

**TENNESSEE REGULATORY AUTHORITY**

460 JAMES ROBERTSON PARKWAY  
NASHVILLE, TENNESSEE 37243-0505

Lynn Greer, Chairman  
Sara Kyle, Director  
Melvin Malone, Director

**APPLICATION FOR CERTIFICATE  
TO PROVIDE OPERATOR SERVICES  
AND/OR RESELL  
RESELL INTEREXCHANGE  
TELECOMMUNICATION SERVICES IN TENNESSEE  
[RULE 1220-4-2-.57]**

**SECTION A**

**Part 1: General Information**

**A. Name of Applicant:**

American MetroComm/Tennessee, Inc.  
1615 Poydras Street, Suite 1050  
New Orleans, LA 70112  
Phone: (504) 500-2000  
Fax: (504) 500-2020

**B. Owner, Partners, or Corporate Officers:**

The following individuals serv as officers and directors of American MetroComm/Tennessee, Inc. and can be reached through the Company's corporate office at 1615 Poydras Street, Suite 1050, New Orleans, LA 70112:

Michael Henry	Chief Executive Officer
Michael Gordon	President
Dennis E. Kelly	Vice President / Secretary
Charles W. Stewart	Vice President / Treasurer
Penya M. Fields	Assistant Secretary
David C. Joseph	Assistant Secretary

(To be filled out by TRA)

Company ID Number 128442

Date Approved \_\_\_\_\_

Evaluator \_\_\_\_\_

Telephone (703) 904-4304, Toll-Free 1-888 263-8835, Facsimile (703) 736-8084

99-00731

**C. Name and telephone number of contact person authorized to respond to Authority inquiries Monday through Friday.**

Michael Henry, Chief Executive Officer  
American MetroComm/Tennessee, Inc.  
1615 Poydras Street, Suite 1050  
New Orleans, LA 70112  
Phone: (504) 500-2000  
Fax: (504) 500-2020

**D. List a toll-free telephone number that consumers can call to report service problems and/or request refunds or adjustments.**

American Metro Customers may reach its Customer Service department by dialing (800) 363-8763, Monday through Friday from 8:00 AM to 5:00 PM Central time. American Metro will be responsible for all customer inquiries and complaints. The toll-free telephone number will be provided on the Customer bill and in virtually all American Metro mailings.

**Check the type of telecommunication services you plan to provide in Tennessee.**

- ☐ Resell Interexchange long distance services
- ☒ [REDACTED]
- ☐ Operator Services
- ☐ Other (describe below)

**If providing operator services, list company name, address and contact person for all reseller carriers you serve in Tennessee. Provide the above information on Appendix I.**

[REDACTED]

**G. List the state(s) you are authorized to operate in at this time.**

STATE	LOCAL EXCHANGE	LONG DISTANCE
	Date Approved	Date Approved
AL	CERTIFIED	CERTIFIED
AK	Not yet applied	Not yet applied
AZ	Not yet applied	Not yet applied
AR	Not yet applied	Not yet applied
CA	Not yet applied	Not yet applied
CO	Not yet applied	Not yet applied
CT	Not yet applied	Not yet applied
DC	Not yet applied	Not yet applied
DE	Not yet applied	Not yet applied
FCC	Not yet applied	Not yet applied
FL	CERTIFIED	CERTIFIED
HI	Not yet applied	Not yet applied
GA	Not yet applied	CERTIFIED
ID	Not yet applied	Not yet applied
IL	Not yet applied	Not yet applied
IN	Not yet applied	Not yet applied
IA	Not yet applied	Not yet applied
KS	Not yet applied	Not yet applied
KY	CERTIFIED	CERTIFIED
LA	CERTIFIED	CERTIFIED
ME	Not yet applied	Not yet applied
MD	Not yet applied	Not yet applied
MA	Not yet applied	Not yet applied
MI	Not yet applied	Not yet applied
MN	Not yet applied	Not yet applied
MS	CERTIFIED	CERTIFIED
MO	Not yet applied	Not yet applied
MT	Not yet applied	Not yet applied
NE	Not yet applied	Not yet applied
NV	Not yet applied	Not yet applied
NH	Not yet applied	Not yet applied
NJ	Not yet applied	Not yet applied
NM	Not yet applied	Not yet applied
NY	Not yet applied	Not yet applied
NC	Not yet applied	Not yet applied
ND	Not yet applied	Not yet applied
OH	Not yet applied	Not yet applied
OK	Not yet applied	Not yet applied
OR	Not yet applied	Not yet applied
PA	Not yet applied	Not yet applied
RI	Not yet applied	Not yet applied
SC	Not yet applied	Not yet applied
SD	Not yet applied	Not yet applied
TN	Not yet applied	Not yet applied
TX	CERTIFIED	CERTIFIED
UT	Not yet applied	Not yet applied
VA	Not yet applied	Not yet applied
VT	Not yet applied	Not yet applied
WA	Not yet applied	Not yet applied
WV	Not yet applied	Not yet applied
WI	Not yet applied	Not yet applied
WY	Not yet applied	Not yet applied

**H. List any states that you have been denied authority to provide service.**

None

**I. Areas in Tennessee to be served.**

Entire State, starting with the BellSouth service areas.

**J. What type of Customers will the company serve?**

- ☒ Business
- ☒ Residential
- ☐ Aggregators (e.g. Hotels, Payphones)
- ☐ Other (specify)\_\_\_\_\_

**K. Do you allow a property imposed fee (PIF) to be added to the price of intrastate telephone calls over your network? If yes, specify amount.**

Not applicable.

**L. Are your prices for intrastate services plus any PIF equal to or less than the dominant carriers price for similar services?**

Yes

**M. Describe the type of services and price that the applicant will be offering in Tennessee on the Informational Tariff Form found in Appendix II<sup>1</sup>**

American Metro proposes to offer basic local exchange service to business and residential Customers. See tariff at Attachment D.

**N. What is the applicant's 10XXX or 800 access code?**

Not applicable for Competitive Local Exchange Service.

**O. Does the applicant now have or plan to have any telecommunications facilities (e.g. switches, fiber lines) in Tennessee?**

American Metro plans on collating in each LATA within the state by using a Suma 4 from Cisco and a Pathstar from Lucent.

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<sup>1</sup>Applicant is required to fill out an Informational Tariff form. Failure to fill out this form will cause the applicant's request to be rejected.

**P. What facility-based network will the applicant be reselling?**

The Company will be reselling the Incumbent Local Exchange Company's network.

**Q. Will the applicant be utilizing the local telephone company's billing system or billing Customers direct<sup>2</sup>?**

The Company proposes to bill its Customers for local exchange service through the incumbent local telephone company's billing system.

**R. Describe briefly how the applicant plans to market their services in Tennessee. If an independent telemarketer is going to be used, state company name and address.**

American Metro intends to market its local exchange service offering to its long distance Customers in Tennessee through brochures in Customer's bills.

**S. Describe the procedures the applicant will use to switch a consumer's preferred interexchange service.**

American Metro would obtain a written letter of agency from its Customers.

**T. Applicant has the ability and agrees to honor the form of call blocking that the consumer has subscribed to with their local telephone company.**

Yes

**U. Applicant gives permission to the local telephone company to provide the Commission a periodic sample of the reseller's intrastate toll calls. The purpose of this analysis is to audit the reseller's rates to assure they are at or below the dominant carrier's tariffed rates.**

Yes

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<sup>2</sup>A copy of a bill is required if the applicant is going to bill the Customer direct.

## **PART II: Organization Structure**

### **A. Type of Organization**

- ☐ Individual
- ☒ Corporation
- ☐ Partnership
- ☐ Other (Explain on separate sheet)

### **B. If partnership and/or Non-resident**

- (1) **Attach a copy of Articles of Incorporation and current by-laws.**
- (2) **Attach a copy of Certification of Authority issued by Tennessee Secretary of State showing corporation's authority to engage in business in Tennessee.**

See Attachments A and B.

## **PART III: Financial Information**

**Attach a current financial statement showing in detail the applicant's financial condition, including balance sheet and income statement, or a copy of IRS form 1120 or 1065 filed by your business for the previous year. Attach, if available, a copy of your company's 10K and/or stockholder reports.**

See Attachment C.

## **PART IV: Display Card**

**Attach a copy of the display card to be placed on the aggregators telephone which shows what operator services are to be provided. The card must contain all required information listed in the attached Rule (1220-4-2-.57,B)<sup>3</sup>, which includes a toll-free number consumers can call for service problems and refunds.**

Not applicable.

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<sup>3</sup>It is the responsibility of the reseller or operator service provider to assure that the appropriate display card is affixed to the aggregates telephones.

**Appendix II**  
**Informational Tariff Sheet**

The rates in the tariff are the Dominate Carrier's (BellSouth) rates.

See Attachment D.

**PART V: Rule Compliance Agreement**

- A. The Interexchange Reseller or Operator Service Provider applicant, hereby, affirms the following:
- Has received, read, and understands the Tennessee Public Service Commission's (TPSC) interexchange Reseller Rules and Regulations, (Appendix III)
  - Understands the penalties for non-compliance, and all associated fees to provide such service.
  - Will comply with the TPSC Interexchange Reseller Rules and all other applicable Commission Rules and state laws, including T.C.A. Section 65-5-206 (Appendix IV),
  - That all information provided in the attached registration document is true to the best of my knowledge.

American MetroComm/Tennessee, Inc.

  
\_\_\_\_\_  
Michael Henry, Chief Executive Officer

Date: 9-20-99

Subscribed and sworn

before me this 21<sup>st</sup> day of September, 1999

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

3 4 13 7 12 4 13 13

**CHARTER  
OF  
AMERICAN METROCOMM/TENNESSEE, INC.**

The undersigned person under the Tennessee Business Corporation Act adopts the following charter for the above listed corporation.

1.

The name of the corporation is American MetroComm/Tennessee, Inc.

2.

The duration of the corporation shall be perpetual and shall commence upon the signing and acknowledging this Charter.

3.

The business of the Corporation shall be solely to develop, acquire, own, operate, lease, mortgage and/or sell property for or related to the carriage, transmission and/or processing of telecommunications, data, cable services or other intelligence by telegraph, telephone or other system of transmitting of intelligence and to do any and all things necessary or incidental to any of the foregoing to carry out and further the business of the corporation as contemplated herein.

4.

The corporation is authorized to issue one hundred thousand (100,000) shares of no par common stock. All stock of the corporation shall be issued pursuant to a plan under Section 1244 of the Internal Revenue Code of 1954 as added by the Small Business Tax Revision Act of 1958.

All of said stock shall be payable in cash, or property, other than stock or securities, in lieu of cash, or services, at a just valuation to be determined by the Board of Directors of this corporation.

5.

The street address of the initial registered office of this corporation is 530 Gay St., Knoxville, TN 39702 and the name of the initial registered agent of this corporation at that address is CT Corporation System.

6.

The corporation is for profit.

**FILED**

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7.

The initial officers of the corporation are:

Gary George – President

Albert I. Donovan, Jr. – Vice President and Treasurer

Dennis Kelly – Vice President and Secretary

8.

The principal mailing address of the corporation is 1615 Poydras Street, Suite 1050, New Orleans, Louisiana 70112.

9.

The name and address of each incorporator is:

Dennis Kelly  
1615 Poydras Street, Suite 1050  
New Orleans, Louisiana 70112

10.

Section 1. Right to Indemnification. Each person who was or is a party or is threatened to be made a party to or is involved in any threatened, pending or complete action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding"), including any action by or in the right of the Corporation, by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a director or officer of the Corporation or, as a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, partner, employee or agent of another business, nonprofit or foreign corporation, partnership, joint venture, limited liability company, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such Proceeding is alleged action in an official capacity as a director, officer, partner, trustee, employee or agent or in any other capacity, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by law, as the same exists or may hereafter be amended (but, in the case of any amendment, such amendment shall be enforced hereunder only to the extent that such amendment permits the Corporation to provide broader indemnification rights than permitted to the corporation to provide prior to such amendment), against any and all expenses, including attorneys' fees, liabilities, losses, judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement actually and reasonably incurred or suffered by such person in connection with such Proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal Proceeding, had no reasonable cause to believe his or her conduct was unlawful; provided, however, that the Corporation shall indemnify any such

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person seeking indemnity in connection with a Proceeding (or part thereof) initiated by such person only if such Proceeding (or part thereof) initiated by such person was authorized by the Board of Directors of the Corporation.

In case of actions by or in the right of the Corporation, no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, to be liable for willful or intentional misconduct in the performance of his or her duty to the Corporation, unless, and only to the extent that the court shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, he or she is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal proceeding, had reasonable cause to believe that his or her conduct was unlawful.

To the extent that a director or officer has been successful on the merits or otherwise in defense of any such Proceeding, or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonable incurred by him or her in connection therewith.

Any indemnification under this Charter, unless ordered by the court, shall be made by the Corporation only as authorized in a specific case upon a determination that the applicable standard of conduct has been met. Such determination shall be made:

- (1) First, by the board of Directors of the corporation by a majority vote of a quorum consisting of directors who were not parties to such Proceeding, or
- (2) If such a quorum is not obtainable and the Board of Directors so directs, by independent legal counsel, or
- (3) If not by legal counsel, by vote of shareholders that are not a party to such Proceeding.

Any right to indemnification hereunder shall include the right to be paid by the Corporation expenses, including attorney's fees incurred in defending any such Proceeding, in advance of its final disposition; provided, however, that the payment of such expenses in advance of the final disposition of such Proceeding shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such director or officer, in which such director or officer agrees to repay all amounts so advanced if it ultimately should be determined that such person is not entitled to be indemnified under this Charter or otherwise. Such right to indemnification shall also continue as to a person who has ceased to be a director or officer and shall inure to the benefit of his or her heirs or legal representatives.

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Section 2. Right of Claimant to Bring Suit. (i) If a claim under Section 1 is not paid in full by the Corporation within ninety days after a written claim therefor has been received by the Corporation, the claimant may bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall also be entitled to be paid the expense (including attorneys' fees) of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any, has been tendered to the Corporation) that the claimant has not met the standards of conduct which make it permissible for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation.

(ii) Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or its shareholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or its shareholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

Section 3. Contractual Rights; Applicability. The rights and obligations of the Corporation and the person entitled to relief from liability or indemnification under this Charter (i) shall be deemed to be a contract between the corporation and such person based upon good and valuable consideration, pursuant to which the person entitled thereto may bring suit as if the provisions hereof were set forth in a separate written contract between the Corporation and the director or officer, (ii) shall be retroactive and shall be available with respect to events occurring prior to the adoption hereof, (iii) shall continue to exist after the rescission or restrictive modification hereof with respect to events occurring prior thereto, and (iv) any repeal, amendment or modification of this Charter shall not adversely affect any right to protection of a director or officer existing at the time of such repeal, amendment or modification.

Section 4. Requested Service. Any director or officer of the Corporation serving, in any capacity, (i) another corporation or other entity of which a majority of the shares entitled to vote in the election of its directors or other ownership interests are held by the Corporation, or (ii) any employee benefit plan of the Corporation or of any corporation or entity referred to in clause (i), shall be deemed to be doing so at the request of the Corporation.

Section 5. Non-Exclusivity of Rights. The rights conferred on any person by Sections 1 and 2 of this Charter shall not be deemed exclusive of, and shall be in addition to, any other rights which such person may have or may hereafter acquire under any statute, rule, provision of this Charter, By-Laws, agreement, vote of shareholders or disinterested directors or otherwise; provided, however, that no such other right shall permit indemnification of any officer or director for the results of such person's willful or intentional misconduct.

Section 6. Insurance. The Corporation may purchase and maintain insurance, obtain letters of credit, act as a self-insurer, create a reserve, trust, escrow or other fund or account or enter into indemnification agreements, with or on behalf of any person who is or was a director,

officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, limited liability company, trust or other enterprise, including service with respect to employee benefit plans, against any liability asserted against him or her or incurred by such person in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under this Charter.

11.

Section 1. Notwithstanding any other provision of the Charter, or, to the extent permitted by law, any provision of law that otherwise so empowers the Corporation, for so long as the Corporation owes any duty or obligation under any loan document entered into with Foothill Capital Corporation, A California corporation, ("Foothill") and each of the lending parties thereto, or any of their respective successors or assigns (the "Lenders") and for a period of ninety-one (91) days thereafter, the Corporation shall not, without the unanimous consent of all members of the Board of Directors, do any of the things listed in this section under (a), (b) or (c). Such consent may not be approved by written consent, but at a duly noticed and convened meeting of the Board of Directors, in accordance with the provisions of the Charter.

- (a) engage in any business or activity other than the purpose set forth in this Charter;
- (b) voluntarily dissolve or liquidate, in whole or in part; or
- \*(c) commence or cause or permit a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect, including, but not limited to, the Bankruptcy Code, or seeking the appointment of a trustee, receiver, liquidator, custodian, examiner or other similar official of it or any substantial part of its property, or consent to any such relief or to the appointment or taking possession by any such official in an involuntary case or other proceeding commences against it, or make a general assignment for the benefit of creditors, or take any action or fail to take any action for itself which would result in the Corporation's inability to pay its debts as they become due, or take or permit any action to authorize any of the foregoing for itself. "Bankruptcy Code" means Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as is now in effect or hereafter amended.

Section 2. Until the date which is ninety one (91) days after the last due on which any and all duties and obligations of the Corporation to the Lenders have been fully and indefeasibly satisfied, the Corporation shall not amend, alter, change or repeal the Charter of Incorporation or these amendments without the unanimous written consent of all Directors nor shall any such amendment, alteration, change or repeal be effected in violation of any agreement the Corporation shall have entered prohibiting any such amendment. Subject to the foregoing limitation, the Corporation reserves the right to amend, alter, change or repeal any provision

contained in the Charter of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

## 12.

At all times, one of the Directors of the Corporation shall be an Independent Director. In the event of the death, incapacity, resignation or removal of the Independent Director, the Board of Directors of the Corporation shall immediately replace such Independent Director with another Independent Director. No actions of the Board of Directors or of the Corporation which require the consent of the Independent Director shall be taken in the absence of an Independent Director. "Independent Director" means a director of the Corporation who shall at no time be a director or officer of, be employed by or hold any Beneficial Interest in the Corporation (except for his position as Independent Director) or any Affiliate thereof, and who shall at no time serve as a trustee in bankruptcy for the Corporation or any Affiliate. "Affiliate" means, with respect to a specified Person, (i) a Person who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, the specified Person, (ii) any Person who is an officer, director, partner, manager, employee, or trustee of, or serves in a similar capacity with respect to, the specified Person or of which the specified Person is an officer, partner, manager or trustee, or with respect to which the specified Person serves in a similar capacity, (iii) any Person who, directly or indirectly, is the Beneficial Owner of any class of equity securities of, or otherwise has a Beneficial Interest in, the specified Person or in which the Specified Person has a Beneficial Interest and (iv) the spouse, issue, or parent of the specified Person. An Affiliate does not include a Person who is a partner in a partnership or joint venture with the Corporation if such Person is not otherwise an Affiliate of the Corporation or any Shareholder. "Control" or any derivative thereof, when used with respect to a specified Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through ownership of voting securities or partnership or other ownership interests, by contract or otherwise; provided, however, that, without limiting the generality of the foregoing, (a) any Person (including family members of such Person) which owns, directly or indirectly, securities representing 20% or more of the value or ordinary voting power of a corporation or 20% or more of the partnership or other ownership interests (based upon value or vote) of any other Person is deemed to Control such corporation or other Person, (b) a general partner shall always be deemed to Control any partnership of which it is a general partner, and (c) a member-manager of a limited liability company shall always be deemed to Control any limited liability company of which it is a manager. "Director" means a direct of the Corporation. "Shareholder" means a shareholder of the Corporation. "Person" means an individual, trust, estate, partnership or any right to any profits or losses of and/or to vote or to direct or to cause the direction of the management, policies, or affairs of any such Person whether through ownership of voting securities or partnership or other ownership interests, by contract or otherwise.

## 13.

When voting on matters subject to the unanimous vote of the Board of Directors and notwithstanding that the Corporation is solvent (on either a balance sheet or equitable basis), the

Independent Director shall take into account the interests of the creditors of the Corporation, as well as the interests of the Corporation.

14.

The notice required of meetings of the Board of Directors on matters requiring the unanimous vote of the Board shall be given not less than three (3) business days prior to the date the meeting is to be held. The notice shall be given to each Director and to any person (including, without limitation, Foothill) who has provided written notice to the Secretary of the Corporation that such person is a pledgee of any shares of stock of the corporation. Any person entitled to receive notice of the meeting may waive that person's right to notice, provided, however, that such waiver is only effective against that person granting such waiver.

15.

Any matters subject to the unanimous vote of the Board of Directors specified in this Charter, shall also require the unanimous approval of the holders of the common stock of the Corporation at a shareholder meeting. Notice of the shareholder's meeting shall be given not less than five (5) business days prior to the date the meeting is to be held. Notice must be given to each shareholder and to any person (including, without limitation, Foothill) who has provided written notice to the Secretary of the Corporation that such person is a pledgee of any shares of stock of the Corporation (such unanimous shareholder approval may not be given by written consent without such a meeting or in lieu of a meeting). Any person entitled to receive notice of the meeting may waive that person's right to notice, provided, whoever, that such waiver is only effective against the person granting such waiver.

16.

At all times, the Corporation shall be required to (i) maintain books and records separate from any individual, trust, estate, partnership, joint venture, association, limited liability company, corporation or other entity ("Person"); (ii) maintain its accounts separate from any other Person; (iii) not to commingle assets with those of any other Person; (iv) maintain separate financial statements; (v) pay its own liabilities out of its own funds; (vi) observe all corporate formalities; (vii) maintain an arm's length relationship with its Affiliates; (viii) allocate fairly and reasonably any overhead for shared office space; (ix) use separate stationary, invoices and checks; (x) hold itself out as a separate Person; (xi) correct any known misunderstanding regarding its separate identity.

This 12<sup>th</sup> day of November, 1997.



Dennis Kelly

134107 124710

# ACKNOWLEDGEMENT

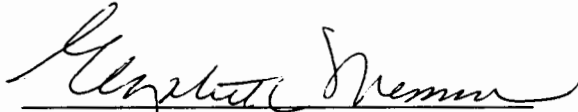
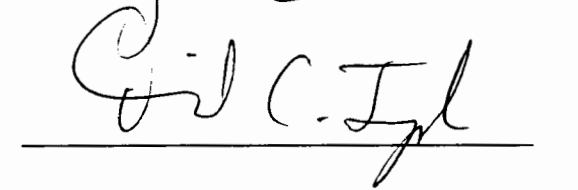
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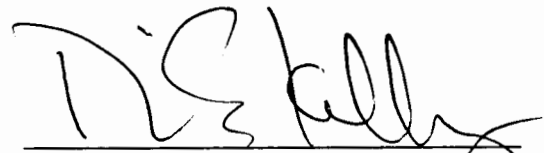
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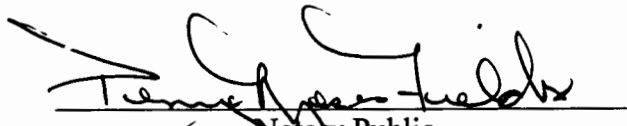
BEFORE ME, the undersigned authority, personally came and appeared Dennis Kelly, known to me personally to be the person who executed the foregoing instrument.

IN WITNESS WHEREOF, the appearer and witnesses and I have hereto affixed our signatures on this 12<sup>th</sup> day of November, 1997.

WITNESSES:

  
Dennis Kelly

  
Notary Public

PENYA MOSES FIELDS  
ATTORNEY AT LAW  
NOTARY PUBLIC  
STATE OF LOUISIANA  
MY COMMISSION IS ISSUED FOR LIFE

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**WRITTEN CONSENT  
OF  
SOLE INCORPORATOR**

Acting pursuant to Tennessee law, the undersigned, being the sole incorporator of American MetroComm/Tennessee, Inc., hereby adopts the following resolutions:

1. Number of Directors


RESOLVED, that the number of directors of the Corporation is hereby fixed at no less two and no more than nine, absent further action by the shareholders.

2. Election of Directors

RESOLVED, that the following persons are elected as Directors of the Corporation:

<u>Name</u>	<u>Address</u>
Gary George	1615 Poydras St., Ste. 1050 New Orleans, LA 70112
Albert I. Donovan, Jr.	1615 Poydras St., Ste. 1050 New Orleans, LA 70112
Dennis Kelly	1615 Poydras St., Ste. 1050 New Orleans, LA 70112

DATE: November 13, 1997

  
\_\_\_\_\_  
Dennis Kelly, Incorporator



**UNANIMOUS CONSENT  
OF  
DIRECTORS**

Acting pursuant to Tennessee law, the undersigned, being all of the directors of American MetroComm/Tennessee, Inc., hereby adopt the following resolutions by unanimous written consent.

1. Officers

RESOLVED, that the following persons be and hereby are elected officers of the Corporation as identified below, to serve in such capacity until their successors are elected and take their place, at such compensation as may be established from time to time by the Directors:

Office

Gary George  
Albert I. Donovan  
Dennis Kelly

Office

President  
Vice President and Treasurer  
Vice President and Secretary

2. \*Stock

RESOLVED, that the officers of the Corporation are hereby authorized, empowered and directed to issue the following number of shares of common no-par value stock to the person listed for the consideration shown:

<u>Shareholder</u>	<u>Shares</u>	<u>Consideration</u>
American MetroComm Corporation	50,000	\$ 1,000.00

3. Stock Certificates

RESOLVED, that the form of stock certificate attached hereto is approved for the issuance of stock of the Corporation.

4. Designation of Fiscal Year


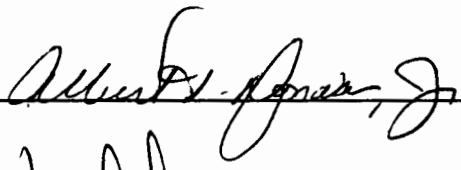

RESOLVED, that the Corporation shall keep its books for both tax and financial accounting purposes on a calendar year basis.

FURTHER RESOLVED, that the officers of the Corporation are, and each of them is authorized and directed to complete, execute and file on behalf of the Corporation such documents, including Form SS-4 of the Internal Revenue Service, as are necessary and proper to effectuate its selection to be taxed on such basis, and to do such further acts and things as may be appropriate thereto.

5. Incorporator

RESOLVED, that the actions of the Incorporator are ratified and confirmed.

DATE:  
November 13, 1997

  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_

**WRITTEN CONSENT OF  
SOLE SHAREHOLDER**

The undersigned, constituting the sole shareholder of American MetroComm/Tennessee, Inc. (the "Corporation"), hereby gives its written consent to the adoption of the following resolutions:

WHEREAS, in connection with a borrowing relationship with Foothill Capital Corporation ("Foothill"), the Corporation has included in its Articles of Incorporation an article to provide for the election of an independent Director for so long as the Corporation has outstanding obligations to Foothill; and

WHEREAS, Brooke H. Duncan, formerly a director of Tulane University, Hibernia Bank and Entergy Corporation, has indicated a willingness to serve as such independent Director, and Foothill has been made aware of Mr. Duncan's credentials and has no objection to his election to such position;

NOW THEREFORE, BE IT RESOLVED, that Brooke H. Duncan is hereby elected Director of the Corporation, for such term and compensation, and subject to such terms and conditions, as may be set forth by agreement signed by Mr. Duncan and the President of the Corporation;

BE IT FURTHER RESOLVED, that Gary George, Albert I. Donovan, Jr., and Dennis Kelly are hereby elected Directors of the Corporation, to serve in such capacity without compensation until their successors are chosen and take their place.

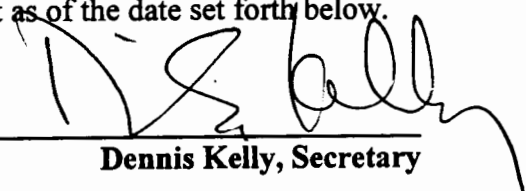
DATE: November 13, 1997

American MetroComm Corporation

By:   
Gary George, President

**CERTIFICATE**

I, the undersigned Secretary of American MetroComm/Tennessee, Inc., hereby certify that the above and foregoing resolution was duly adopted by the sole shareholder of American MetroComm/Tennessee, Inc. and remains in full force and effect as of the date set forth below.

  
Dennis Kelly, Secretary

Date: 11/13/97

WRITTEN CONSENT OF  
SOLE SHAREHOLDER

The undersigned, constituting the Sole Shareholder of American MetroComm/Tennessee, Inc., a Tennessee corporation (the "Corporation"), hereby consents to the adoption of the following resolution in lieu of an annual meeting of shareholders.

RESOLVED, that the following persons are hereby elected Directors of the Corporation, to serve without compensation except as agreed in writing until their successors are elected and take their place:

Gary George

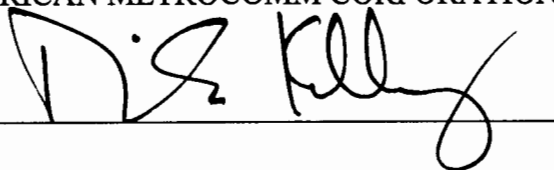
Dennis Kelly

Brooke Duncan,

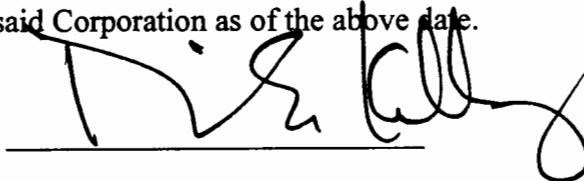
DATE: May 15, 1998

AMERICAN METROCOMM CORPORATION

BY: \_\_\_\_\_

A handwritten signature in black ink, appearing to read "D. Kelly", written over a horizontal line.

I, the undersigned Secretary of  
American MetroComm/Tennessee, Inc., a Tennessee corporation,  
Certify that the above-named shareholder is the sole shareholder  
Of said Corporation as of the above date.

A handwritten signature in black ink, appearing to read "D. Kelly", written over a horizontal line.


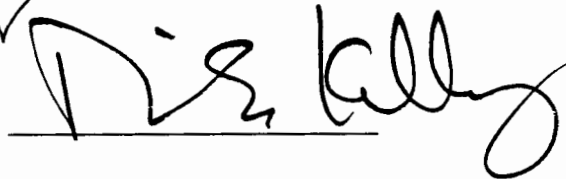
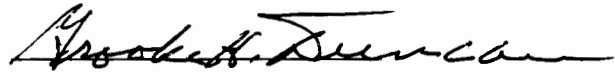
## UNANIMOUS CONSENT OF DIRECTORS

The undersigned, constituting all of the Directors of American MetroComm/Tennessee, Inc., a Tennessee corporation (the "Corporation"), hereby adopt by unanimous written consent the following resolution:

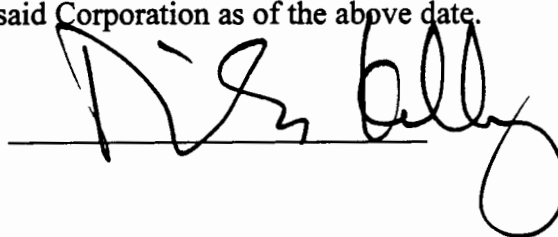
RESOLVED, that the following officers of the Corporation are elected, to serve without compensation until their successors are elected:

President	Gary George
Vice President and Secretary	Dennis Kelly
Vice President and Treasurer	Charles Stewart
Assistant Secretary	Penya Fields
Assistant Secretary	David Joseph

DATE: May 16, 1998

I, the undersigned Secretary of  
American MetroComm/Tennessee, Inc., a Tennessee corporation,  
Certify that the above-named Directors are all of the Directors  
Of said Corporation as of the above date.



29

**AMERICAN METROCOMM/TENNESSEE, INC.**

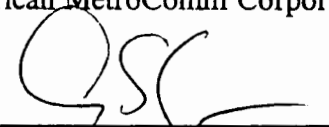
**Written Consent of Sole Shareholder**

The undersigned, being the sole shareholder of American MetroComm/Tennessee, Inc., a Tennessee corporation (the "Corporation"), and acting by written consent in accordance with applicable law does hereby adopt the following corporate resolution:

RESOLVED that the Articles of Incorporation of the Corporation be and are hereby amended to amend and restate the Article attached hereto as Exhibit "A".

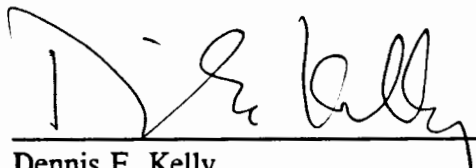
This Written Consent is dated this 17 day of April, 1998.

American MetroComm Corporation

  
By: Gary S. George  
President

**Certificate**

I, Dennis E. Kelly, being the Secretary of American MetroComm/Tennessee, Inc., a Tennessee corporation, do hereby certify that the subscriber to the foregoing Written Consent is the sole shareholder of American MetroComm/Tennessee, Inc. and that this Written Consent was duly adopted on April \_\_, 1998, and such written consent has not been amended, modified or rescinded in any respect.

  
Dennis E. Kelly

## Exhibit "A"

### Article of Amendment to the Articles of Incorporation of American MetroComm/Tennessee, Inc.

Article 11 of the Articles of Incorporation shall be amended and restated in its entirety to read as follows:

#### 11.

Section 1. Notwithstanding any other provision of the Articles of Incorporation, or, to the extent permitted by law, any provision of law that otherwise so empowers the Corporation, for so long as the Corporation owes any duty or obligation under any loan document entered into with Goldman Sachs Credit Partners L.P., a Bermuda limited partnership ("Goldman Sachs"), and each of the other lending parties thereto, or any of their respective successors or assigns (the "Lenders"), and for a period of ninety-one (91) days thereafter, the Corporation shall not, without the unanimous consent of all members of the Board of Directors, do any of the things listed in this section under (a), (b) or (c). Such consent may not be approved by written consent, but only at a duly noticed and convened meeting of the Board of Directors, in accordance with the provisions of the Articles of Incorporation.

- (a) engage in any business or activity other than the purpose set forth in these Articles of Incorporation;
- (b) voluntarily dissolve or liquidate, in whole or in part; or
- (c) commence or cause or permit a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect, including, but not limited to, the Bankruptcy code, or seeking the appointment of a trustee, receiver, liquidator, custodian, examiner or other similar official of it or any substantial part of its property, or consent to any such relief or to the appointment or taking possession by any such official in an involuntary case or other proceeding commenced against it, or make a general assignment for the benefit of creditors, or take any action or fail to take any action for itself which would result in the Corporation's inability to pay its debts as they become due, or take or permit any action to authorize any of the foregoing for itself. "Bankruptcy Code" means

Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq., as is now in effect or hereafter amended.

Section 2. Until the date which is ninety-one (91) days after the last date on which any and all duties and obligations of the Corporation to the Lenders have been fully and indefeasibly satisfied, the Corporation shall not amend, alter, change or repeal the Articles of Incorporation or these amendments without the unanimous written consent of all Directors nor shall any such amendment, alteration, change or repeal be effected in violation of any agreement the Corporation shall have entered prohibiting any such amendment. Subject to the foregoing limitation, the Corporation reserves the right to amend, alter, change or repeal any provision contained in the Articles of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

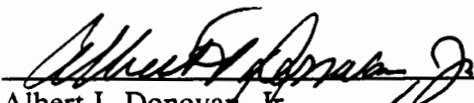


AMERICAN METROCOMM/TENNESSEE, INC.


**Unanimous Written  
Consent of Directors**

In lieu of a special meeting of the Directors of American MetroComm/Tennessee, Inc., a Tennessee corporation (the "Corporation"), the undersigned, being all of the directors of the Corporation and acting by written consent in accordance with applicable law, do hereby unanimously adopt the corporate resolutions attached hereto as Exhibit A.

This Unanimous Written Consent is dated as of April 17, 1998.

  
Albert I. Donovan, Jr.

  
Brooke H. Duncan

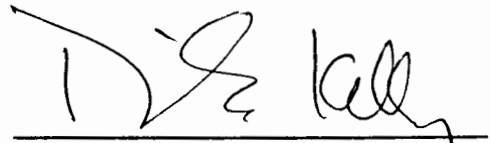
  
Gary S. George

  
Dennis E. Kelly

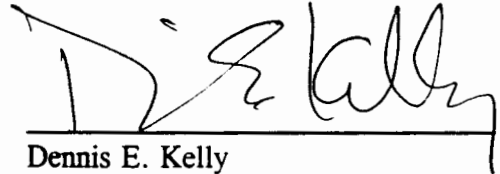
AMERICAN METROCOMM/TENNESSEE, INC.

Certificate of Secretary

I, Dennis E. Kelly, being the Secretary of American MetroComm/Tennessee, Inc., a Tennessee corporation (the "Corporation"), do hereby certify that the subscribers to the foregoing Unanimous Written Consent are all of the Directors of the Corporation and this Written Consent was duly adopted on April 17, 1998, and such written consent has not been amended, modified or rescinded in any respect.

  
Dennis E. Kelly

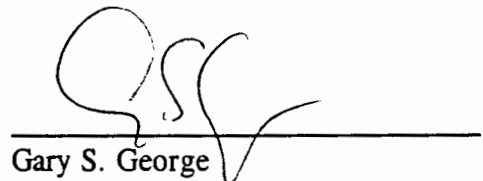
17 IN WITNESS WHEREOF, the undersigned has hereunto set his hand on this  
day of April, 1998.

  
Dennis E. Kelly  
Secretary

**Certificate**

THE UNDERSIGNED, Gary S. George, does hereby certify on behalf of the Corporation that he is the duly elected and acting President of the Corporation and that Dennis E. Kelly is the duly elected and acting Secretary of the Corporation and the signature set forth above is his genuine signature.

17 IN WITNESS WHEREOF, the undersigned has hereunto set his hand on this  
day of April, 1998.

  
Gary S. George  
President

**—Secretary of State**

**Corporations Section**

**James K. Polk Building, Suite 1800**

**Nashville, Tennessee 37243-0306**

DATE: 11/13/97  
REQUEST NUMBER: 3407-2463  
TELEPHONE CONTACT: (615) 741-0537  
FILE DATE/TIME: 11/13/97 1101  
EFFECTIVE DATE/TIME: 11/13/97 1101  
CONTROL NUMBER: 0340547

TO:  
AMERICAN METROCOMM CORP  
1615 POYDRAS ST  
SUITE 1050  
NEW ORLEANS, LA 70112

RE:  
AMERICAN METROCOMM/TENNESSEE, INC  
CHARTER - FOR PROFIT

CONGRATULATIONS UPON THE INCORPORATION OF THE ABOVE ENTITY IN THE STATE OF TENNESSEE, WHICH IS EFFECTIVE AS INDICATED.

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

WHEN CORRESPONDING WITH THIS OFFICE OR SUBMITTING DOCUMENTS FOR FILING, PLEASE REFER TO THE CORPORATION CONTROL NUMBER GIVEN ABOVE. PLEASE BE ADVISED THAT THIS DOCUMENT MUST ALSO BE FILED IN THE OFFICE OF THE REGISTER OF DEEDS IN THE COUNTY WHEREIN A CORPORATION HAS ITS PRINCIPAL OFFICE IF SUCH PRINCIPAL OFFICE IS IN TENNESSEE.

FOR: CHARTER - FOR PROFIT

ON DATE: 11/13/97

FROM:  
AMERICAN METROCOMM CORPORATION  
1615 POYDRAS ST  
SUITE 1050  
NEW ORLEANS, LA 70112-0000

RECEIVED: FEES \$50.00 \$50.00  
TOTAL PAYMENT RECEIVED: \$100.00

RECEIPT NUMBER: 00002205111  
ACCOUNT NUMBER: 00272498



*Riley C. Darnell*

RILEY C. DARNELL  
SECRETARY OF STATE