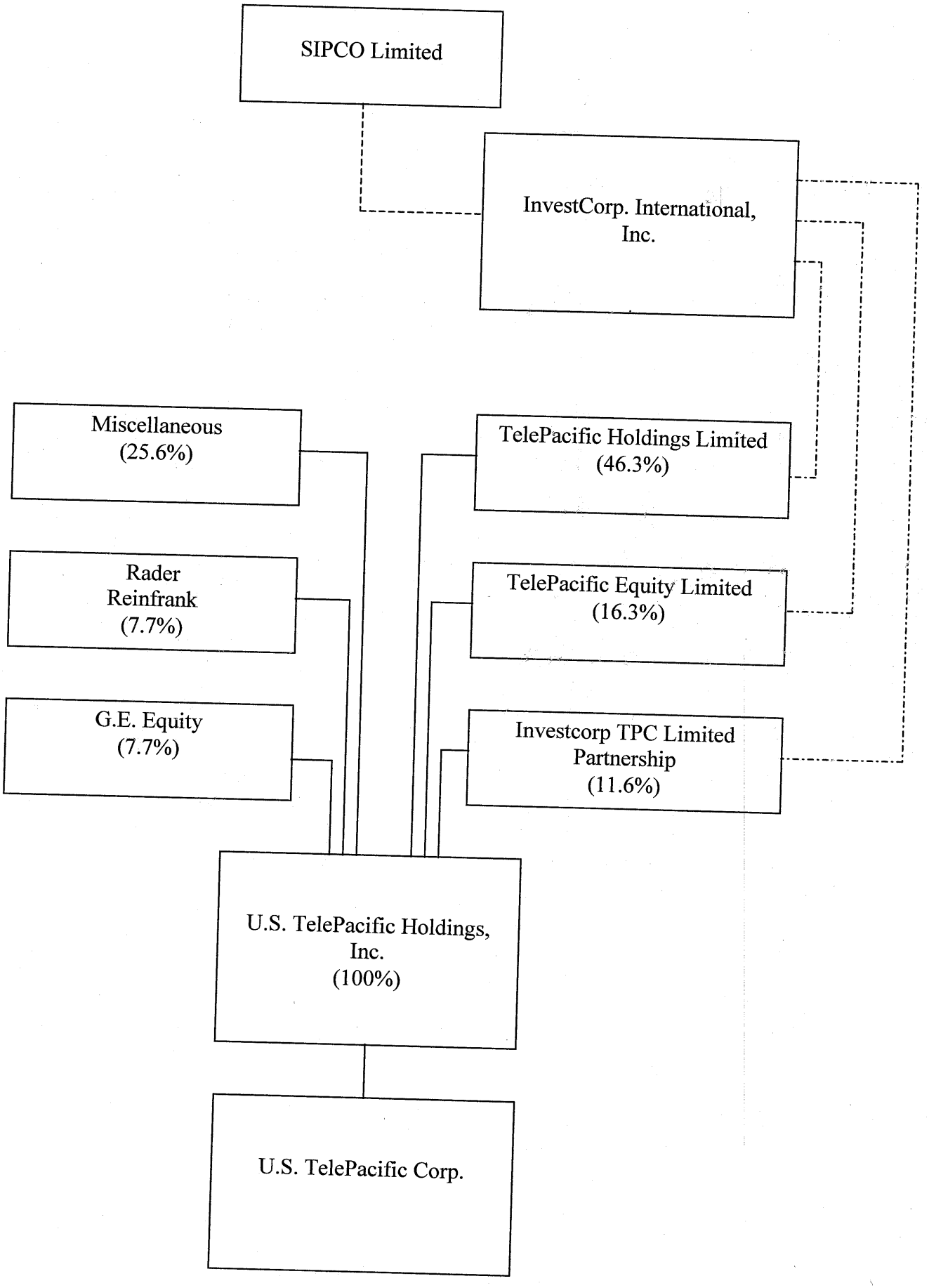
Jane Z. Delahanty, states: that she is an officer of U.S. TelePacific Corp.; that, in such capacity, she is qualified and authorized to file and verify the foregoing application on its behalf; that she has carefully examined all the statements and matters contained in the application; and that all such statements made and matters set forth therein are true and correct to the best of her knowledge, information and belief. Affiant further states that the application is made in good faith, with the intention of presenting evidence in support thereof in every particular.



Jane Z. Delahanty

Subscribed and sworn to before me, a Notary Public in and for the State and County above named, this _____ day of May 2002.

EXHIBIT A


SIPCO Limited
InvestCorp. International, Inc.
Miscellaneous (25.6%)
TelePacific Holdings Limited (46.3%)
Rader Reinfrank (7.7%)
TelePacific Equity Limited (16.3%)
G.E. Equity (7.7%)
Investcorp TPC Limited Partnership (11.6%)
U.S. TelePacific Holdings, Inc. (100%)
U.S. TelePacific Corp.

U.S. TelePacific Corp. dba TelePacific Communication

Board of Directors

Director

Mr. David Glickman — **Chairman**
TelePacific Communications
9864 Wilshire Blvd.
Beverly Hills, CA 90210
phone: (213) 213-2222
fax: (213) 213-2223
E-mail: dglickman@telepacific.com

Mr. Lars C. Haegg — **Principal**
InvestCorp International, Inc.
280 Park Avenue, 36th (W) Floor
New York, NY 10017
phone: (212) 703-1242
fax: (212) 329-6842
E-mail: lhaegg@investcorp.com

Mr. Richard A. Jalkut — **President and CEO**
TelePacific Communications
515 S. Flower St., 47th Floor
Los Angeles, CA 90071
phone: (213) 213-3000
fax:
E-mail: djalkut@telepacific.com

Mr. Christopher O'Brien
InvestCorp International, Inc.
280 Park Avenue, 37th (W) Floor
New York, NY 10017
phone: (212) 599-4700
fax: (212) 983-7073
E-mail: cobrien@investcorp.com

Mr. Steve Rader — **Managing General Partner**
Clarity Partners
100 Crescent Drive
Beverly Hills, CA 90210
phone: (310) 246-2977
fax: (310) 550-0879
E-mail: spr@claritypartners.net

Mr. Christopher Stadler
InvestCorp International, Inc.
280 Park Avenue, 37th (W) Floor
New York, NY 10017
phone: (212) 599-4700
fax: (212) 983-7073
E-mail: cstadler@investcorp.com

Board of Directors

Governor Pete Wilson

2132 Century Park Lane, #301
Los Angeles, CA 90067
phone: (310) 282-8525
fax: (310) 282-8478
E-mail: govpete@pacbell.net

#Name?

U.S. TelePacific Corp. dba TelePacific Communications

515 S. Flower St., 47th Floor, Los Angeles, CA 90071

Corporate Officers

Mr. Richard A. Jalkut
President and CEO
(213) 213-3000 - *phone*
- *fax*
djalkut@telepacific.com

Mr. Eugene Welsh
CFO/Treasurer
(213) 213-3200 - *phone*
(213) 213-3201 - *fax*
gwelsh@telepacific.com

Mr. Erich Everbach
Secretary
(213) 213-3690 - *phone*
(213) 213-3691 - *fax*
eeverbach@telepacific.com

Ms. Jane Delahanty
Assistant Secretary
(213) 213-3288 - *phone*
(213) 213-3289 - *fax*
jdelahanty@telepacific.com

Ms. Kirstin Gooldy
Assistant Secretary
(213) 213-3335 - *phone*
(213) 213-3336 - *fax*
kgooldy@telepacific.com

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF U.S. TELEPACIFIC HOLDINGS CORP.

U.S. TelePacific Holdings Corp., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware,

DOES HEREBY CERTIFY:

ONE: The name of this Corporation is U.S. TelePacific Holdings Corp. (the "Corporation"). The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of Delaware on August 30, 1999. An Amended and Restated Certificate of Incorporation of the Corporation was filed with the Secretary of State of Delaware on December 27, 1999. A further Amended and Restated Certificate of Incorporation of the Corporation was filed with the Secretary of State of Delaware on April 14, 2000.

TWO: Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, this Amended and Restated Certificate of Incorporation restates and integrates and amends the provisions of the Amended and Restated Certificate of Incorporation of this Corporation.

THREE: The text of the Amended and Restated Certificate of Incorporation as heretofore in effect is hereby restated and amended to read in its entirety as follows:

"FIRST: The name of the corporation (hereinafter the "Corporation") is:

U.S. TELEPACIFIC HOLDINGS CORP.

SECOND: The address, including street, number, city and county, of the registered office of the Corporation in the State of Delaware is 1013 Centre Road, City of Wilmington, County of New Castle; and the name of the registered agent of the Corporation in the State of Delaware is Corporation Service Company.

THIRD: The nature of the business and of the purposes to be conducted and promoted by the Corporation shall be to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

FOURTH: Section A. Authorized Capital. The Corporation shall be authorized to issue two classes of stock to be designated, respectively, "Preferred Stock" and "Common Stock;" the total number of shares which the Corporation shall have authority to issue is Nine Hundred Million Forty One Thousand Six Hundred Ninety (900,041,690); the total number of shares of Preferred Stock, par value $0.0001 per share, shall be Forty One Thousand Six Hundred Ninety (41,690); and the total number of shares of Common Stock, par value $0.0001 per share, shall be Nine Hundred Million (900,000,000).

Section B. Preferred Stock. The Preferred Stock shall be divided into series. The first series shall consist of One Hundred Fifty (150) shares and shall be designated "Series A Preferred Stock," the second series shall consist of One Hundred (100) shares and shall be designated "Series B Preferred Stock," the third series shall consist of One Thousand Four Hundred Forty (1,440) shares and shall be designated "Series C Preferred Stock," and the fourth series shall consist of Forty Thousand (40,000) shares and shall be designated "Series D Preferred Stock."

Section C. Common Stock. The Common Stock shall be divided into classes. The first class shall consist of Seventeen Million (17,000,000) shares and shall be designated "Class A Common Stock," the second class shall consist of Two Hundred Thousand (200,000) shares and shall be designated "Class B Common Stock," the third class shall consist of Two Million One Hundred Ninety Nine Thousand Eight Hundred Sixty (2,199,860) shares and shall be designated "Class C Common Stock," the fourth class shall consist of One Million Nine Hundred Forty Five Thousand Three Hundred Eighty Four (1,945,384) shares and shall be designated "Class D Common Stock," the fifth class shall consist of Twenty One Million Two Hundred Sixty Six Thousand Three Hundred Six (21,266,306) shares and shall be designated "Class E Common Stock," and the sixth class shall consist of Eight Hundred Fifty Seven Million Three Hundred Eighty Eight Thousand Four Hundred Fifty (857,388,450) shares and shall be designated "Ordinary Common Stock."

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

1. Dividend Rights

A. i. The holders of record of the Series A Preferred Stock (collectively, the "Series A Holders," and individually, a "Series A Holder") and the holders of record of the Series B Preferred Stock (collectively, the "Series B Holders," individually, a "Series B Holder") of the Corporation shall be entitled to receive, when, as and if declared by the Board of Directors of the Corporation (the "Board"), out of the funds of the Corporation legally available therefor, a cumulative cash dividend (a "Preferred Stock Dividend") at a simple interest rate of 10% of the Funded Portion (as specified below) of the Liquidation Value (as specified below) per share per annum, reduced by the amount of dividends, if any, paid to the Series A Holders and Series B Holders pursuant to Section D.1.B. during the measurement period for such Preferred Stock Dividend, payable upon a conversion, liquidation or redemption of each share of Series A Preferred Stock (each, a "Series A Preferred Share") and each share of Series B Preferred Stock (each, a "Series B Preferred Share") in accordance with Section D.4., D.5. or D.6 below, as applicable.

ii. The holders of record of the Series C Preferred Stock (collectively, the "Series C Holders," and individually, a "Series C Holder") of the Corporation shall be entitled to receive, when, as and if declared by the Board, out of the funds of the Corporation legally available therefor, a Preferred Stock Dividend at a simple interest rate of 7% of the Funded Portion of the Liquidation Value per share per annum, reduced by the amount of dividends, if any, paid to the Series C Holders pursuant to Section D.1.B. during the measurement period for such Preferred Stock Dividend, payable upon a conversion, liquidation or redemption of each

share of Series C Preferred Stock (each, a "Series C Preferred Share") in accordance with Section D.4., D.5. or D.6 below, as applicable.

iii. The holders of record of the Series D Preferred Stock (collectively, the "Series D Holders," individually, a "Series D Holder" and collectively with the Series A Holders, the Series B Holders and the Series C Holders, the "Preferred Holders") of the Corporation shall be entitled to receive, when, as and if declared by the Board, out of the funds of the Corporation legally available therefor, a Preferred Stock Dividend (the "Series D Preferred Stock Dividend") at a simple interest rate of 10% of the original issue price per share per annum, reduced by the amount of dividends, if any, paid to the Series D Holders pursuant to Section D.1.B. during the measurement period for such Preferred Stock Dividend, payable upon a conversion, liquidation or redemption of each share of Series D Preferred Stock (each, a "Series D Preferred Share" and collectively with the Series A Preferred Shares, the Series B Preferred Shares and the Series C Preferred Shares, the "Preferred Shares") in accordance with Section D.4., D.5. or D.6 below, as applicable.

iv. The Funded Portion means with respect to the Series A Preferred Shares, the Series B Preferred Shares and the Series C Preferred Shares, respectively, the amount of consideration paid for such shares in accordance with the terms of the Preferred Stock Purchase Agreement, dated as of April 14, 1999 (as amended, modified or restated from time to time), between the Corporation and the Series A Holders, the Series B Preferred Stock Purchase Agreement, dated as of November 9, 1999 (as amended, modified or restated from time to time), between the Corporation and the Series B Holders and the Series C Preferred Stock Purchase Agreement, dated as of April 14, 2000 (as amended, modified or restated from time to time) between the Corporation and the Series C Holders, respectively. The Liquidation Value will be $100,000 (or such lesser Funded Portion) per share of Series A, Series B and Series C Preferred Stock. Preferred Stock Dividends will accrue on each Preferred Share as stated above whether or not such Preferred Stock Dividends have been declared from time to time and whether or not there are funds of the Corporation legally available from time to time for the payment of the Preferred Stock Dividends.

B. In the event that the Corporation declares, makes or pays any dividends or other distributions upon the Common Stock (whether payable in cash, securities, rights or other property) other than dividends and distributions referred to in Section D.5.D., the Corporation shall also declare and pay to the Preferred Holders at the same time it declares and pays such dividends or other distributions to the holders of Common Stock (and with the same record date), the dividends or distributions which would have been declared and paid with respect to the Common Stock issuable upon conversion of the Preferred Stock had all of the outstanding Preferred Stock been converted immediately prior to the record date for such dividend or distribution, or if no record date is fixed, the date as of which the record holders of Common Stock entitled to such dividends or distributions are determined.

C. If the funds of the Corporation legally available for payment of Preferred Stock Dividends on any date when such dividends are payable are insufficient to pay the total amount of Preferred Stock Dividends then accrued with respect to the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock or the Series D Preferred Stock, or if the Corporation is prohibited from paying such Preferred Stock Dividends by applicable law or by

any contract or agreement, including, but not limited to, any loan agreement, to which the Corporation is a party, the Corporation will use those funds legally available and not so prohibited for the payment of any Preferred Stock Dividends so payable. Subject to Section D.5.F., on such date as additional funds of the Corporation are legally available for the payment of such Preferred Stock Dividends, or such prohibition no longer applies, such funds will be used to pay accrued and unpaid Preferred Stock Dividends.

D. Accrued and unpaid Preferred Stock Dividends on Preferred Shares will not bear interest prior to the date such Preferred Stock Dividends are due and payable. After accrued and unpaid Preferred Stock Dividends on Preferred Shares become due and payable, such accrued and unpaid Preferred Stock Dividends will bear interest at a rate of the lesser of 12% per annum or the highest amount permitted by applicable law. Preferred Stock Dividends paid on the Preferred Shares in an amount less than the total amount of such Preferred Stock Dividends at the time accrued and payable on such shares shall be allocated first to payment of the Series D Preferred Stock Dividend and, after the Series D Preferred Stock Dividend has been paid in full, pro rata among the Series A Holders, the Series B Holders and the Series C Holders based on the amount of Preferred Stock Dividends due to each such holder.

2. Voting Rights

A. Except as provided by applicable law or as provided herein, the Common Stock and the Preferred Stock shall vote together as one class according to the following: (i) the holder of each share of Class A Common Stock, Class B Common Stock, Class C Common Stock, Class D Common Stock, Class E Common Stock and Ordinary Common Stock issued and outstanding shall be entitled to one vote per share of stock held by such holder; and (ii) the holder of each share of Preferred Stock shall be entitled to the number of votes that such Preferred Holder would have if such Preferred Holder were to convert such Preferred Holder's Preferred Shares into shares of Ordinary Common Stock immediately prior to the record date of the applicable vote; provided, however, that, unless and until the "Regulatory Approval" set forth in the Fourth Amended and Restated Shareholders' Agreement dated December __, 2001 has been satisfied, if any Preferred Holder would otherwise be entitled to fifty percent (50%) or greater of the total number of votes entitled to participate in such vote, such Preferred Holder shall only be entitled to the number of votes that equal forty-nine and nine tenths percent (49.9%) of the total votes eligible to be cast in such vote (after eliminating such excess votes) and, for purposes of this proviso only, TelePacific Holdings Limited, TelePacific Investments Limited and [new Investcorp entity] shall be treated as one Preferred Holder. Fractional votes will not be permitted and, subject to the foregoing sentence, any resulting fractional voting rights (after determining the total number of votes such Preferred Holder would be entitled to if such Preferred Holder had converted all of such Preferred Holder's Preferred Shares) will be rounded to the nearest whole number (with one-half being rounded upward).

B. Without limiting the rights granted to Preferred Holders hereunder, the Preferred Holders are entitled to receive notice of all meetings of the stockholders of the Corporation to the same extent and in the same manner as the holders of Common Stock.

C. The Board will consist of nine members until the "Regulatory Approval" (as described in Section D.2.A.) has been satisfied, and thereafter will consist of between five and twelve directors.

3. Certain Restrictions and Powers

A. The Corporation shall not alter the terms of any series of Preferred Stock in a manner which adversely affects the rights of the holders of such series of Preferred Stock, at any time that any shares of such series of Preferred Stock remain outstanding, without first obtaining the approval of the holders of at least 90% of the shares of such series then outstanding; provided, however, that for the avoidance of doubt the authorization or issuance of any additional securities of the Corporation having priorities or preferences senior to or on a parity with any existing series of Preferred Stock shall not constitute an adverse effect on the holders of such existing series of Preferred Stock.

B. So long as Series D Preferred Shares are outstanding, the Corporation may not take any of the following actions without first obtaining the consent of the holders of 66 2/3% of the Series D Preferred Shares (the "Required Series D Consent"):

i. issue any new equity securities of the Corporation or cause the issuance of any new equity securities of any wholly-owned, direct or indirect, subsidiary of the Corporation (each, a "Subsidiary" and collectively the "Subsidiaries"), other than (x) pursuant to employee incentive plans approved by the Board (provided, however, that the Corporation may not increase the number of shares authorized to be issued pursuant to incentive plans without first obtaining the Required Series D Consent), (y) of a Subsidiary in connection with the formation of a new Subsidiary or (z) pursuant to a Qualifying IPO (as defined in Section D.5.C.);

ii. merge, consolidate, or sell all or substantially all of the assets of the Corporation or any of its Subsidiaries other than a merger or consolidation of one or more Subsidiaries into another Subsidiary or the Corporation in which the Subsidiary or the Corporation is the surviving corporation;

iii. amend the Certificate of Incorporation or By-laws of the Corporation or cause the Corporation's wholly-owned Subsidiary, U.S. TelePacific Corp., a California corporation, to amend its Articles of Incorporation or By-laws;

iv. adopt or approve any material change to the annual operating budget for the Corporation and its Subsidiaries taken as a whole;

v. enter into or have a Subsidiary enter into any business outside of the Core Business or otherwise expend any material amount of time, effort, or funds in connection therewith. "Core Business" means providing voice, data, or video services reasonably comparable to services provided in the United States by the Corporation's primary competitors and excludes paging, cell phone resales, and company-owned pay phones;

vi. except as provided herein, declare or pay dividends, or make any other distributions, on any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series D Preferred Stock;

vii. declare or pay dividends, or make any other distributions, on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series D Preferred Stock;

viii. except as provided herein, redeem or purchase or otherwise acquire for consideration shares of any stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series D Preferred Stock; provided, however, that the Corporation may at any time (a) redeem, purchase or otherwise acquire shares of any such junior stock in exchange for shares of any stock of the Corporation ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series D Preferred Stock or (b) subject to approval by the Board, repurchase from employees, consultants or directors of the Corporation shares of Common Stock pursuant to the terms of restricted stock, stock option or employment agreements upon termination of their employment, engagement or directorship with the Corporation;

ix. redeem or purchase or otherwise acquire for consideration any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series D Preferred Stock;

x. hire or terminate any of the following members of senior management of the Corporation or of U.S. TelePacific Corp.: Chief Executive Officer, the senior officer responsible for operations, Chief Financial Officer, the senior officer responsible for network engineering and the senior officer responsible for sales and marketing;

xi. sell or cause a Subsidiary to sell any asset or group of related assets outside the ordinary course of business in excess of $5,000,000 in one or a series of transactions; or

xii. acquire or cause a Subsidiary to acquire the assets or capital stock of another corporation where the purchase price for such assets or stock, as the case may be, exceeds $5,000,000.

After the "Regulatory Approval" (as described in Section D.2.A.) has been satisfied, the Required Series D Consent shall no longer be required for the actions described in subsections (iv), (v), (x), (xi) or (xii).

C. The Corporation shall not permit any Subsidiary to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under Section D.3.B., purchase or otherwise acquire such shares at such time and in such manner.

D. So long as Preferred Shares are outstanding, the Corporation may not, and shall cause each of its Subsidiaries not to, take any of the following actions without first delivering 72 hours prior written notice to the Preferred Holders:

i.. incur cumulative indebtedness over $5,000,000;

ii. enter into any transactions with an Affiliate (as defined below) involving amounts in excess of $50,000. "Affiliate" means any entity or individual directly or indirectly

controlling or controlled by the Corporation or under direct or indirect common control with the Corporation (other than wholly-owned subsidiaries of the Corporation); or

iii. adopt or materially change its annual business plan.

E. Unless and until the "Regulatory Approval" (as described in Section D.2.A.) has been satisfied, pursuant to Section 141(a) of the Delaware General Corporation Law and to the fullest extent permitted thereby, the power to authorize the Corporation to take any action specified in Section D.3.B. (a "Designated Corporate Action") which would otherwise be vested in the Board shall instead, upon a Preferred Affirmative Vote Election and provided any Series A Preferred Shares or Series C Preferred Shares are then outstanding (and further provided that such election has not been withdrawn), be vested in the Series A Holders and Series C Holders acting by written authority of holders owning a sufficient number of Preferred Shares to constitute a Special Preferred Vote. As used herein, a "Preferred Affirmative Vote Election" means a written notification to the Board signed by holders of Series A Preferred Shares and Series C Preferred Shares owning the requisite number of each such series of Preferred Shares to constitute a Special Preferred Vote that such holders are invoking the special powers set forth in this Section D.3.E. with respect to the Designated Corporate Action specified in such notification; and "Special Preferred Vote" means the approval of holders of at least 66 2/3% of the outstanding Series A Preferred Shares and the approval of holders of at least 66 2/3% of the Series C Preferred Shares. Notwithstanding the foregoing, the provisions contained in this Section D.3.E. shall not permit the holders of the Preferred Shares to alter the rights, preferences or privileges of any Preferred Shares (or any series thereof) or to declare or to make any dividend or other distribution on any Preferred Shares (or any series thereof) not otherwise expressly contemplated in this Amended and Restated Certificate of Incorporation filed on December __, 2001 in any manner materially adverse to the interest of shares ranking senior, junior or on parity to the Preferred Shares. Upon satisfaction of the "Regulatory Approval," this Section D.3.E. shall be null and void.

4. Liquidation, Dissolution or Winding-Up

A. In the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary (a "Liquidation"), the Series D Preferred Holders shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Series D Junior Securities (as such term is defined in Section D.8), an amount equal to the greater of (i) three times (3x) the original issue price per share of Series D Preferred Stock, adjusted for any combinations, consolidations, stock splits or stock distributions or dividends with respect to such share, for each share of Series D Preferred Stock then held by them, plus all accrued but unpaid Series D Preferred Stock Dividends on such share (whether or not declared) up to and including the date of Liquidation and (ii) the amount the Series D Preferred Holders would receive upon such Liquidation if the Series D Preferred Holders had converted the Series D Preferred Shares into shares of Ordinary Common Stock immediately prior to such Liquidation (the "Series D Liquidation Preference"); provided, however, that consideration paid to holders of outstanding Series D Preferred Shares in a Liquidation must be cash consideration unless the holders of 66 2/3% of the outstanding Series D Preferred Shares give prior written consent to receive non-cash consideration. Subject to the preceding proviso, the fair market value of any assets of the Corporation and the proportion of

cash and other assets distributed by the Corporation to the holders of Series D Preferred Shares shall be as determined in good faith by the Board. If the assets and funds to be distributed among the Series D Preferred Holders shall be insufficient to permit the payment to such holders of the full Series D Liquidation Preference, then the entire assets and funds of the Corporation legally available for distribution shall be distributed among the Series D Preferred Holders in proportion to the Series D Liquidation Preference each such holder is otherwise entitled to receive pursuant to this Section D.4.A. At the option of the holders of at least 66 2/3% of the then outstanding shares of Series D Preferred Stock, (x) the acquisition of the Corporation by means of any transaction or series of transactions (including, without limitation, any reorganization, consolidation or merger of the Corporation, but excluding any merger (A) effected exclusively for the purpose of changing the domicile of the Corporation or (B) of a wholly owned subsidiary of the Corporation into the Corporation) or (y) a sale of 66 2/3% or more of the assets of the Corporation shall be deemed to be a Liquidation within the meaning of this Section D.4, with the result that the Corporation shall be required to pay, first, the Series D Liquidation Preference and, second, the ABC Liquidation Preference and Common Stock Liquidation Preference (each as defined below) out of funds legally available therefor.

B. Upon the occurrence of a Liquidation, and after the Series D Preferred Holders shall each have received their full Series D Liquidation Preference, the holders of the Series A, Series B and Series C Preferred Stock and the holders of the Class A, Class B, Class C, Class D and Class E Common Stock shall be entitled to receive, prior and in preference to any distribution of the assets or surplus funds of the Corporation to the holders of any ABC Junior Securities (as such term is defined in Section D.8. but, for purposes of this Section D.4.B. only, excluding from such definition the Class A, Class B, Class C, Class D and Class E Common Stock), the following amounts:

(i) for holders of Series A, Series B and Series C Preferred Stock, an amount equal to the greater of (x) $100,000 per share, adjusted for any combinations, consolidations, stock splits or stock distributions or dividends with respect to such share, plus all accrued but unpaid Preferred Stock Dividends on such share (whether or not declared) up to and including the date of Liquidation and (y) the amount the Series A, Series B and Series C Preferred Holders would receive upon such Liquidation if all holders of Series A, Series B and Series C Preferred Shares had converted such shares into shares of Ordinary Common Stock immediately prior to such Liquidation (the "ABC Liquidation Preference");

(ii) for holders of Class A Common Stock, an amount equal to $0.01 per share, adjusted for any combinations, consolidations, stock splits or stock distributions or dividends with respect to such share;

(iii) for holders of Class B Common Stock, an amount equal to $1.00 per share, adjusted for any combinations, consolidations, stock splits or stock distributions or dividends with respect to such share;

(iv) for holders of Class C Common Stock, an amount equal to $1.455 per share, adjusted for any combinations, consolidations, stock splits or stock distributions or dividends with respect to such share;

(v) for holders of Class D Common Stock, an amount equal to $1.75 per share, adjusted for any combinations, consolidations, stock splits or stock distributions or dividends with respect to such share; and

(vi) for holders of Class E Common Stock, an amount equal to $0.32 per share, adjusted for any combinations, consolidations, stock splits or stock distributions or dividends with respect to such share (the amounts described in clauses (ii), (iii), (iv), (v) and (vi) of this Section D.4.B., collectively, the "Common Stock Liquidation Preference");

provided, however, that in the event the holders of Series A, Series B and Series C Preferred Stock receive the amount set forth in Section D.4.B.(i)(y), the shares of Series A, Series B and Series C Preferred Stock and all shares of Class A, Class B, Class C, Class D and Class E Common Stock shall be deemed to have been converted into shares of Ordinary Common Stock immediately prior to such Liquidation; provided, further, that consideration paid to any such holders in a Liquidation must be cash consideration unless the holders of 66 2/3% of the outstanding Series A, Series B and Series C Preferred Shares give prior written consent to receive non-cash consideration. Subject to the preceding proviso, the fair market value of any assets of the Corporation and the proportion of cash and other assets distributed by the Corporation to such holders shall be as determined in good faith by the Board. If the assets and funds to be distributed among the holders of the Series A, Series B and Series C Preferred Stock and the Class A, Class B, Class C, Class D and Class E Common Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution to the holders of the Series A, Series B and Series C Preferred Stock and Class A, Class B, Class C, Class D and Class E Common Stock shall be distributed among such holders in proportion to the liquidation preference each such holder is otherwise entitled to receive pursuant to this Section D.4.B.

C. If, upon the completion of the distributions contemplated by Sections D.4.A and D.4.B, assets or surplus funds remain in the Corporation, the remaining assets or surplus funds legally available for distribution, if any, shall be divided ratably among the holders of the Ordinary Common Stock.

5. Conversion Rights

A. Right to Convert. Each Preferred Share shall be convertible at the option of any holder thereof at any time and from time to time from and after the date of issuance of such Preferred Share. Upon conversion, each Preferred Share shall be convertible into the number of the Corporation's fully paid and nonassessable shares of Ordinary Common Stock determined as follows: (i) with respect to each Series A Preferred Share, Series B Preferred Share and Series C Preferred Share, by dividing $100,000 (as adjusted for stock splits, dividends, recapitalizations or similar events that occur after the date of original issuance of the Series D Preferred Stock) plus all accrued and unpaid Preferred Stock Dividends (whether or not declared) by the Conversion Price applicable to such share, determined as herein provided, in effect on the date that the certificate is surrendered for conversion; and (ii) with respect to each Series D Preferred Share, by dividing $1,000 (as adjusted for stock splits, dividends, recapitalizations or similar events that occur after the date of original issuance of the Series D Preferred Stock) plus all accrued and unpaid Series D Preferred Stock Dividends (whether or not declared) by the Conversion Price

applicable to such share, determined as herein provided, in effect on the date that the certificate is surrendered for conversion. If less than all of the Preferred Shares held by a Preferred Holder are to be converted, the Preferred Holder shall specify at the time of surrender of his or her Preferred Shares for conversion the exact number to be converted. Each share of Class A Common Stock, Class B Common Stock, Class C Common Stock, Class D Common Stock and Class E Common Stock shall be convertible at the option of any holder thereof at any time and from time to time from and after the date of issuance of such share into one fully paid and nonassessable share of the Ordinary Common Stock. If less than all of the shares of Class A Common Stock, Class B Common Stock, Class C Common Stock, Class D Common Stock and Class E Common Stock held by a holder are to be converted, the holder shall specify at the time of surrender of his or her shares for conversion the exact number to be converted.

B. Conversion Price. The "Conversion Price" for each Preferred Share shall be $0.32, subject to adjustments as provided herein. The Corporation must provide each Preferred Holder with a detailed computation of each adjustment to the Conversion Price made pursuant to Sections D.5.D. and D.5.E..

C. Automatic Conversion. Each Preferred Share shall automatically be converted into shares of Ordinary Common Stock at its then effective Conversion Price, and each share of Class A Common Stock, Class B Common Stock, Class C Common Stock, Class D Common Stock and Class E Common Stock shall automatically be converted into one share of Ordinary Common Stock (in each case as adjusted for stock splits, dividends, recapitalizations or similar events that occur after the date of original issuance of the Series D Preferred Stock), immediately upon the closing of a firmly underwritten initial public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, the aggregate gross proceeds to the Corporation of which equal or exceed $100 million and the per share price to the public of which is at least $2.00 (prior to deduction of underwriting commissions and offering expenses and as adjusted for stock splits, dividends, recapitalizations or similar events that occur after the date of original issuance of the Series D Preferred Stock) (a "Qualifying IPO"). Each share of a series of Preferred Stock shall automatically be converted into shares of Ordinary Common Stock at its then effective Conversion Price in the event that the holders of at least a majority of the outstanding shares of such series of Preferred Stock vote in favor of such conversion. Upon a vote of the holders of a majority of the outstanding shares of Series C Preferred Stock to convert the shares of Series C Preferred Stock into shares of Ordinary Common Stock or in the event of any deemed conversion of Series C Preferred Stock, each share of Class A Common Stock, Class B Common Stock, Class C Common Stock, Class D Common Stock and Class E Common Stock shall automatically be converted into one share of Ordinary Common Stock (as adjusted for stock splits, dividends, recapitalizations or similar events that occur after the date of original issuance of the Series D Preferred Stock). At the time of any such conversion, any accrued and unpaid Preferred Stock Dividends may be paid in shares of Ordinary Common Stock (the number of such shares to be determined as provided in the second to last sentence of Section D.5.F.).

D. Adjustments to Conversion Price on Stock Dividend, Stock Split, etc. The number of shares of Ordinary Common Stock into which each Preferred Share and each share of Class A, Class B, Class C, Class D and Class E Common Stock may be converted shall be subject to adjustment in the event the Corporation shall at any time (i) establish a record date for

the purpose of declaring any dividend on the Common Stock payable in shares of Common Stock, (ii) effect a subdivision or combination or consolidation of the outstanding shares of Common Stock into a greater or lesser number of shares of Common Stock, or (iii) increase or decrease the number of shares of Common Stock by reclassification. In such event, the number of shares of Ordinary Common Stock to be received upon conversion shall be adjusted so that (x) each Preferred Holder shall thereafter be entitled to receive for each Preferred Share held by such Preferred Holder the number of shares of Ordinary Common Stock which such Preferred Holder would have owned and/or been entitled to receive upon the occurrence of an event or record date described above had the Preferred Share been converted immediately prior to the happening of the event or record date and (y) each holder of Class A, Class B, Class C, Class D and Class E Common Stock shall thereafter be entitled to receive for each share of Class A, Class B, Class C, Class D and Class E Common Stock held by such holder the number of shares of Ordinary Common Stock which such holder would have owned and/or been entitled to receive upon the occurrence of an event or record date described above had the share of Class A, Class B, Class C, Class D and Class E Common Stock been converted immediately prior to the happening of the event or record date. The Conversion Price of the Series D Preferred Shares will be adjusted by dividing the original issue price of such shares by such adjusted number of shares of Ordinary Common Stock. The Conversion Price of the Series A, Series B and Series C Preferred Shares will be adjusted by dividing the Liquidation Value by such adjusted number of shares of Ordinary Common Stock. Any such adjustments shall become effective immediately after the record date of such dividend or the effective date of such reclassification, subdivision, combination, or consolidation.

E. Adjustments to Conversion Price for Certain Diluting Issuances.

i. Definitions.

a. "**Additional Shares of Common Stock**" shall mean all shares of Common Stock or common stock equivalents issued (or, pursuant to Section D.5.E.iii., deemed to be issued) by the Corporation after the Original Issue Date, other than:

(1) shares of Ordinary Common Stock issued or issuable upon conversion of shares of Preferred Stock or upon conversion of shares of Class A, Class B, Class C, Class D or Class E Common Stock;

(2) shares of Common Stock issued or issuable as a dividend or distribution on Preferred Stock or Common Stock;

(3) shares of Common Stock issued or issuable upon exercise or conversion of Options or Convertible Securities outstanding on the Original Issue Date or shares issuable pursuant to Options or Convertible Securities granted pursuant to employee benefit plans approved by the Board after the date hereof; or

(4) shares of Common Stock issued or issuable for which adjustment of the Conversion Price is made pursuant to Section D.5.D.

b. **"Convertible Securities"** shall mean any evidences of indebtedness, shares (other than Common Stock and Preferred Stock) or other securities convertible into or exchangeable for Common Stock.

c. **"Options"** shall mean rights, options, or warrants to subscribe for, purchase or otherwise acquire Common Stock, Preferred Stock, or Convertible Securities or the right to acquire options or warrants for any of the foregoing.

d. **"Original Issue Date"** shall mean the date on which the Corporation first issued a share of Series D Preferred Stock.

ii. Adjustment only if Consideration is Less than Conversion Price. Any provision herein to the contrary notwithstanding, no adjustment in the Conversion Price of a series of Preferred Stock shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share (determined pursuant to Section D.5.E.v. hereof) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Conversion Price for such series of Preferred Stock in effect on the date of, and immediately prior to, such issuance.

iii. Deemed Issuance of Additional Shares of Common Stock. If the Corporation at any time or from time to time after the Original Issue Date issues any Options or Convertible Securities or fixes a record date for the determination of holders of any class of securities then 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 designed to protect against dilution) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options for Convertible Securities, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issuance or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that in any such case in which Additional Shares of Common Stock are deemed to be issued:

a. no further adjustments in the Conversion Price of any series of Preferred Stock shall be made upon the subsequent issuance of such Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

b. if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, or decrease or increase in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Price of a series of Preferred Stock computed upon the original issuance 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 Option or the rights of conversion or exchange under such Convertible Securities (provided, however, that no such adjustment of such Conversion Price shall affect Ordinary Common Stock previously issued upon conversion of the Preferred Stock);

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

(1) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration that the Corporation actually received for the issuance of all such Options, whether or not exercised, plus the consideration that the Corporation actually received upon such exercise, or for the issuance of all such Convertible Securities which were actually converted or exchanged; and

(2) in the case of Options for Convertible Securities, only the Convertible Securities actually issued upon the exercise thereof were issued at the time of issuance of such Options, and the consideration that the Corporation received for the Additional Shares of Common Stock deemed to have been then issued was the consideration that the Corporation actually received for the issuance of all such Options, whether or not exercised, plus the consideration that the Corporation is deemed to have received (as determined under Section D.5.E.v.) upon the issuance of the Convertible Securities or with respect to which such Options were actually received; and

(3) in the case of any Options which expire by their terms not more than 30 days after the date of issuance thereof, no adjustment of the Conversion Price of a series of Preferred Stock shall be made until the expiration or exercise of all such Options.

iv. Adjustments to Conversion Price. If the Corporation, at any time after the Original Issue Date, issues Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section D.5.E.iii.) without consideration or for a consideration per share less than the Conversion Price of a series of Preferred Stock in effect on the date of and immediately prior to such issue, then and in such event, the Conversion Price for such series of Preferred Stock will be reduced, concurrently with such issue, to the price per share of the Additional Shares of Common Stock.

v. Determination of Consideration. For the purposes of Section D.5.E., the consideration that the Corporation receives for the issuance of any Additional Shares of Common Stock shall be computed as follows:

a. Cash and Property. Except as modified by Section D.5.E.v.b. with respect to Options and Convertible Securities, such consideration will:

(1) insofar as it consists of cash, be computed at the aggregate amount of cash that the Corporation received, excluding amounts paid or payable for accrued interest or accrued dividends;

(2) insofar as it consists of publicly traded securities, be computed based upon the average closing price of such securities for the twenty consecutive trading days preceding the day on which the Corporation receives such consideration;

(3) insofar as it consists of property other than cash or publicly traded securities, be computed at the fair market value thereof at the time of such issuance, as determined in good faith by the Board; and

(4) in the event that Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration that covers both, be the proportion of such consideration so received, computed as provided in the preceding clauses, as determined in good faith by the Board.

b. Options and Convertible Securities. The consideration per share ("CPS") that the Corporation receives for Additional Shares of Common Stock deemed to have been issued pursuant to Section D.5.E.iii., relating to Options and Convertible Securities shall be determined by the following equation:

$$CPS = \frac{TCR + MAC}{MNS}$$

where:

"TCR" = the total amount, if any, that the Corporation receives or received as consideration for the issuance of such Options or Convertible Securities;

"MAC" = the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against dilution) 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; and

"MNS" = the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against the dilution) issuable upon the exercise of such Options or conversion or exchange of such Convertible Securities.

F. Conversion Method. Except in the case of an automatic conversion specified in Section D.4.B. or D.5.C., before a Preferred Holder or a holder of Class A, Class B, Class C, Class D or Class E Common Stock is entitled to convert the same into shares of Ordinary Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed in blank, at the office of the transfer agent for the Corporation's Common Stock and shall give written notice by mail, postage prepaid, to the Corporation at its executive corporate office, of the election to convert the same. The certificate or certificates for shares of Ordinary Common Stock shall be issued only in the name of the person surrendering the certificate or certificates of Preferred Stock or Class A, Class B, Class C, Class D or Class E Common Stock or, in the case of an automatic conversion under Section D.4.B. or D.5.C., the record holder thereof. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such

holder, or to the nominee or nominees of such holder, (i) a certificate or certificates for the number of shares of Ordinary Common Stock to which such holder shall be entitled as aforesaid and (ii) a new certificate for any remaining Preferred Shares or shares of Class A, Class B, Class C, Class D or Class E Common Stock evidenced by a surrendered certificate but not converted. 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 to be converted, and such holder shall be treated for all purposes as the record holder of such shares of Ordinary Common Stock as of such date.

In the event of a conversion of Preferred Shares, if there are Preferred Stock Dividends accrued on such converted Preferred Shares but not paid up to the date of conversion, the Corporation shall pay such Preferred Holder such Preferred Stock Dividends in cash on the date of the conversion, subject to (i) the Corporation's right to pay such Preferred Stock Dividends in shares of Ordinary Common Stock as set forth in Section D.5.C. (and the limitations thereon as to the payment of dividends set forth in Section D.1.D.) and (ii) any restrictions applicable under state law in the state of the Corporation's incorporation and to the provisions of any contract or agreement, including, but not limited to any loan agreement, to which the Corporation is a party; provided, however, that if the Corporation shall be unable to pay any such Preferred Stock Dividends as a result of such restrictions, the Preferred Holder, upon written notice to the Corporation given within thirty (30) days following the date of conversion, shall be entitled to convert all, but not less than all, of such accrued but unpaid Preferred Stock Dividends into such whole number of additional shares of Ordinary Common Stock determined by dividing (x) the amount of such accrued but unpaid Preferred Stock Dividends by (y) the Conversion Price then in effect for such series of Preferred Stock. Notwithstanding the foregoing, in the case of a Qualifying IPO, to the extent legally permitted, the Corporation, at its option, may pay such Preferred Stock Dividends out of the proceeds of such Qualifying IPO in lieu of conversion into additional shares of Ordinary Common Stock.

G. Fractional Shares of Common Stock. No fractional shares of Ordinary Common Stock or scrip shall be issued upon conversion of Preferred Stock or Class A, Class B, Class C, Class D or Class E Common Stock. Instead of any fractional shares of Ordinary Common Stock which otherwise would be issuable upon any such conversion, the Corporation shall pay a cash adjustment in respect of such fractional interest based upon the fair market value (if Ordinary Common Stock is publicly traded on a national exchange, based on the closing price for a share of Ordinary Common Stock on such exchange on the date of conversion and if not publicly traded, as determined in good faith by the Board) of a share of Ordinary Common Stock.

H. Taxes. All shares of Ordinary Common Stock issued upon conversion of Preferred Stock or Class A, Class B, Class C, Class D or Class E Common Stock will be validly issued, fully paid and nonassessable. The Corporation shall pay any and all documentary stamp or similar issuance or transfer taxes that may be payable in respect of any issuance or delivery of shares of Ordinary Common Stock on conversion of Preferred Stock or Class A, Class B, Class C, Class D or Class E Common Stock pursuant hereto.

I. Surrendered Stock. All certificates representing Preferred Stock surrendered for conversion or redemption shall be appropriately retired and canceled on the books of the Corporation, and the Preferred Stock so converted or redeemed represented by such certificates shall be restored to the status of authorized but unissued Preferred Stock. All certificates

representing shares of Class A, Class B, Class C, Class D or Class E Common Stock surrendered for conversion shall be appropriately retired and canceled on the books of the Corporation, and the shares so converted represented by such certificates shall be restored to the status of authorized but unissued shares of Class A, Class B, Class C, Class D or Class E Common Stock.

J. Available Common Stock. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Ordinary Common Stock, solely for the purpose of effecting the conversion of Preferred Stock and Class A, Class B, Class C, Class D and Class E Common Stock, such number of shares of Ordinary Common Stock as shall from time to time be sufficient to effect a conversion of all outstanding Preferred Stock and Class A, Class B, Class C, Class D and Class E Common Stock under Section D.4.B. and D.5.A., and if at any time the number of authorized but unissued shares of Ordinary Common Stock shall not be sufficient to effect the conversion of all then outstanding Preferred Stock and Class A, Class B, Class C, Class D and Class E Common Stock, the Corporation shall promptly take such corporate action as may, in the opinion of its counsel and subject to any necessary approval of its stockholders, be necessary to increase its authorized but unissued shares of Ordinary Common Stock to such number of shares as shall be sufficient for such purpose.

6. Mandatory Redemption

On or before March 15, 2005, the Corporation shall provide notice (in accordance with Section D.6.A.) to the Preferred Holders that they have the right to cause a mandatory redemption of all of the outstanding Preferred Shares according to the schedule below if they deliver written notice of at least a majority of the Preferred Shares to the Corporation approving such mandatory redemption on or before April 15, 2005. If the Corporation receives such notice, the Corporation must redeem, out of funds of the Corporation legally available therefor, one third of the then outstanding Preferred Shares held by each Preferred Holder (rounded down to the nearest whole share) within thirty days of April 30, 2005, one half of the then outstanding Preferred Shares held by each Preferred Holder (rounded up to the nearest whole share) within thirty days of April 30, 2006 and all of the remaining outstanding Preferred Shares held by each Preferred Holder within thirty days of April 30, 2007 (such dates are collectively referred to as the "Redemption Dates" and each such date, a "Redemption Date") for a cash amount equal to the liquidation preference of such share.

A. Notice of Redemption. Notice of redemption of Preferred Shares shall be mailed by first class mail, postage prepaid, addressed to the Preferred Holders at each Preferred Holder's address as it appears on the books of the Corporation and shall set forth the place at which such Preferred Holder may obtain payment and surrender such Preferred Holder's certificates representing the Preferred Shares redeemed. Such mailing must be given at least 30 days prior to each Redemption Date. Any notice which is mailed in the manner herein provided for shall be conclusively presumed to have been duly given, whether or not the Preferred Holders receive such notice.

B. Rights upon Redemption. If notice of redemption is duly given, and if, on or before each Redemption Date, all funds necessary for such redemption are set aside by the Corporation, separate and apart from its other funds, in trust for the benefit of the Preferred Holders, so as to be and continue to be available therefor, then, notwithstanding that any

certificate for shares so called for redemption are not surrendered for cancellation, all shares so called for redemption will no longer be deemed outstanding on and after each such Redemption Date, and all rights with respect to such shares shall forthwith on each such Redemption Date cease and terminate, except only the right of the Preferred Holders to receive the amount payable on redemption thereof, without interest. If there are insufficient legally available funds to redeem all the Preferred Shares, payment will be applied first to redeem all of the outstanding Series D Preferred Shares and then allocated pro rata among the Series A, Series B and Series C Preferred Holders based on the amount such Preferred Holder has a right to receive. Any funds so set aside by the Corporation and unclaimed by the second anniversary of each Redemption Date shall revert to the general funds of the Corporation.

C. Status of Redeemed Preferred Stock. Shares of Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be restored to the status of authorized but unissued Preferred Stock.

7. **Consolidation, Merger, etc.**

If the Corporation enters into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property and the holders of the Series D Preferred Stock have not elected to treat such consolidation, merger, combination or other transaction as a Liquidation pursuant to Section D.4.A., then in any such case the Preferred Stock, or the stock issued in substitution for the Preferred Stock pursuant to the following sentence, will be convertible into the same kind and amounts of stock, securities, cash and/or any other property (payable in kind), as the case may be, which were issuable or distributable upon such event to holders of the number of shares of Common Stock into which the Preferred Stock could have been converted immediately prior to such event. Other than as set forth in the preceding sentence, the Preferred Stock will continue to be outstanding on the same terms and conditions as set forth herein, except that if the Corporation does not exist after such event, the successor corporation will issue to the Preferred Holders securities with the same rights, preferences and privileges as the Preferred Stock with the same amount of accrued and unpaid dividends owing to each Preferred Holder on such securities as is owed to such Preferred Holder on such Preferred Holder's Preferred Shares.

8. **Rank**

The Series D Preferred Stock shall rank senior in all respects, including, without limitation, as to dividends or upon liquidation, dissolution or winding up, to (i) the Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock, (ii) all classes of Common Stock of the Corporation and (iii) any other equity securities of the Corporation that by their terms are not made senior to or on a parity with the Preferred Stock (the securities described in the foregoing clauses (i), (ii) and (iii), collectively, the "Series D Junior Securities"). The Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock shall rank pari passu in all respects including, without limitation, as to dividends or upon liquidation, dissolution or winding up. Except with respect to the Common Stock Liquidation Preference described in Section D.4.B., the Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock shall rank (i) senior to all classes of Common Stock of the Corporation

and (ii) senior to any other equity securities of the Corporation that by their terms are not made senior to or on a parity with the Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock (the securities described in the foregoing clauses (i) and (ii), collectively, the "ABC Junior Securities").

FIFTH: The Corporation is to have perpetual existence.

SIXTH: In furtherance and not in limitation of the powers conferred by statute, the board of directors shall have the power without the vote or assent of the stockholders to adopt, amend or repeal the by-laws of the Corporation.

SEVENTH: The personal liability of the directors of the Corporation and the personal liability of the Preferred Holders acting (or failing to take action) pursuant to Section D.3.E. are hereby eliminated to the fullest extent permitted by paragraph (7) of subsection (b) of Section 102 of the General Corporation Law of the State of Delaware, as the same may be amended and supplemented.

EIGHTH: The Corporation shall, to the fullest extent permitted by Section 145 of the General Corporation Law of the State of Delaware, as the same may be amended and supplemented, indemnify any and all persons whom it shall have power to indemnify under said section from and against any and all of the expenses, liabilities or other matters referred to in or covered by said section, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any By-Law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

NINTH: From time to time any of the provisions of this certificate of incorporation may be amended, altered or repealed, and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted in the manner and at the time prescribed by said laws and as required by the terms of the Corporation's Certificate of Incorporation as then in effect, and all rights at any time conferred upon the stockholders of the Corporation by this certificate of incorporation are granted subject to the provisions of this Article NINTH."

The foregoing Amended and Restated Certificate of Incorporation has been approved by the Board of Directors of the Corporation.

The foregoing Amended and Restated Certificate of Incorporation has been approved by the outstanding shares of the Corporation in accordance with Sections 242 and 245 of the Delaware General Corporation Law.

Dated: December __, 2001

U.S. TELEPACIFIC HOLDINGS CORP.

By: _____
Name: Richard L. Kimsey
Title: Chief Executive Officer and President

80199524_7.DOC

SERIES D PREFERRED STOCK PURCHASE AGREEMENT

BY AND AMONG

U.S. TELEPACIFIC HOLDINGS CORP.

AND

THE INVESTORS SET FORTH ON EXHIBIT A

December __, 2001

EXHIBITS

Exhibit A	Schedule of Investors
Exhibit B	Form of Amended and Restated Certificate of Incorporation
Exhibit C	Schedule of Holders of Common Stock
Exhibit D	Schedule of Holders of Options
Exhibit E	Schedule of Warrants
Exhibit F	Form of Opinion of Latham & Watkins
Exhibit G	Form of Fourth Amended and Restated Shareholders' Agreement
Exhibit H	Form of Second Amended and Restated Registration Rights Agreement

SERIES D PREFERRED STOCK PURCHASE AGREEMENT

This Series D Preferred Stock Purchase Agreement (this "**Agreement**") is made and entered into as of December __, 2001 by and among **U.S. TelePacific Holdings Corp.**, a Delaware corporation (the "**Company**"), and the persons and entities (each, an "**Investor**" and collectively, the "**Investors**") listed on the Schedule of Investors attached hereto as Exhibit A (the "**Schedule of Investors**").

BACKGROUND

A. The Company is authorized (or will be authorized before the Closing) to issue up to 40,000 shares of Series D Convertible Preferred Stock (the "**Series D Preferred Stock**"), having the rights, preferences, privileges and restrictions set forth in the Company's Amended and Restated Certificate of Incorporation, a copy of which is attached hereto as Exhibit B; and

B. The Company desires to sell, and the Investors desire to purchase, shares of the Company's authorized but unissued shares of Series D Preferred Stock for One Thousand Dollars ($1,000) per share, pursuant to the terms and subject to the conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and promises made in this Agreement, the parties hereby agree as follows:

ARTICLE I
DEFINITIONS

In this Agreement, the following definitions apply:

"**Accountants**" is defined in **Section 7.4**.

"**Affiliate**" means any person directly or indirectly controlling or controlled by or under direct or indirect common control with another person.

"**Agreement**" is defined in the introduction to this Agreement.

"**Amended and Restated Registration Rights Agreement**" is defined in **Section 5.12**.

"**Amended and Restated Shareholders' Agreement**" is defined in **Section 5.11**.

"**Ancillary Agreements**" is defined in **Section 3.1**.

"**Arbitrator**" is defined in **Section 10.12(b)**.

"**Closing**" means the consummation of the sale of the shares of Series D Preferred Stock sold by the Company under this Agreement.

"**Closing Date**" is defined in **Section 2.2**.

"**Code**" is defined in **Section 3.16**.

"**Common Stock**" means the common stock, par value $0.0001 per share, of the Company.

"**Company**" is defined in the introduction to this Agreement.

"**Exchange Offer**" means the offer being made by the Company to all of its current common stockholders who are "accredited investors" under applicable securities laws to exchange their existing shares of Common Stock for shares of newly designated Class A, Class B, Class C and Class D Common Stock on a share for share basis, based on the price per share stockholders paid for such shares when they were originally acquired from the Company.

"**Existing Common**" is defined in **Section 3.2(a)**.

"**Financial Statements**" is defined in **Section 3.7**.

"**GE Equity**" means GE Capital Equity Investments, Inc., a Delaware corporation, and its designees.

"**HSR Regulations**" is defined in **Section 4.1.10**.

"**Indemnified Party**" is defined in **Section 9.2**.

"**Investcorp**" is defined in **Section 4.1.2(b)**.

"**Investcorp Parties**" means TelePacific Holdings Limited, a Cayman Islands corporation, and TelePacific Investments Limited, a Cayman Islands corporation, and TelePacific Equity Limited, a Cayman Islands corporation.

"**Investor**" is defined in the introduction to this Agreement.

"**Losses**" is defined in **Section 9.1**.

"**Material Contracts**" means the contracts set forth on **Section 3.13(b)** of the Schedule of Exceptions.

"**Preferred Stock**" means the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock and the Series D Preferred Stock, collectively.

"**Registration Rights Agreement**" means the Amended and Restated Registration Rights Agreement, dated as of November 9, 1999, between the Company, the holders of the Series A Preferred Stock, the holders of the Series B Preferred Stock and the holders of the Tennenbaum Warrants.

"**Restated Certificate**" is defined in **Section 2.1**.

"**Restricted Period**" is defined in **Section 4.1.2(e)(i)**.

"**RRCO**" means Rader Reinfrank Holdings No. 3, a California general partnership, and its designees.

"**Schedule of Exceptions**" is defined in the first paragraph of **Article III**.

"**Securities**" is defined in **Section 4.1.2(e)(i)**.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Series A Preferred Stock**" means the Series A Convertible Preferred Stock of the Company.

"**Series B Preferred Stock**" means the Series B Convertible Preferred Stock of the Company.

"**Series C Preferred Stock**" means the Series C Convertible Preferred Stock of the Company.

"**Series D Investcorp Party**" is defined in **Section 4.1**.

"**Series D Preferred Stock**" is defined in paragraph A of the Background section.

"**Shareholders' Agreement**" means the Third Amended and Restated Shareholders' Agreement, dated as of December 29, 2000, by and among the Company and the persons or entities party thereto as "Shareholders."

"**Significant Series D Investor**" is defined in **Section 7.4**.

"**Tennenbaum Warrants**" means the warrants to purchase an aggregate of 1,800,000 shares of the Company's Common Stock.

ARTICLE II
BASIC TERMS OF PURCHASE AND SALE

2.1 Purchase and Sale of Series D Preferred Stock. Upon the terms and conditions contained herein, each Investor will purchase from the Company at the Closing, and

the Company will sell and issue to each Investor at the Closing, the number of shares of Series D Preferred Stock set forth opposite such Investor's name on Exhibit A attached hereto at a purchase price of One Thousand Dollars ($1,000) per share. The Series D Preferred Stock and the Common Stock to be issued upon conversion thereof shall have the rights, preferences, privileges and restrictions set forth in the Amended and Restated Certificate of Incorporation of the Company in the form attached hereto as Exhibit B (the "**Restated Certificate**").

2.2 **Closing.** The Closing will be held at the offices of Latham & Watkins, 701 "B" Street, Suite 2100, San Diego, CA 92101, at 10:00 a.m. PST, on December __, 2001, or at such other time on or before December 31, 2001 and place as the parties agree. The date on which the Closing actually occurs is referred to herein as the "**Closing Date.**" At the Closing, the Company shall deliver to each Investor a certificate or certificates (as instructed by such Investor) representing the Series D Preferred Stock which such Investor is purchasing against delivery to the Company by such Investor of immediately available wired funds or a certified check in the amount of the purchase price therefor payable to the Company's order.

2.3 **Use of Proceeds.** The Company will use the net proceeds from the sale of the Series D Preferred Stock for (i) general corporate purposes and (ii) the costs of closing the transactions contemplated hereby.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company hereby represents and warrants to each Investor that as of the date of this Agreement, except as set forth on the Schedule of Exceptions delivered herewith (the "**Schedule of Exceptions**"), specifically identifying the relevant subparagraph(s) hereof, which exceptions shall be deemed to be representations and warranties as if made hereunder:

3.1 **Organization; Good Standing; Qualification.** The Company is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware. The Company has all requisite corporate power and authority to own and operate its properties and assets and to carry on its business as now conducted and as presently proposed to be conducted, to execute and deliver this Agreement, the Amended and Restated Shareholders' Agreement, the Amended and Restated Registration Rights Agreement and any other agreement, instrument or other document to which the Company is a party the execution and delivery of which is contemplated hereby (collectively, with the Amended and Restated Shareholders Agreement and the Amended and Restated Registration Rights Agreement, the "**Ancillary Agreements**"), to issue and sell the Series D Preferred Stock and the Common Stock issuable upon conversion thereof, and to carry out the provisions of this Agreement, each Ancillary Agreement and the Restated Certificate. The Company is duly qualified and is authorized to transact business and is in good standing as a foreign corporation in each jurisdiction in which the failure so to qualify would have a material adverse effect on its business, properties, prospects, or financial condition.

3.2 **Capitalization.**

(a) As of the date of this Agreement and prior to the filing of the Restated Certificate, the authorized capital of the Company consists of (i) 1,750 shares of Preferred Stock, of which, (A) 150 shares have been designated Series A Preferred Stock, all of which are issued and outstanding, (B) 100 shares have been designated Series B Preferred Stock, all of which are issued and outstanding and (C) 1,500 shares have been designated Series C Preferred Stock, 1,440 of which are issued and outstanding and (ii) 100,000,000 shares of Common Stock, of which 21,355,135 are issued and outstanding (the "**Existing Common**"). Such shares of Existing Common are owned by the stockholders, and in the numbers, set forth in Exhibit C. All outstanding shares of Existing Common have been duly authorized and validly issued, are fully paid and non-assessable, and were issued in accordance with the registration and qualification provisions of the Securities Act and any relevant state securities laws or pursuant to valid exemptions therefrom.

(b) Immediately prior to the Closing under the terms of the Restated Certificate, the authorized capital of the Company will consist of (i) 41,690 shares of Preferred Stock, of which (A) 150 shares will be designated Series A Preferred Stock, all of which will be issued and outstanding, (B) 100 shares will be designated Series B Preferred Stock, all of which will be issued and outstanding, (C) 1,440 shares will be designated Series C Preferred Stock, all of which will be issued and outstanding and (D) 40,000 shares will be designated Series D Preferred Stock, none of which will be issued and outstanding and all of which will be available to be sold pursuant hereto and (ii) 850,000,000 shares of Common Stock, of which (A) 17,000,000 will be designated Class A Common Stock, none of which will be issued and outstanding and all of which will be available for issuance to the holders of Existing Common who elect to participate in the Exchange Offer and exchange the shares of Existing Common acquired by such holders from the Company at a price of $0.0005 per share, (B) 200,000 will be designated Class B Common Stock, none of which will be issued and outstanding and all of which will be available for issuance to the holders of Existing Common who elect to participate in the Exchange Offer and exchange the shares of Existing Common acquired by such holders from the Company at a price of $1.00 per share, (C) 2,199,860 will be designated Class C Common Stock, none of which will be issued and outstanding and all of which will be available for issuance to the holders of Existing Common who elect to participate in the Exchange Offer and exchange the shares of Existing Common acquired by such holders from the Company at a price of $1.455 per share, (D) 1,945,384 will be designated Class D Common Stock, none of which will be issued and outstanding and all of which will be available for issuance to the holders of Existing Common who elect to participate in the Exchange Offer and exchange the shares of Existing Common acquired by such holders from the Company at a price of $1.75 per share, and (E) 828,654,756 will be designated Ordinary Common Stock, 21,355,135 of which will be issued and outstanding.

(c) The rights, privileges and preferences of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock will be

as stated in Article Fourth of the Restated Certificate. All outstanding shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock have been duly authorized and validly issued, and are fully paid and non-assessable. All outstanding shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock were issued in accordance with the registration and qualification provisions of the Securities Act and any relevant state securities laws or pursuant to valid exemptions therefrom.

(d) Except for (i) the conversion privileges of the Preferred Stock, (ii) the options to purchase shares of Existing Common set forth in Exhibit D and all additional shares of Existing Common reserved for issuance under the Company's stock option plans, which options have been or will be issued to employees of the Company or other eligible recipients, (iii) the warrants described in Exhibit E and (iv) the preemptive rights granted to the holders of the Preferred Stock, no options, calls, warrants, conversion privileges, preemptive rights, rights of first refusal or other commitments or rights, of any character whatsoever, are presently outstanding or in existence with respect to the purchase or other acquisition of any of the authorized but unissued capital stock of the Company. Except as set forth in the Shareholders' Agreement and as contemplated by this Agreement, the Company is not a party or subject to any agreement or understanding, and, to the best of the Company's knowledge, there is no agreement or understanding between any persons that affects or relates to the voting or giving of written consents with respect to any securities or the voting by a director of the Company.

(e) Except for anti-dilution adjustments with respect to the Preferred Stock and the warrants identified on Exhibit E as providing anti-dilution benefits to the holders thereof, neither the offer nor the issuance or sale of the Series D Preferred Stock in accordance with the terms hereof or the Common Stock issuable upon conversion thereof constitutes or will constitute an event, under any capital stock or convertible security or any anti-dilution or similar provision of any agreement or instrument to which the Company is a party or by which it is bound or affected, which shall either increase the number of shares of capital stock issuable upon conversion of any securities or upon exercise of any warrant or right to subscribe to or purchase any stock or similar security, or decrease the consideration per share of capital stock to be received by the Company upon such conversion or exercise.

3.3 **Subsidiaries and Affiliates.** The Company has no subsidiaries and has no interest, direct or indirect, in any other corporation, joint venture, partnership, limited partnership, association or other business entity.

3.4 **Corporate Records.** The corporate minute books and stock record books of the Company contain minutes of all meetings of directors and stockholders and all actions by written consent without a meeting by the directors and stockholders since the date of incorporation and accurately reflect all actions by the directors (and any committee of directors) and stockholders with respect to all transactions referred to in such minutes.

3.5 **Authorization.** All corporate action on the part of the Company, its officers, directors and stockholders necessary for the authorization, execution, delivery and performance of this Agreement and the Ancillary Agreements, the consummation of the transactions contemplated herein and therein, and for the authorization, issuance (or reservation for issuance) and delivery of the Series D Preferred Stock being sold hereunder and Common Stock issuable upon conversion of the Series D Preferred Stock has been taken or will be taken before the Closing, and this Agreement and the Ancillary Agreements when executed and delivered by the Company, will constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application relating to or affecting the enforcement of creditors' rights and (ii) general equitable principles. The sale of the Series D Preferred Stock and the issuance of the Common Stock upon the conversion of the Series D Preferred Stock in accordance with the terms hereof and the Restated Certificate are not and will not be subject to any preemptive rights, rights of first refusal, rights of first offer or other similar rights that have not been properly waived or complied with.

3.6 **Valid Issuance of the Series D Preferred Stock and Common Stock.** The Series D Preferred Stock that is being purchased by the Investors hereunder, when issued, sold, and delivered in accordance with the terms of this Agreement for the aggregate consideration expressed herein, will be duly and validly issued, free of all liens or encumbrances, and fully paid and non-assessable and will be free of restrictions on transfer other than restrictions on transfer under this Agreement and the Amended and Restated Shareholders' Agreement and under applicable state and federal securities laws. The Common Stock issuable upon conversion of the Series D Preferred Stock has been duly and validly reserved for issuance and, upon issuance thereof, will be duly and validly issued, fully paid and non-assessable, and will be free of restrictions on transfer other than restrictions on transfer under this Agreement and the Amended and Restated Shareholders' Agreement and under applicable state and federal securities laws. Based in part upon the representations of the Investors in **Article IV** of this Agreement, the Series D Preferred Stock, when issued and delivered pursuant to this Agreement, and the Common Stock issuable upon conversion thereof, will be issued in compliance with federal and all applicable state securities laws.

3.7 **Financial Statements.** The Company has delivered to the Investors (i) audited financial statements (balance sheet, income statement, statement of stockholders' equity and statement of cash flows) at December 31, 2000 for the 12 months ended December 31, 2000 and unaudited income statements and a balance sheet for the month ended October 31, 2001 (together, the "**Financial Statements**"). The Financial Statements have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods indicated and with each other. The Financial Statements fairly present the financial position and operating results of the Company, as of the dates, and for the periods indicated therein, subject to normal year-end adjustments for the income statements and balance sheet for the month ended October 31, 2001. Except as set forth in the Financial Statements, the Company has no liabilities, contingent or otherwise, other than (i) liabilities incurred in the ordinary course of business after October 31, 2001 and (ii) obligations under contracts and commitments incurred in the ordinary course of business and not required under

generally accepted accounting principles to be reflected in the Financial Statements, which, individually or in the aggregate, are not material to the financial condition or operating results of the Company. The Company maintains and will continue to maintain a standard system of accounting established and administered in accordance with generally accepted accounting principles.

3.8 **Changes.** Since October 31, 2001, there has not been:

(a) any change in the assets, liabilities, financial condition or operating results of the Company from that reflected in the Financial Statements, except changes in the ordinary course of business which have not been, or are not expected to be, in the aggregate, materially adverse;

(b) any damage, destruction or loss, whether or not covered by insurance, materially and adversely affecting the assets, properties, financial condition, operating results, prospects or business of the Company (as such business is presently conducted and as it is presently proposed to be conducted);

(c) any cancellation, waiver or compromise by the Company of a material right or of a material debt owed to it;

(d) any satisfaction or discharge of any lien, claim or encumbrance or payment of any obligation by the Company, except in the ordinary course of business and which is not material to the assets, properties, financial condition, operating results or business of the Company (as such business is presently conducted and as it is presently proposed to be conducted);

(e) any material change or amendment to a Material Contract;

(f) any material change in any compensation arrangement or agreement with any employee, officer, director or stockholder or any direct or indirect loans made by the Company to any stockholder, employee, officer or director of the Company in excess of $100,000, other than advances made in the ordinary course of business;

(g) any sale, assignment, or transfer of any patents, trademarks, copyrights, trade secrets, or other intangible assets of the Company;

(h) any resignation or termination of employment of any executive officer of the Company; and the Company, to the best of its knowledge, does not know of the impending resignation or termination of employment of any such officer;

(i) receipt of notice that there has been a loss of, or material order cancellation by, any major customer of the Company;

(j) any mortgage, pledge, transfer of a security interest in, or lien, created by the Company, with respect to any of its material properties or assets, except liens for taxes not yet due or payable or contested by the Company in good faith;

(k) Any declaration or payment of any dividend or other distribution of the assets of the Company or any purchase or redemption of any of its outstanding capital stock;

(l) Any sale, transfer or lease of any of the assets of the Company, except in the ordinary course of business;

(m) Any issuance or sale of any shares of the capital stock or other securities of the Company or grant of any options with respect thereto (other than options issued pursuant to the Company's stock option plans), or any modification of any of the capital stock of the Company;

(n) any agreement or commitment by the Company to do any of the things described in this **Section 3.8**; or

(o) to the Company's knowledge, any other event or condition of any character which might materially and adversely affect the assets, properties, financial condition, operating results, prospects or business of the Company (as such business is presently conducted and as it is presently proposed to be conducted).

3.9 Compliance with Law. The operations of the Company have not violated any federal, state or local laws, regulations or orders. The Company has all franchises, licenses, permits, certificates and any similar authority necessary for the conduct of its business as now being conducted by it, except for those which if not obtained would not have a material adverse affect on the business, properties, prospects or financial condition of the Company, and the Company believes it can obtain, without undue burden or expense, any similar authority for the conduct of its business as presently planned to be conducted.

3.10 Governmental and Third Party Consents. All consents, approvals, orders, authorizations, registrations, qualifications, designations, declarations or filings with or from any federal or state governmental agency or authority or any other person or entity required on the part of the Company in connection with the execution, delivery or performance of this Agreement and the consummation of the transactions contemplated herein have been obtained, except that any notices of sales of securities required to be filed with the Securities and Exchange Commission pursuant to Regulation D or the securities laws of any state pursuant to any applicable state securities laws may be filed within the applicable periods for such filings.

3.11 Compliance with Other Instruments. The Company is not in violation or default of (i) any provision of its Restated Certificate or By-laws, (ii) any provision of any mortgage, indenture, agreement, instrument, or contract to which it is a party or by which it is bound, except for any violation or default the result of which would not have a material adverse effect on the Company, (iii) any state statute, rule, regulation or restriction applicable to the

Company, except for any violation or default the result of which would not have a material adverse effect on the Company or (iv) any federal judgment, order, writ, decree, statute, rule, regulation or restriction applicable to the Company. The execution, delivery, and performance by the Company of this Agreement, and any Ancillary Agreement, and the consummation of the transactions contemplated hereby and thereby, including the issuance and sale of the Series D Preferred Stock pursuant hereto and of the Common Stock issuable upon conversion thereof, will not result in any such violation or be in conflict with or constitute, with or without the passage of time or giving of notice, either a default under any such provision or an event that results in the creation of any lien, charge, or encumbrance upon any assets of the Company or the suspension, revocation, impairment, forfeiture, or non-renewal of any permit, license, authorization, or approval applicable to the Company, its business or operations, or any of its assets or properties.

3.12 **Litigation.** There is no action, suit, proceeding or investigation pending or, to the Company's knowledge, currently threatened against the Company that questions the validity of this Agreement, or any Ancillary Agreement or the right of the Company to enter into such agreements, or to consummate the transactions contemplated hereby or thereby, or that might result, either individually or in the aggregate, in any material adverse change in the assets, condition, affairs or prospects of the Company, financially or otherwise, or any change in the current equity ownership of the Company, nor is the Company aware of any basis for the foregoing. The Company is not a party or subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality. There is no action, suit, proceeding or investigation by the Company currently pending or which the Company intends to initiate. There is no action, suit, proceeding or investigation pending or, to the Company's knowledge, threatened (or, to the knowledge of the Company, any basis therefor) involving the prior employment of any of the Company's officers, employees or consultants, their use in connection with the Company's business of any information or techniques allegedly proprietary to any of their former employers, or their obligations under any agreements with prior employers.

3.13 **Contracts.**

(a) Except for agreements explicitly contemplated hereby, there are no agreements, understandings or proposed transactions between the Company and any of its officers, directors, affiliates or any affiliate thereof.

(b) There are no agreements, understandings, instruments, contracts or proposed transactions to which the Company is a party or by which it is bound that (i) obligate the Company to pay an amount in excess of Five Hundred Thousand Dollars ($500,000), (ii) involve the license of any patent, copyright, trade secret or other proprietary right to or from the Company, (iii) contain provisions restricting or affecting the development, manufacture or distribution of the Company's products or services or (iv) require indemnification by the Company with respect to infringements of proprietary rights (other than indemnification obligations arising from purchase or sale agreements entered into in the ordinary course of business).

(c) Each of the Company's Material Contracts, copies of which have been made available to the Series D Investcorp Party, is valid and subsisting; the Company has duly performed all its obligations thereunder to the extent that such obligations to perform have accrued; and no breach or default, alleged breach or default, or event which would (with the passage of time, notice or both) constitute a breach or default thereunder by the Company, or, to the best knowledge of the Company, by any other party or obligor with respect thereto, or which would result in a cancellation, suspension, or material alteration thereunder, has occurred or will occur as a result of this Agreement or any Ancillary Agreement.

(d) Since October 31, 2001, the Company has not (i) declared or paid any dividends, or authorized or made any distribution upon or with respect to any class or series of its capital stock, (ii) incurred any indebtedness for money borrowed or incurred any other liabilities individually in excess of $100,000 or in excess of $500,000 in the aggregate, (iii) made any loans or advances to any person in excess of $50,000, other than ordinary advances for travel expenses, or (iv) sold, exchanged or otherwise disposed of any of its assets or rights, other than the sale of its inventory in the ordinary course of business.

3.14 **Title to Property and Assets**. The Company has good and marketable title to all of its assets, including all such assets reflected in the Financial Statements, free and clear of all liens and encumbrances, except such liens and encumbrances that arise in the ordinary course of business and do not materially impair the Company's ownership or use of such property or assets. All leases pursuant to which the Company leases real or personal property are valid and effective in accordance with their respective terms and, to the best of the Company's knowledge, there exists no default or other occurrence or condition which could result in a default or termination of any such lease.

3.15 **Environmental and Health and Safety Matters**. The Company is not in violation of any applicable statute, law or regulation relating to the environment or occupational health and safety, except for any violation that individually or in the aggregate would not have a material adverse effect on the Company, and no material expenditures are or, to the best of its knowledge, will be required in order to comply with any such existing statute, law or regulation.

3.16 **Taxes**. The Company has timely filed, or caused to be timely filed, all federal, state and local tax returns for income taxes, franchise taxes, sales taxes, withholding taxes, property taxes and, to the best of the Company's knowledge, all other taxes of every kind whatsoever required by law to be filed, and all such tax returns are complete and accurate and in accordance with all legal requirements applicable thereto. All taxes shown to be due and payable on such returns, any assessments imposed, and, to the Company's knowledge, all other taxes due and payable by the Company on or before the Closing have been paid or will be paid prior to the time they become delinquent. The tax returns of the Company have never been audited by appropriate governmental authorities, and the Company does not know of any additional tax liabilities, deficiencies or proposed adjustments for any period for which any such returns have been filed. The provision for taxes of the Company shown in the Financial Statements is

adequate for taxes due or accrued as of the date thereof. The Company has not elected pursuant to the Internal Revenue Code of 1986, as amended (the "**Code**"), to be treated as an S corporation or a collapsible corporation pursuant to Section 1362(a) or Section 341(f) of the Code, nor has it made any other elections pursuant to the Code (other than elections that relate solely to methods of accounting, depreciation, or amortization) that would have a material adverse effect on the business, properties, prospects or financial condition of the Company. The Company has withheld or collected from each payment made to each of its employees, the amount of all taxes, including federal income taxes, Federal Insurance Contribution Act taxes and Federal Unemployment Tax Act taxes required to be withheld or collected therefrom, and has paid the same to the proper tax receiving officers or authorized depositories.

3.17 **Patents, Trademarks, Etc.** The Company owns or has the right to use, free and clear of all liens, charges, claims and restrictions, all patents, trademarks, service marks, trade names, copyrights, proprietary information, licenses and rights necessary to its business as now conducted or as proposed to be conducted, and, to the best of the Company's knowledge, will not, when so acting, infringe upon or otherwise act adversely to the right or claimed right of any person under or with respect to any of the foregoing. The Schedule of Exceptions contains a complete list of all patents and pending patent applications of the Company. The Company is not a party to any agreement concerning a license for proprietary information, nor does it currently intend to enter into any such agreement. The Company has not received any communications alleging that the Company has violated or, by conducting its business as proposed would violate, the proprietary or intellectual property rights of any other person or entity. The Company is not aware of any violation or infringement by a third party of any of the Company's licenses, patents, trademarks, service marks, trade names, copyrights, trade secrets or other proprietary rights.

3.18 **Intentionally Omitted.**

3.19 **Misleading Statements.** No representation, warranty or statement by the Company in this Agreement nor in any written statement or certificate furnished or to be furnished to the Investors pursuant hereto or in connection with the transactions contemplated hereby, when taken together, contained when made any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. To the best of the Company's knowledge, every fact that materially and adversely affects the business, prospects, condition, affairs or operations of the Company or any of its properties or assets has been disclosed to the Investors in this Agreement or the Schedule of Exceptions.

3.20 **Employees.** To the best of the Company's knowledge, no employee or director of the Company is in violation of any term of any employment contract, patent disclosure agreement or any other contract or agreement with any third party, the terms of which would restrict the right of any such employee or director to be employed by, or to serve as a director of, the Company because of the nature of the business conducted or to be conducted by the Company or for any other reason, and the continued employment by, or service as a director of, the Company of its present employees and directors will not result in any such violations. Except as set forth in the Schedule of Exceptions, the Company has no oral employment

agreements, other than at-will employment agreements, and no written employment agreements with any of its employees. The Company is not a party to or bound by any collective bargaining agreement or other labor agreement with any bargaining agent (exclusive or otherwise) of any of its employees. To the best of the Company's knowledge, no strike, labor dispute or union organization activities are pending or threatened between it and its employees. No employee of the Company has been granted the right to continued employment by the Company or to any material compensation following termination of employment with the Company. The Company has no present intention to terminate the employment of any officer, key employee or group of key employees.

3.21 **Employee Compensation Plans.** The Company is not a party to or bound by any currently effective deferred compensation agreement, bonus plan, incentive plan, profit sharing plan or retirement agreement, nor has the Company contracted or agreed to establish any such plan. The Company does not have any Employee Benefit Plan as defined in the Employee Retirement Income Security Act of 1974, as amended.

3.22 **Insurance.** There is in full force and effect one or more policies of insurance issued by insurers of recognized responsibility, insuring the Company and its properties and business against such losses and risks, and in such amounts, as are customary in the case of companies of established reputation engaged in the same or similar business and similarly situated including, without limitation, insurance on all material assets in an amount sufficient (subject to deductible amounts which are standard and customary in the Company's industry) to permit it to replace any of its physical properties which might be damaged or destroyed, covering property damage by fire or other casualty. The Company has not been refused any insurance coverage sought or applied for, and the Company has no reason to believe that it will be unable to renew its existing insurance coverage as and when the same shall expire upon terms at least as favorable to those presently in effect, other than possible increases in premiums that do no result from any act or omission of the Company. The Company maintains and shall maintain in full force and effect, directors' and officers' liability insurance, key man insurance and such other policies of insurance, issued by insurers of recognized responsibility, with such coverage and in such amounts as are customary in the case of companies of established reputation engaged in the same or similar business and similarly situated.

3.23 **Registration Rights.** Except as set forth in the Registration Rights Agreement (as amended or restated from time to time), the Company is not under any obligation to register under the Securities Act or register or qualify under any state securities laws any of its presently outstanding securities or any of its securities which may hereafter be issued.

3.24 **Certain Transactions.** The Company is not indebted, either directly or indirectly, to any present or former affiliate, stockholder, officer or director, or, to the best of its knowledge, to any of their respective affiliates, spouses or children, in any amount whatsoever, other than for payment of salaries or director fees for services rendered, employee benefits and reasonable expenses incurred on the Company's behalf. No present or former affiliate, officer, director or stockholder of the Company (nor any person in the immediate family of any such officer, director or stockholder) or any of their respective affiliates is indebted to the Company or, to the best of the Company's knowledge, after due inquiry, has any material direct or indirect

ownership interest in any firm or corporation with which the Company is affiliated or with which the Company has a business relationship that is material to the Company or which competes with the Company. No affiliate, officer, director or stockholder of the Company (or, to the best of its knowledge, any of their affiliates or any member of their immediate families) is, directly or indirectly, interested in any contract with the Company (other than as contemplated by the Agreement or such contracts as relate to any such person's ownership of capital stock or other securities of the Company). The Company is not a guarantor or indemnitor of any indebtedness of any person, firm or corporation.

3.25 **Shareholder Agreements.** Except as set forth in the Shareholders' Agreement and as provided in this Agreement, there are no agreements or arrangements between the Company and any of the Company's stockholders, or to the best of the Company's knowledge, between or among any of the Company's stockholders, which grant special rights with respect to any shares of the Company's capital stock or which in any way affect any stockholder's ability or right freely to alienate or vote such shares.

3.26 **Brokers or Finders.** The Company has not engaged any brokers, finders or agents, and the Company has not incurred, and will not incur, directly or indirectly, any liability for brokerage or finders' fees or agents' commissions or placement fees or any similar charges in connection with this Agreement and the transactions contemplated hereby. The Company agrees to indemnify and to hold the Investors harmless of and from any liability for any commission or compensation in the nature of a finder's fee or placement fee to any broker or other person or firm (and the costs and expenses of defending against such liability or asserted liability) for which the Company, or any of its employees or representatives, is responsible.

3.27 **Foreign Corrupt Practices Act.** Neither the Company nor any subsidiary has made, offered or agreed to offer anything of value to any government official, political party or candidate for government office nor has taken any action which would cause the Company to be in violation of any law of any foreign jurisdiction or the United States, including the Foreign Corrupt Practices Act of 1977, as amended. There is not nor has there been any employment of or beneficial ownership of the Company by any governmental or political official in any country.

3.28 **Licenses.** All licenses, permits, and authorizations issued to the Company by the Federal Communications Commission or any state utility commissions are in full force and effect. The Company has no knowledge of facts that would cause the Federal Communications Commission or any state utility commissions not to renew any of the Company's licenses, permits or authorizations.

3.29 **Confidentiality Agreements.** Every employee, officer and consultant of the Company is subject to the terms of a confidentiality or non-disclosure agreement that obligates such employee, officer of consultant to maintain the confidentiality of the Company's confidential information as and to the extent set forth therein.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF THE INVESTORS

4.1 TelePacific Equity Limited, a Cayman Islands corporation (the "**Series D Investcorp Party**"), hereby represents and warrants severally to the Company as follows:

4.1.1 **Authorization.** All corporate action on the part of the Series D Investcorp Party necessary for the authorization, execution, delivery and performance of this Agreement, the Amended and Restated Shareholders' Agreement and the Amended and Restated Registration Rights Agreement, and the consummation of the transactions contemplated herein and therein has been taken or will be taken before the Closing, and this Agreement, the Amended and Restated Shareholders' Agreement and the Amended and Restated Registration Rights Agreement, when executed and delivered by the Series D Investcorp Party, will constitute the valid and legally binding obligations of the Series D Investcorp Party, enforceable against the Series D Investcorp Party in accordance with their respective terms, except as limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application relating to or affecting the enforcement of creditors' rights and (ii) general equitable principles.

4.1.2 **Investment.**

(a) The Series D Investcorp Party is not a U.S. Person (as defined in Regulation S under the Securities Act).

(b) The Series D Investcorp Party is acquiring the Series D Preferred Stock and the Common Stock issuable upon conversion thereof (i) for its own account and/or for the account of Affiliates of Investcorp S.A. ("**Investcorp**") and certain other investors with whom Investcorp has administrative relationships with and who have acquired or may acquire equity interests in the Series D Investcorp Party for investment purposes only and not with a view to, or for resale in connection with, any "distribution" of all or any portion thereof in a manner which would violate the Securities Act and (ii) not for the account of, as a nominee or agent for, or on behalf of any U.S. Person.

(c) At the time of the execution and delivery of this Agreement, the Series D Investcorp Party was outside the United States.

(d) None of the Series D Investcorp Party, the other Investcorp Parties, Investcorp or any person acting on their behalf has taken or will take any action in connection with the transactions contemplated by this Agreement or the offering, sale or issuance of any equity interests in the Series D Investcorp Party which would subject the offering, issuance or sale of the shares of Series D Preferred Stock to the provisions of Section 5 of the Securities Act.

(e) The Series D Investcorp Party:

(i) understands that the Series D Preferred Stock and any Common Stock issued on conversion thereof (collectively, the "**Securities**") are distributed under Regulation S under the Securities Act, and the Series D Investcorp Party will not, during the period commencing on the date hereof and ending on the first anniversary of such date, or such shorter period as may be permitted by Regulation S or other applicable securities law (the "**Restricted Period**"), offer, sell, pledge or otherwise transfer the Securities in the United States, or to a U.S. Person for the account or benefit of a U.S. Person; and

(ii) understands that the Securities are being offered in a transaction not involving any public offering within the meaning of the Securities Act and that the Securities have not been registered under the Securities Act, and will, during the Restricted Period, offer, sell, pledge or otherwise transfer the Securities only in accordance with Rule 904 of Regulation S under the Securities Act, pursuant to registration under the Securities Act or pursuant to an available exemption from the registration requirements of the Securities Act (and based upon an opinion of counsel if the Company so requests, acting reasonably), and in accordance with all applicable state and foreign securities laws.

(f) The Series D Investcorp Party covenants and agrees that Investcorp or an Affiliate of Investcorp will control, directly or indirectly, a majority of the voting and dispositive power with respect to the shares of Series D Preferred Stock (and the shares of Common Stock into which any such shares have been converted) which continue to be held by the Series D Investcorp Party and its Affiliates.

4.1.3 **Disclosure of Information.** The Series D Investcorp Party believes that it has received all the information that the Series D Investcorp Party considers necessary or appropriate for deciding whether to purchase the Series D Preferred Stock. The Series D Investcorp Party further represents that the Series D Investcorp Party has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of the Series D Preferred Stock and the business, properties, prospects, and financial condition of the Company and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify the accuracy of any information furnished to the Series D Investcorp Party or to which the Series D Investcorp Party had access. The foregoing, however, does not limit or modify the representations and warranties of the Company in **Article III** of this Agreement or the right of the Series D Investcorp Party to rely thereon.

4.1.4 **Experience.** The Series D Investcorp Party represents that by reason of the business or financial experience of Investcorp and its Affiliates, and the business and financial experience of each of the other international investors who have or may acquire equity interests in the Series D Investcorp Party, the Series D Investcorp

Party and its shareholders have the capacity to protect their own interests in connection with the transaction contemplated in this Agreement.

4.1.5 **Restricted Securities.** The Series D Investcorp Party understands that the Series D Preferred Stock and any Common Stock issued on conversion thereof are characterized as "restricted securities" under the federal securities laws since they are being acquired from the Company in a transaction not involving a public offering and that under such laws and applicable regulations such securities may not be sold, transferred or otherwise disposed of without registration under the Securities Act or an exemption therefrom. The Series D Investcorp Party represents that it is familiar with Rule 144 promulgated by the Securities and Exchange Commission, as presently in effect, and understands the resale limitations imposed thereby and by the Securities Act.

4.1.6 **Advertising.** The Series D Investcorp Party has not agreed to purchase the Series D Preferred Stock as a result of any general solicitation or general advertising, including advertisements, articles, notes or other communications published in any newspaper, magazine or similar media, or broadcast over radio or television, or any seminar or meeting whose attendees have been invited by general solicitation or general advertising.

4.1.7 **Further Limitations on Disposition.** Without in any way limiting the representations set forth above and except for any disposition to an Affiliate, the Series D Investcorp Party further agrees not to make any disposition of all or any portion of the Series D Preferred Stock being purchased hereunder (or of Common Stock issuable upon conversion thereof) except in compliance with applicable state securities laws and unless and until:

(a) a registration statement under the Securities Act is then in effect covering such proposed disposition and such disposition is made in accordance with such registration statement;

(b) such disposition is made in accordance with Rule 144 under the Securities Act; or

(c) the Series D Investcorp Party shall have notified the Company of the proposed disposition and shall have furnished the Company with a statement of the circumstances surrounding the proposed disposition, and, if requested by the Company, the Series D Investcorp Party shall have furnished the Company with an opinion of counsel acceptable to the Company, that such disposition will not require registration under the Securities Act and will be in compliance with applicable state securities laws.

4.1.8 **Legends.** The Series D Investcorp Party understands and acknowledges that each certificate evidencing Series D Preferred Stock purchased by the Series D Investcorp Party hereunder or Common Stock acquired upon conversion thereof (or evidencing any other securities issued with respect thereto pursuant to any stock split,

stock dividend, merger or other form of reorganization or recapitalization) will bear, in addition to any other legends which may be required by this Agreement or applicable state securities laws, the following legend:

> THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED ("ACT"), NOR HAVE THEY BEEN REGISTERED OR QUALIFIED UNDER THE SECURITIES LAWS OF ANY STATE. NO TRANSFER OF SUCH SECURITIES WILL BE PERMITTED UNLESS A REGISTRATION STATEMENT UNDER THE ACT IS IN EFFECT AS TO SUCH TRANSFER, THE TRANSFER IS MADE IN ACCORDANCE WITH REGULATION S UNDER THE ACT OR WHICH IS OTHERWISE EXEMPT FROM REGISTRATION UNDER PROVISIONS OF THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS; AND IN THE CASE OF AN EXEMPTION, IF REQUESTED BY THE CORPORATION, ONLY IF THE CORPORATION HAS RECEIVED AN OPINION OF COUNSEL SATISFACTORY TO THE CORPORATION THAT SUCH TRANSACTION DOES NOT REQUIRE REGISTRATION UNDER THE ACT. THESE SECURITIES MAY NOT BE A PART OF ANY HEDGING TRANSACTIONS THAT DO NOT COMPLY WITH THE ACT.

The Company is not obligated to register a transfer of, and may instruct its transfer agent not to register a transfer of, Series D Preferred Stock or Common Stock acquired upon conversion of Series D Preferred Stock unless the conditions specified in the foregoing legend are satisfied.

4.1.9 **Finders' Fees.** The Series D Investcorp Party has not engaged any brokers, finders, or agents and has not incurred, and will not incur, directly or indirectly, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement and the transactions contemplated hereby and agrees to indemnify and to hold the Company harmless of and from any liability for any commission or compensation in the nature of a finder's fee to any broker or other person or firm (and the costs and expenses of defending against such liability or asserted liability) for which the Series D Investcorp Party, or any of its employees or representatives, is responsible.

4.1.10 **Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.** The Series D Investcorp Party (a) is a recently formed entity, (b) has no regularly prepared balance sheet (as such term is used in the Rules, Regulations, Statements and Interpretations under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "**HSR Regulations**")), (c) is its own Ultimate Parent Entity (as such term is defined in the HSR Regulations) and (d) does not have $50 million or more in assets in excess of the cash to be used as consideration for the acquisition of the Series D Preferred Stock and to pay fees and expenses related thereto.

4.2 **Representations and Warranties of Other Investors.** Each Investor other than the Series D Investcorp Party hereby represents and warrants severally to the Company as follows:

4.2.1 **Authorization.** All corporate action on the part of the Investor necessary for the authorization, execution, delivery and performance of this Agreement, the Amended and Restated Shareholders' Agreement and the Amended and Restated Registration Rights Agreement, and the consummation of the transactions contemplated herein and therein has been taken or will be taken before the Closing, and this Agreement, the Amended and Restated Shareholders' Agreement and the Amended and Restated Registration Rights Agreement, when executed and delivered by the Investor, will constitute the valid and legally binding obligations of such Investor, enforceable against such Investor in accordance with their respective terms, except as limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application relating to or affecting the enforcement of creditors' rights and (ii) general equitable principles.

4.2.2 **Investment.** The Investor is an "accredited investor" within the meaning of Regulation D prescribed by the Securities and Exchange Commission pursuant to the Securities Act. The Investor is acquiring the Series D Preferred Stock and the Common Stock issuable upon conversion thereof for its own account for investment purposes only and not with a view to, or for resale in connection with, any "distribution" of all or any portion thereof within the meaning of the Securities Act, subject, nevertheless, to the condition that the disposition of the property of the Investor shall at all times be within its control. The Investor understands that the Series D Preferred Stock to be purchased has not been registered under the Securities Act by reason of a specific exemption from the registration provisions of the Securities Act that depends upon, among other things, the bona fide nature of the investment intent as expressed herein.

4.2.3 **Disclosure of Information.** The Investor believes that it has received all the information that the Investor considers necessary or appropriate for deciding whether to purchase the Series D Preferred Stock. The Investor further represents that the Investor has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of the Series D Preferred Stock and the business, properties, prospects, and financial condition of the Company and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify the accuracy of any information furnished to the Investor or to which the Investor had access. The foregoing, however, does not limit or modify the representations and warranties of the Company in **Article III** of this Agreement or the right of the Investor to rely thereon.

4.2.4 **Experience.** The Investor is experienced in evaluating and investing in private placement transactions of securities of companies in a similar stage of development as the Company and acknowledges that it is able to fend for itself, can bear

the economic risk of its investment, and has such knowledge and experience in financial and business matters that the Investor is capable of evaluating the merits and risks of the investment in the Series D Preferred Stock.

4.2.5 **Restricted Securities.** The Investor understands that the Series D Preferred Stock and any Common Stock issued on conversion thereof are characterized as "restricted securities" under the federal securities laws since they are being acquired from the Company in a transaction not involving a public offering and that under such laws and applicable regulations such securities may not be sold, transferred or otherwise disposed of without registration under the Securities Act or an exemption therefrom. The Investor represents that it is familiar with Rule 144 promulgated by the Securities and Exchange Commission, as presently in effect, and understands the resale limitations imposed thereby and by the Securities Act.

4.2.6 **Advertising.** The Investor has not agreed to purchase the Series D Preferred Stock as a result of any general solicitation or general advertising, including advertisements, articles, notes or other communications published in any newspaper, magazine or similar media, or broadcast over radio or television, or any seminar or meeting whose attendees have been invited by general solicitation or general advertising.

4.2.7 **Further Limitations on Disposition.** Without in any way limiting the representations set forth above and except for any disposition to an Affiliate, the Investor further agrees not to make any disposition of all or any portion of the Series D Preferred Stock being purchased hereunder (or of Common Stock issuable upon conversion thereof) except in compliance with applicable state securities laws and unless and until:

(a) a registration statement under the Securities Act is then in effect covering such proposed disposition and such disposition is made in accordance with such registration statement;

(b) such disposition is made in accordance with Rule 144 under the Securities Act; or

(c) the Investor shall have notified the Company of the proposed disposition and shall have furnished the Company with a statement of the circumstances surrounding the proposed disposition, and, if requested by the Company, the Investor shall have furnished the Company with an opinion of counsel acceptable to the Company, that such disposition will not require registration under the Securities Act and will be in compliance with applicable state securities laws.

4.2.8 **Legends.** The Investor understands and acknowledges that each certificate evidencing Series D Preferred Stock purchased by such Investor hereunder or Common Stock acquired upon conversion thereof (or evidencing any other securities issued with respect thereto pursuant to any stock split, stock dividend, merger or other

form of reorganization or recapitalization) will bear, in addition to any other legends which may be required by this Agreement or applicable state securities laws, the following legend:

> THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED ("ACT"), NOR HAVE THEY BEEN REGISTERED OR QUALIFIED UNDER THE SECURITIES LAWS OF ANY STATE. NO TRANSFER OF SUCH SECURITIES WILL BE PERMITTED UNLESS A REGISTRATION STATEMENT UNDER THE ACT IS IN EFFECT AS TO SUCH TRANSFER, THE TRANSFER IS MADE IN ACCORDANCE WITH RULE 144 UNDER THE ACT, OR IN THE OPINION OF COUNSEL (WHICH MAY BE COUNSEL FOR THE COMPANY) REGISTRATION UNDER THE ACT IS UNNECESSARY IN ORDER FOR SUCH TRANSFER TO COMPLY WITH THE ACT AND WITH APPLICABLE STATE SECURITIES LAWS.

The Company is not obligated to register a transfer of, and may instruct its transfer agent not to register a transfer of, Series D Preferred Stock or Common Stock acquired upon conversion of Series D Preferred Stock unless the conditions specified in the foregoing legend are satisfied.

4.2.9 **Finders' Fees.** The Investor has not engaged any brokers, finders, or agents and has not incurred, and will not incur, directly or indirectly, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement and the transactions contemplated hereby and agrees to indemnify and to hold the Company harmless of and from any liability for any commission or compensation in the nature of a finder's fee to any broker or other person or firm (and the costs and expenses of defending against such liability or asserted liability) for which the Investor, or any of its employees or representatives, is responsible.

ARTICLE V
CONDITIONS OF OBLIGATIONS OF THE INVESTORS

The obligations of each Investor under this Agreement are subject to the fulfillment of each of the following conditions at or before the Closing, each of which the Company will use its best efforts to fulfill:

5.1 Representations and Warranties True at Closing. The representations and warranties of the Company contained in **Article III** shall be true and correct when made and shall be true and correct on and as of the applicable Closing Date.

5.2 Performance. The Company shall have performed and satisfied all agreements and conditions contained herein required to be performed or satisfied by it on or before the applicable Closing Date.

5.3 **Consents.** The Company and the Investors shall have obtained all consents, permits and waivers necessary for consummation of the transactions contemplated by this Agreement that need to be obtained by the Company or the Investors, respectively, prior to the Closing Date, including the obtaining of all consents, approvals, authorizations, registrations and qualifications referred to in **Section 3.10**.

5.4 **Filing of Restated Certificate.** The Restated Certificate shall have been filed with, and accepted by, the Secretary of State of the State of Delaware.

5.5 **Reservation of Conversion Shares.** The Common Stock issuable upon conversion of the Series D Preferred Stock shall have been duly authorized and reserved for issuance upon such conversion.

5.6 **Compliance Certificates.** The Company shall have delivered to the Investors a certificate, dated the Closing Date, signed by the Company's Chief Executive Officer or the Chief Financial Officer, certifying that the conditions specified in **Sections 5.1, 5.2, 5.3, 5.4 and 5.5** have been performed or satisfied in all respects.

5.7 **Proceedings and Documents.** All corporate and other proceedings in connection with the transactions contemplated by this Agreement and all documents incident thereto shall be satisfactory in form and substance to the Investor, which shall have received complete and correct copies of such documents as it may reasonably request.

5.8 **Qualifications.** All authorizations, approvals or permits, if any, of any governmental authority or regulatory body of the United States or of any state that are required in connection with the lawful issuance and sale of the Series D Preferred Stock pursuant to this Agreement shall be duly obtained and effective as of the Closing.

5.9 **Legal Investment.** On the Closing Date, the sale and issuance of the Series D Preferred Stock and the proposed issuance of the Common Stock issuable upon conversion thereof shall be legally permitted by all laws and regulations to which the Investor and the Company are subject.

5.10 **Opinion of Company Counsel.** The Investor shall have received from Latham & Watkins, counsel for the Company, an opinion, dated the Closing Date, in form and substance satisfactory to the Series D Investcorp Party, covering the matters set forth in Exhibit F hereto.

5.11 **Amended Shareholders' Agreement.** The Company, the Series D Investcorp Party and the parties to the Shareholders' Agreement shall have entered into a Fourth Amended and Restated Shareholders' Agreement in the form attached hereto as Exhibit G (the "**Amended and Restated Shareholders' Agreement**").

5.12 **Amended Registration Rights Agreement.** The Company, RRCO, GE Equity, the holders of the Series C Preferred Stock, the holders of the Tennenbaum Warrants and the Investors shall have entered into a Second Amended and Restated Registration Rights

Agreement in the form attached hereto as Exhibit H (the "**Amended and Restated Registration Rights Agreement**").

5.13 **Board of Directors.** At the Closing, the Company's Board of Directors shall be comprised of David P. Glickman, Dick Jalkut, Stephen Rader, Governor Pete Wilson, the Company's Chief Executive Officer and the following four (4) designees of the Investors: Mamoun Askari, Lars Haegg, Christopher O'Brien and Christopher Stadler.

5.14 **Amendment of Loan and Security Agreement.** The Company shall have entered into an agreement with its senior lender, pursuant to which (i) that certain Loan and Security Agreement, dated as of September 20, 1999 (the "**Loan and Security Agreement**"), by and among the Company, certain subsidiaries of the Company and the senior lender shall be amended in a manner reasonably satisfactory to the Series D Investcorp Party and (ii) the senior lender shall waive any prior defaults of the Company and its subsidiaries under the Loan and Security Agreement.

ARTICLE VI
CONDITIONS OF THE COMPANY'S OBLIGATIONS

The obligations of the Company under this Agreement are subject to the fulfillment at or before the Closing of each of the following conditions:

6.1 **Representations and Warranties True at Closing.** The representations and warranties of the Investors contained in Article IV hereof shall be true and correct when made and true and correct on and as of the applicable Closing Date.

6.2 **Qualifications.** All authorizations, approvals or permits, if any, of any governmental authority or regulatory body of the United States or of any state that is required, in connection with the lawful issuance and sale of the Series D Preferred Stock, shall be duly obtained and effective as of the Closing.

6.3 **Performance.** The Investors shall have performed and satisfied all agreements and conditions contained herein required to be performed or satisfied by them on or before the Closing Date.

6.4 **Consents.** The Company and the Investors shall have obtained all consents, permits, and waivers necessary for consummation of the transactions contemplated by this Agreement that need to be obtained by the Company or the Investors, respectively, prior to the Closing Date.

ARTICLE VII
AFFIRMATIVE COVENANTS OF THE COMPANY

7.1 **Access.** Until the Closing Date, the Company will permit the Investors, their employees, agents and representatives to have continued reasonable access to the Company's books and records, facilities, personnel and operations and to all documents in the Company's possession or control that the Investors and their representatives reasonably request

to examine the business and affairs of the Company. No examination by the Investors will, however, constitute a waiver or relinquishment by such Investors of their rights to rely on the Company's covenants, representations and warranties made herein or pursuant hereto.

7.2 **Publicity.** Neither the Company nor any of the Investors shall issue, publish or disseminate or cause to be issued, published or disseminated any press release or public communication relating to this Agreement or any Ancillary Agreement or any of the transactions contemplated herein or therein without the prior written consent of the Company (in the case of a press release or other public communication to be issued by an Investor) or the Series D Investcorp Party (in the case of a press release or other public communication to be issued by the Company).

7.3 **Compliance with Laws.** The operations of the Company will be conducted in compliance with all federal, state or local laws, regulations or orders. The Company will maintain all franchises, licenses, permits, certificates and any similar authority necessary for the conduct of its business as presently conducted and will obtain any similar authority for the conduct of its business as planned to be conducted.

7.4 **Basic Financial Information and Reporting.**

The Company will maintain true books and records of account in which full and correct entries will be made of all its business transactions pursuant to a system of accounting established and administered in accordance with generally accepted accounting principles consistently applied, and will set aside on its books all such proper accruals and reserves as shall be required under generally accepted accounting principles consistently applied.

As soon as practicable after the end of each fiscal year of the Company, and in any event within ninety (90) days thereafter, the Company will furnish each Investor who purchases at least one hundred (100) shares of Series D Preferred Stock (each such Investor, a "**Significant Series D Investor**") a balance sheet of the Company, as at the end of such fiscal year, and a statement of income and a statement of cash flows of the Company, for such year, all prepared in accordance with generally accepted accounting principles consistently applied and setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail. Such financial statements shall be accompanied by (1) a report and opinion thereon by independent public accountants of national standing selected by the Company's Board of Directors (the "**Accountants**") and (2) a letter from the Accountants to the management of the Company assessing the program of internal procedures and controls in place at the Company, determining the Company's compliance with the program and recommending improvements to the program.

The Company will furnish each Significant Series D Investor, as soon as practicable after the end of the first, second and third quarterly accounting periods in each fiscal year of the Company, and in any event within forty-five (45) days thereafter, a balance sheet of the Company as of the end of each such quarterly period, and a statement of income and a statement of cash flows of the Company for such period and for the current fiscal year to date, including a comparison to plan figures for such period, prepared in accordance with generally

accepted accounting principles consistently applied, with the exception that no notes need be attached to such statements and year-end audit adjustments may not have been made.

The Company will furnish each Significant Series D Investor (i) at least thirty (30) days prior to the beginning of each fiscal year commencing with calendar year 2003 an annual budget and operating plans for such fiscal year (and, as soon as available, any subsequent revisions thereto); and (ii) as soon as practicable after the end of each month commencing with calendar year 2002, and in any event within thirty (30) days thereafter, a balance sheet of the Company as of the end of each such month, and a statement of income and a statement of cash flows of the Company for such month and for the current fiscal year to date, including a comparison to plan figures for such period, prepared in accordance with generally accepted accounting principles consistently applied, with the exception that no notes need be attached to such statements and year-end audit adjustments may not have been made.

7.5 **Inspection Rights.** The Series D Investcorp Party shall have the right to visit and inspect any of the properties of the Company or any of its subsidiaries, and to discuss the affairs, finances and accounts of the Company or any of its subsidiaries with its officers, and to obtain and review such information as is reasonably requested all at such reasonable times and as often as may be reasonably requested.

7.6 **Regulatory Approvals.** The Company will use its commercially reasonable efforts to file applications with and obtain any approvals from the Federal Communications Commission and state governmental authorities and regulatory agencies required in connection with the proposed voting rights and board composition described in the Restated Certificate and the Amended and Restated Shareholders' Agreement as promptly as possible following the Closing.

7.7 **Stock Option Matters.** Neither the Company nor its Board of Directors (including any committee thereof) shall take any action under the Company's stock option plans that would otherwise be permitted thereunder upon a change of control as a result of the sale and issuance of the Series D Preferred Stock to the Investors and any change of control resulting therefrom.

ARTICLE VIII
NEGATIVE COVENANTS OF THE COMPANY

The Company hereby covenants and agrees that it shall not make, offer or agree to offer anything of value to any government official, political party or candidate for government office nor will it take any action that would cause the Company or any subsidiary to be in violation of any law of any foreign jurisdiction or the United States, including the Foreign Corrupt Practices Act of 1977, as amended.

ARTICLE IX
INDEMNIFICATION

9.1 Company Indemnification. Until the earlier of: (a) the second anniversary of the Closing Date and (b) the date of the consummation of a Qualifying IPO (as defined in the Restated Certificate), the Company covenants and agrees to defend, indemnify and save and hold harmless each of the Investors, together with their respective officers, directors, partners, employees, trustees, attorneys and representatives and each person who controls such Investor within the meaning of the Securities Act or the Exchange Act, from and against any and all out-of-pocket costs, expenses, liabilities, claims or legal damages (including, without limitation, reasonable fees and disbursements of counsel and accountants and other costs and expenses incident to any actual or threatened claim, suit, action or proceeding, whether incurred in connection with a claim against the Company or a third party claim) (collectively, "**Losses**") arising out of or resulting from: (i) any material inaccuracy in or material breach of any representation, warranty, covenant or agreement made by the Company in this Agreement, any Ancillary Agreement or in any writing delivered pursuant to this Agreement or at the Closing; (ii) the failure of the Company to perform or observe in all material respects any covenant, agreement or provision to be performed or observed by it pursuant to this Agreement or any Ancillary Agreement; (iii) any legal, administrative or other proceedings brought by a third party arising out of the transactions contemplated by this Agreement or any Ancillary Agreement; or (iv) any actual or threatened claim, suit, action or proceeding arising out of or resulting from the conduct by the Company of its business or operations, or the Company's occupancy or use of its properties or assets, on or prior to the Closing Date; other than Losses resulting directly from the negligence or willful misconduct of such Investor or any of its respective officers, directors, employees, or any person who controls such Investor within the meaning of the Securities Act or the Exchange Act; provided, however, that, if and to the extent that such indemnification is unenforceable for any reason, the Company shall make the maximum contribution to the payment and satisfaction of such indemnified liability which shall be permissible under applicable laws.

9.2 Procedure. Each party entitled to be indemnified pursuant to **Section 9.1** (each, an "**Indemnified Party**") shall notify the Company in writing of any action against such Indemnified Party in respect of which the Company is or may be obligated to provide indemnification on account of **Section 9.1**, promptly after the receipt of notice of the commencement thereof. The omission of any Indemnified Party so to notify the Company of any such action shall not relieve the Company from any liability which the Company may have to such Indemnified Party except to the extent the Company shall have been materially prejudiced by the omission of such Indemnified Party so to notify the Company, pursuant to this **Section 9.2**. In case any such action shall be brought against any Indemnified Party and such party shall notify the Company of the commencement thereof, the Company shall be entitled to participate therein and, to the extent that the Company may wish, to assume the defense thereof, with counsel reasonably satisfactory to such Indemnified Party, and after notice from the Company to such Indemnified Party of its election so to assume the defense thereof, the Company will not be liable to such Indemnified Party under **Section 9.1** for any legal or other expense subsequently incurred by such Indemnified Party in connection with the defense thereof nor for any settlement thereof entered into without the consent of the Company; provided,

however, that (i) if the Company shall elect not to assume the defense of such claim or action or (ii) if the Indemnified Party obtains written advice of counsel that there may be a material conflict between the positions of the Company and of the Indemnified Party in defending such claim or action, then separate counsel for the Indemnified Party shall be entitled to participate in and conduct the defense and the Company shall be liable for any reasonable legal or other expenses incurred by the Indemnified Party in connection with the defense.

ARTICLE X
MISCELLANEOUS PROVISIONS

10.1 Confidentiality.

(a) The Company, and its agents, representatives and affiliates will keep the transactions contemplated by this Agreement confidential and will not disclose any information pertaining thereto to any other person or entity without the prior written consent of the Series D Investcorp Party; provided that the Company may circulate a communication as to the transactions contemplated by this Agreement, which the Series D Investcorp Party has approved in advance in writing, to potential and existing investors and to its employees.

(b) Any information obtained by the Investors pursuant to **Section 7.1** which is, or would reasonably be perceived to be, proprietary to the Company or otherwise confidential will not be disclosed without the prior written consent of the Company; except for such reasonable disclosure as is made by an Investor to its affiliates, members, accountants, attorneys or banks so long as such persons agree to keep such information confidential and to not disclose such information without the prior written consent of the Company. Notwithstanding the foregoing, an Investor shall have no duty of confidentiality with respect to any information or material which:

(i) is, through no wrongful act by the Investor or its affiliates, agents or representatives, known to such Investor prior to the first time it is disclosed to the Investor by any of the Company, the Company's affiliates, agents or representatives or any other person under a duty of confidentiality to the Company;

(ii) is or becomes publicly known through no wrongful act of the Investor, its affiliates, agents or representatives; or

(iii) is required by court order or governmental agency to be disclosed, provided that the Investor has used all reasonable efforts to limit such disclosure and to obtain confidential treatment or a protective order with respect to the confidential information, has given prompt notice to the Company of any such order or request relating to such disclosure, and has allowed the Company to participate in all proceedings relating thereto.

(c) The confidential obligations of each Investor pursuant to **subsection 10.1(b)** shall survive until the later of (i) 18 months from the date of receipt by the Investor of the information to which **subsection 10.1(b)** relates and (ii) the first anniversary of the date that the Investors cease to have a designee on the Company's Board of Directors.

10.2 **Further Assurances.** Each party agrees to cooperate fully with the other party and to execute such further instruments, documents and agreements and to give such further written assurances, as may be reasonably requested by the other party to evidence and reflect the transactions described herein and contemplated hereby, and to carry into effect the intents and purposes of this Agreement.

10.3 **Rights Cumulative.** Each of the various rights, powers and remedies of the parties hereto shall be considered to be cumulative with and in addition to any other rights, powers and remedies which such parties may have at law or in equity in the event of the breach of any of the terms of this Agreement. The exercise or partial exercise of any right, power or remedy shall neither constitute the exclusive election thereof nor the waiver of any other right, power or remedy available to such party.

10.4 **Notices.** All notices, demands and requests required by this Agreement shall be in writing and shall be deemed to have been given for all purposes (i) upon personal delivery, (ii) one day after being sent, when sent by professional overnight courier service from and to locations within the continental United States, (iii) five days after posting when sent by registered or certified mail, or (iv) on the date of transmission when sent by facsimile transmission, addressed to the addresses set forth below:

If to the Series D Investcorp Party to:

c/o TelePacific Equity Limited
P.O. Box 1111
Westwind Building, 2nd Floor
Harbour Drive
Georgetown, Grand Cayman
Cayman Islands, B.W.I.
Attn: Sydney Coleman

Telephone: (345) 949-5122
Telecopier: (345) 949-7920

with a copy to:

Gibson, Dunn & Crutcher
200 Park Avenue
New York, NY 10166
Attn: E. Michael Greaney, Esq.

Telephone: (212) 351-4000
Telecopier: (212) 351-4035

If to the Company:

U.S. TelePacific Holdings Corp.
515 S. Flower Street, 47th Floor
Los Angeles, CA 90071
Attn: Chief Executive Officer

with a copy to:

Latham & Watkins
701 "B" Street, Suite 2100
San Diego, CA 92101
Attn: Thomas A. Edwards, Esq.

Telephone: (213) 213-3300
Telecopier: (213) 213-3100

Telephone: (619) 236-1234
Telecopier: (619) 696-7419

If to another Investor, to the address of such Investor (and with such notice copies) as is maintained in the records of the Company.

The addresses to which notices or demands are to be given may be changed from time to time by notice served as provided above. Delivery of notice to the copied parties above is not notice to an Investor or the Company, as the case may be.

10.5 Headings. The headings in this Agreement are only for convenience and ease of reference and are not to be considered in construction or interpretation.

10.6 Severability. The provisions of this Agreement are severable. The invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity or enforceability of any other of its provisions. If one or more provisions hereof shall be declared invalid or unenforceable, the remaining provisions shall remain in full force and effect and shall be construed in the broadest possible manner to effectuate the purposes hereof. The parties further agree to replace such void or unenforceable provisions of this Agreement with valid and enforceable provisions which will achieve, to the extent possible, the economic, business and other purposes of the void or unenforceable provisions.

10.7 Counterparts. This Agreement is being signed in several counterparts. Each of them is an original, and all of them constitute one agreement.

10.8 Entire Agreement. This Agreement (together with its Exhibits and other documents referred to herein) is intended by the parties hereto to be the final expression of their agreement and constitutes and embodies the entire agreement and understanding between the parties hereto with regard to the subject matter hereof and is a complete and exclusive statement of the terms and conditions thereof, and shall supersede any and all prior oral and written correspondence, conversations, negotiations, agreements and understandings relating to the same subject matter.

10.9 Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the holders of at least 66 2/3% of the Common Stock issued or issuable upon conversion of the Series D Preferred Stock. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each holder of any securities purchased under this Agreement at the time outstanding (including securities into which such securities are convertible), each future holder of all such securities and the Company.

10.10 Governing Law; Jurisdiction; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California without reference to its rules as to the conflicts of law.

10.11 Specific Performance. It is acknowledged that it will be impossible to measure in money the damages that would be suffered if the parties fail to comply with any of the obligations herein imposed on them and that in the event of any such failure, an aggrieved party will be irreparably damaged and will not have an adequate remedy at law. Any such party shall, therefore, in addition to all remedies at law, be entitled to injunctive relief, including specific performance, to enforce such obligations, and if any action should be brought in equity to enforce any of the provisions of this Agreement, none of the parties hereto shall raise the defense that there is an adequate remedy at law.

10.12 Arbitration.

(a) Any and all disputes of any nature (whether sounding in contract or in tort) arising out of or relating to this Agreement must be initiated, maintained and determined exclusively by binding arbitration and, on a non-exclusive basis, in the County of Los Angeles, State of California, pursuant to **Section 10.12(c)**. Each party agrees irrevocably to submit itself, in any suit to confirm the judgment or finding of such arbitrator, to the jurisdiction for the United States District Court for the Central District of California and the jurisdiction of any court of the State of California located in Los Angeles County and waives any and all objections to jurisdiction that it may have under the laws of the State of California or the United States.

(b) In case of a dispute, any party may commence the arbitration by giving written notice to the other pursuant to **Section 10.4**. The arbitrator (the "**Arbitrator**") will be a retired judge of the United States District Court for the Central District of California or of the Superior Court of the State of California in and for the County of Los Angeles. The arbitration proceeding will be conducted by means of a reference pursuant to California Code of Civil Procedure Section 638(1). Within 10 Business Days after receipt of the notice requesting arbitration, the parties shall attempt in good faith to agree upon the Arbitrator to whom the dispute will be referred and on a joint statement of contentions. Unless agreement as to an Arbitrator is theretofore reached, within 10 Business Days after receipt of the notice requesting arbitration, each party shall submit the names of three (3) retired judges who have served at least five (5) years as trial judges in the Superior Court of the State of California or in the United States District Court. Any party may then file a petition seeking the appointment by the presiding Judge of the Superior Court of one of the persons so named as "referee" in accordance with said Code of Civil Procedure 638(1), which petition will recite in a clear and meaningful manner the factual basis of the controversy between the parties and the issues to be submitted to the referee for decision. Each party hereby consents to the jurisdiction of the Superior Court in and for the County of Los Angeles for such action and agrees that service of process will be deemed completed when a notice similarly sent would be deemed received under **Section 10.4**.

(c) The hearing before the Arbitrator will be held within thirty (30) days after the parties reach agreement as to the identity of the Arbitrator (or within thirty (30) days after the appointment by the court). Unless more extensive discovery is expressly permitted by the Arbitrator, each party has only the right to one document production request, may serve but one set of interrogatories and is only entitled to depose those witnesses which the Arbitrator expressly permits, it being the intention of the parties to minimize discovery procedures and to hold the hearing on an expedited basis. The Arbitrator shall establish the discovery schedule promptly following submission of the joint statement of intentions (or the filing of the answer to the petition), to which such schedule will be strictly adhered. All decisions of the Arbitrator will be in writing and will not be subject to appeal. The Arbitrator shall make all substantive rulings in accordance with California law and will have authority equal to that of a Superior Court Judge to grant equitable relief in an action pending in Los Angeles Superior Court in which all parties have appeared. The Arbitrator shall use its best efforts to hear the dispute on consecutive days and to render a decision and award within thirty (30) days. Unless otherwise agreed to by the parties to the dispute being arbitrated, a court reporter shall be present at and record the proceedings of the hearing. All motions will be heard at the time of the hearing. The Arbitrator shall determine which rules of evidence, and which procedural rules, will apply. In the absence of a determination thereof by the Arbitrator, the rules of the American Arbitration Association, not inconsistent with this **Section 10.12**, will apply to the conduct of the proceeding.

(d) The fees and costs of the Arbitrator will be shared equally by all disputing parties. The Arbitrator will award legal fees, disbursements and other expenses to the prevailing party or parties for such amounts as determined by the Arbitrator to be appropriate. Judgment upon the Arbitrator's award may be entered as if after trial in accordance with California law. Should a party fail to pay fees as required, the other party may advance the same and will be entitled to a judgment from the Arbitrator in the amount of such fees plus interest at the prime rate as determined by the Bank of America. Any award issued by the Arbitrator will bear interest at the judgment rate in effect in the State of Delaware from the date determined by the Arbitrator.

10.13 Successors and Assigns. Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto. Each Investor may transfer or assign its rights and obligations hereunder; provided that such transfer or assignment will not relieve such Investor of its obligations hereunder unless such transfer or assignment is to an affiliate of such Investor.

10.14 Expenses. The Company shall pay the reasonable fees and expenses of Gibson, Dunn & Crutcher LLP, counsel for the Series D Investcorp Party, incurred in connection with the negotiation, preparation, execution and delivery of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated thereby, provided that such fees and expenses do not exceed Ninety Thousand Dollars ($90,000).

10.15 Time is of the Essence. Time will be of the essence with respect to all matters set forth herein.

10.16 Interpretation. If any claim is made by a party relating to any conflict, omission or ambiguity in the provisions of this Agreement, no presumption or burden of proof or persuasion will be implied because this Agreement was prepared by or at the request of any party or its counsel. The parties waive any statute or rule of law to the contrary. Unless the context otherwise requires: (i) a term has the meaning assigned to it; (ii) "or" is not exclusive; (iii) words in the singular include the plural, and words in the plural include the singular; (iv) pronouns of either gender or neuter shall include, as appropriate, the other pronoun forms (v) "herein," "hereof" and other words of similar import refer to this Agreement as a whole and not to any particular Section, subsection, paragraph, clause or other subdivision; (vi) all references to "Section," "Schedule," or "Exhibit" refer to the particular Section, Schedule or Exhibit in or attached to this Agreement; and (vii) "including" and "includes," when following any general provision, sentence, clause, statement, term or matter, will be deemed to be followed by ", but not limited to," and ", but is not limited to," respectively.

10.17 Waiver of Jury Trial. EACH PARTY HERETO HEREBY VOLUNTARILY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREIN. THIS **SECTION 10.17** HAS BEEN FULLY DISCUSSED BY EACH OF THE PARTIES HERETO (INCLUDING CONSULTATION WITH THEIR RESPECTIVE LEGAL COUNSEL), AND THESE PROVISIONS SHALL NOT BE SUBJECT TO ANY EXCEPTIONS. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, SUPPLEMENTS OR MODIFICATIONS TO (OR ASSIGNMENTS OF) THIS AGREEMENT.

10.18 Withholding. The Series D Investcorp Party acknowledges and agrees that the Company will comply with all withholding requirements of U.S. and other applicable law in connection with dividends and other distributions payable on the Series D Preferred Stock.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement with the intent and agreement that the same shall be effective as of the day and year first above written.

U.S. TELEPACIFIC HOLDINGS CORP.
a Delaware corporation

By: _____
Name: Richard L. Kimsey
Title: Chief Executive Officer

SERIES D PREFERRED STOCK PURCHASE AGREEMENT
[INVESTOR SIGNATURE PAGE]

"INVESTORS":

_____
(Print Name of Investor)

_____
(Signature)

_____
(Title, if applicable)

Address: _____
_____
_____

_____
(Print Name of Investor)

_____
(Signature)

_____
(Title, if applicable)

Address: _____
_____
_____

EXHIBIT A

Schedule of Investors

Investor	Number of Shares of Series D Preferred Stock	Purchase Price

EXHIBIT B

Form of Amended and Restated Certificate of Incorporation

EXHIBIT C

Schedule of Holders of Common Stock

EXHIBIT D

Schedule of Holders of Options

EXHIBIT E

Schedule of Warrants

1. Warrant to purchase 1,208,000 shares of common stock issued to Tennenbaum & Co., LLC. The agreement governing the terms of this warrant contains anti-dilution provisions which will be triggered by the sale and issuance of the Series D Preferred Stock at the Closing.

2. Warrant to purchase 342,000 shares of common stock issued to Howard M. Levkowitz. The agreement governing the terms of this warrant contains anti-dilution provisions which will be triggered by the sale and issuance of the Series D Preferred Stock at the Closing.

3. Warrant to purchase 198,000 shares of common stock issued to Mark Holdsworth. The agreement governing the terms of this warrant contains anti-dilution provisions which will be triggered by the sale and issuance of the Series D Preferred Stock at the Closing.

4. Warrant to purchase 26,000 shares of common stock issued to Mark and Alyssa Tennenbaum. The agreement governing the terms of this warrant contains anti-dilution provisions which will be triggered by the sale and issuance of the Series D Preferred Stock at the Closing.

5. Warrant to purchase 26,000 shares of common stock issued to Andrew and Julie Tennenbaum. The agreement governing the terms of this warrant contains anti-dilution provisions which will be triggered by the sale and issuance of the Series D Preferred Stock at the Closing.

6. Warrant to purchase 120,000 shares of common stock issued to RRCO. The agreement governing the terms of this warrant contains anti-dilution provisions which will be triggered by the sale and issuance of the Series D Preferred Stock at the Closing.

7. Warrant to purchase 20,000 shares of common stock issued to David Flaum, a former director of the Company. The agreement governing the terms of this warrant contains anti-dilution provisions which will be triggered by the sale and issuance of the Series D Preferred Stock at the Closing.

8. Warrant to purchase 150,000 shares of common stock issued to David Flaum.

9. Warrant to purchase 66,600 shares of common stock issued to Heidrick & Struggles.

EXHIBIT F

Form of Legal Opinion of Company Counsel

EXHIBIT G

Form of Fourth Amended and Restated Shareholders' Agreement

EXHIBIT H

Form of Second Amended and Restated Registration Rights Agreement

U.S. TELEPACIFIC HOLDINGS CORP.

FOURTH AMENDED AND RESTATED SHAREHOLDERS' AGREEMENT

Dated as of December __, 2001