

TC00-015

TC00-015

11/15/7

TC00-015

DOCKET NO.

IN THE MATTER OF THE
APPLICATION OF SHARED
COMMUNICATIONS SERVICES, INC.
FOR A CERTIFICATE OF AUTHORITY
TO PROVIDE TELECOMMUNICATIONS
SERVICES IN SOUTH DAKOTA

Public Utilities Commission of the State of South Dakota

MEMORANDA

2/17 cc Link and Nichols;
2/17 cc Kelly filing;
2/17 cc Applicant to Application C.O.A.;
2/17 cc Kelly filing C.O.A.;
2/17 cc Nichols Class.



SHARED COMMUNICATIONS
A wholly owned subsidiary of Advanced TelCom Group, Inc.

TC00-015

Page 12039
Salem, OR 97309

Tel (800) 285-6100

for 503-399-1459
www.sharedcommunications.com

February 11, 2000

VIA FEDERAL EXPRESS

South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501

RECEIVED

FEB 14 2000

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

RE: Application for Certificate of Public Convenience and Authority to
operate as a non-facilities-based reseller of interexchange
telecommunications services in the State of South Dakota.

To Whom It May Concern:

Shared Communications Services, Inc. hereby submits the enclosed
Application, seeking authority to operate as a reseller of interexchange
telecommunications services within the State of South Dakota. An original and
eleven (11) copies are provided. Please date-stamp one copy and return it in the
postage-paid return envelope to the undersigned. Also enclosed, please find a
check for the required application fee, in the amount of \$250.00.

Please do not hesitate to contact me if you should have questions or
require any additional information regarding this matter.

Sincerely,

Meadow L. Columbus
Meadow L. Columbus
Regulatory Administrator

Enclosures

cc: Michael Dell Long, Esq.

START

OF

RETAKE

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Public Utilities Commission of the State of South Dakota

DATE

MEMORANDA

2/14/00 Filed and Docketed;
2/17/00 Public Filing;
5/1/00 Supplement to Application and Revised Tariff Pages;
5/23/00 Order Granting COA;
5/23/00 Docket Closed.



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Meadow L. Columbus
Regulatory Administrator

Enclosures

cc Michael Dell Long, Esq.

END

OF

RETAKE

STATE OF SOUTH DAKOTA
PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)
SHARED COMMUNICATIONS SERVICES, INC.)
FOR A CERTIFICATE OF AUTHORITY FOR)
INTEREXCHANGE SERVICE WITHIN THE)
STATE OF SOUTH DAKOTA)

APPLICATION

Shared Communications Services, Inc. ("SCS") respectfully applies to the South Dakota Public Utilities Commission ("Commission") for a Certificate of Authority for Interexchange Service, pursuant to SDCL 49-31-3, to operate as a non-facilities-based reseller of interexchange telecommunications services to the public within the State of South Dakota. In support of this Application, SCS provides the following information:

1. SCS maintains its headquarters at 3723 Fairview Industrial Drive, S.E., Salem, Oregon, 97302. SCS' phone number is (503) 399-7000 or toll free (800) 285-6100.
2. SCS is incorporated under the laws of the State of Oregon. A copy of the Articles of Incorporation, as amended, is attached as Exhibit 1. SCS received a Certificate of Authority to transact business within of State of South Dakota on September 14, 1998, a copy of which is attached. Exhibit 2.
3. SCS does not maintain an office in South Dakota at this time. SCS' South Dakota registered agent for service of process is CT Corporation System, 319 S. Coteau Street, Pierre, South Dakota, 57501.

4. Advanced TelCom Group, Inc. ("ATGI"), a (state) corporation which maintains its corporate headquarters at 110 Stony Point Rd., Santa Rosa, CA 95401, owns 100 percent of the ownership interest in SCS. Although, SCS is a wholly-owned subsidiary of ATGI, both SCS and ATGI will continue to operate their respective telecommunications businesses under their current names, and without any disruption in service, confusion or inconvenience to customers of SCS.

5. SCS' initial service offerings will include emerging competitive services such as inter-LATA and intra-LATA switched message toll service, 800 service, and calling card services. SCS will also provide travel cards, directory assistance and operator services to its pre-subscribed customers. Additional calling features may be added in the future. A complete description of SCS' proposed services and initial prices is included in Applicant's initial proposed tariff, which is attached hereto and incorporated as part of this Application as Exhibit 3.

6. SCS intends to provide telecommunications services to residential and business customers statewide as a non-facilities-based (switchless) reseller of emerging competitive interexchange services utilizing certificated interexchange carrier network facilities. SCS does not own, operate, control or manage any communications transmission facility within the State of South Dakota. Customers will become customers of SCS, not the underlying interexchange carrier.

7. SCS does not own or control any subsidiaries.

8. SCS possesses adequate financial resources to provide the proposed services. Attached hereto as Exhibit 4 are the audited income statement and balance sheet for the fiscal year October 1, 1997 through September 30, 1998. Further, Applicant has attached hereto as Exhibit 5 the interim financial reports for the months October 1, 1998 through July 31, 1999, the date of the

Applicant's acquisition by AT&T.

9. The name, title, address and telephone number of person to whom correspondence, communications and orders and decisions of the Commission are to be sent regarding this Application and for ongoing operations of the Company is as follows:

Meadow Columbus, Regulatory Administrator
Shared Communications Services, Inc.
3723 Fairview Industrial Drive, S.E.
Salem, Oregon, 97302
(503) 316-4427/(877)299-2282

10. SCS intends to bill all South Dakota customers directly on a timely and accurate basis. SCS will provide full call detail information and will comply with the applicable regulatory requirements. SCS' direct billing invoices include a customer service 1-800 telephone number through which the customer may access the Customer Service Department. SCS has a fully-staffed and professional customer service department which is capable of fielding and acting upon direct billing inquiries.

11. SCS has been providing telecommunications services since 1986 and is authorized to provide intrastate telecommunications services in Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. SCS is also an authorized reseller of international telecommunications services by the Federal Communications Commission. SCS has never been denied certification nor had such

SHARED COMMUNICATIONS SERVICES, INC. APPLICATION FOR CERTIFICATE OF
AUTHORITY - Page 3

certificates revoked for any reason. SCS is in good standing with the appropriate regulatory agencies in each of the states where it is registered or certified.

12. SCS intends to market its services through its sales personnel and sales agents to business and residential customers. SCS does not engage in any multilevel marketing. SCS is committed to the use of ethical sales practices, thus SCS sales personnel and sales agents are trained to market SCS' services in a professional manner, and to fairly and accurately portray services and charges for them. Attached hereto as Exhibit 6 are copies of the company brochures which may be used to assist in the sale of services within the State of South Dakota.

13. SCS' rates are based on the costs of obtaining access to the underlying interexchange carriers, facilities, and a combination of operating company charges, fixed overhead expenses, and the cost of maintaining and servicing SCS facilities. Nonetheless, SCS rates are competitive with the rates of other competitive telecommunications providers.

14. SCS' federal tax identification number is 93-0914013.

15. SCS is strongly opposed to the slamming and cramming practices of other telecommunications companies. To that end, attached hereto as Exhibit 7 is a copy of SCS' policies for switching an existing customer of another long distance carrier (PIC) instructions.

16. SCS' principals and executives have extensive personal experience in the telecommunications industry and the direct provision of services to communications consumers, and have the managerial and technical capability to provide the services described herein.

17. SCS' entry into the South Dakota marketplace is in the public interest because SCS intends to make an uniquely attractive blend of service quality, network management and reporting, and competitive rates available. Namely, SCS' offering will ultimately enable

residential, business and other telecommunications users to obtain multiple long distance services at rates that are generally available only to higher volume telecommunications users.

18 In addition to the direct benefits delivered to the public by its services, SCS' entry into the South Dakota marketplace will benefit the public directly by increasing the competitive pressure felt by existing IXCs, spurring them to consider lowering and user rates and/or enhancing their product offering to service which are more closely aligned with specific South Dakota telecommunications consumers' needs.

19 SCS is a non-dominant reseller of interexchange telecommunications services. SCS requests to be regulated by the Commission in the same relaxed fashion extended to other, similarly situated resellers.

20 SCS will comply with and abide by Commission guidelines and requirements governing telecommunications resellers which the Commission has promulgated or may promulgate or adopts in the future, unless application of such rules is specifically waived by the Commission.

WHEREFORE, SCS respectfully requests that this Commission grant it a Certificate of Authority for Interexchange Service to operate as a telecommunications reseller within the State of South Dakota and that the Commission regulate it in a streamlined fashion, and that the Commission approve SCS' initial tariff effective on the date of the order granting authority.

Respectfully submitted,



Jeff Raines, President
Shared Communications Services, Inc.

Dated this 11th day of February, 2000.

EXHIBIT 1

APPLICANT'S ARTICLES OF
INCORPORATION, AS AMENDED

CERTIFICATE

State of Oregon

OFFICE OF THE SECRETARY OF STATE
Corporation Division

I, **PHIL KEISLING**, Secretary of State of Oregon, and Custodian of the Seal of said State, do hereby certify:

SHARED COMMUNICATIONS SERVICES, INC.

was

incorporated

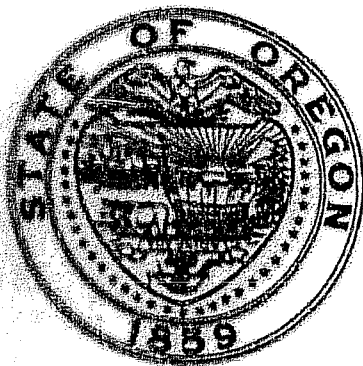
under the Oregon

Business Corporation Act

on

January 23, 1986

and is active on the records of the Corporation Division as of the date of this certificate.



In Testimony Whereof, I have hereunto set my hand and affixed hereto the Seal of the State of Oregon.

PHIL KEISLING, Secretary of State

By

Heather S. Davis

Heather S. Davis

August 31, 1998

01248668393

33211

FILED

STATE OF OREGON
DEPARTMENT OF COMMERCE
CORPORATION DIVISION

JAN 23 1986

CORPORATION COMMISSIONER

STATE OF OREGON
DEPARTMENT OF COMMERCE
CORPORATION DIVISION01800481
BUSINESS CORPORATION
ARTICLES OF INCORPORATION
(ORS 57.311)

Submit Original and One

True Copy

Filing Fee \$20

License Fee \$20

TOTAL \$40(831.115)

ARTICLE 1. Name of Corporation SHARED COMMUNICATION SERVICES, INC.

(The corporate name must contain the word "Corporation", "Company", "Incorporated", or "Limited" or an abbreviation of one of such words).

ARTICLE 2. Name of initial registered agent MICHAEL MILLS

Street address of initial registered office

315 Commercial Street N.E. Salem, Oregon 97301
(Street and Number) (City and State) (Zip Code)

ARTICLE 3. Address where Division may mail notices

315 Commercial Street N.E. Salem, Oregon 97301
(Street or PO Box) (City and State) (Zip Code)

ARTICLE 4. Purpose or purposes for which corporation is organized

Telephone communication service,s, any lawful purpose

ARTICLE 5. Aggregate number of shares which the corporation shall have authority to issue

90 shares = No Par Value

(Insert statement as to par value of each share or a statement that all of such shares are to be without par value.)

Jm

ARTICLE 6. Names and addresses of the persons who are to serve as initial directors until the first annual meeting of shareholders or until their successors are elected and shall qualify

<u>Name</u>	<u>Address</u>
<u>CHARLES COLUMBUS</u>	<u>4710 Dalke Court N.E., Salem, OR 97305</u>
<u>JIM DUNSTON</u>	<u>2276 Songbird Ct. SE, Salem, OR 97302</u>
<u>DELORES DAVEY</u>	<u>407 Sandrodee Drive SE, Salem, OR 97302</u>

ARTICLE 7. (Optional provisions for the regulation of the internal affairs of the corporation as may be appropriate. If none, leave blank.)

ARTICLE 8. Name and address of each incorporator

<u>Name</u>	<u>Address</u>
<u>Michael Mills</u>	<u>715 Commercial Street N.E., Salem, OR 97301</u>
_____	_____

We, the undersigned incorporators, declare under penalties of perjury that we have examined the foregoing and, to the best of our knowledge and belief, it is true, correct and complete. (Those named in Article 8 should sign here.)

<u>[Signature]</u>	_____
(Signature)	(Signature)

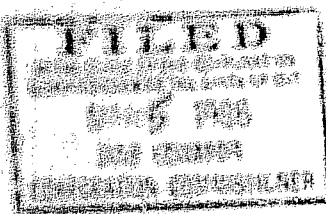
Dated January 21, 1986.

Person to contact about this filing.

<u>Michael Mills</u>	<u>588-0556</u>
NAME	PHONE NUMBER

Submit the original and one true copy to the Corporation Division, Commerce Building, 158 12th Street NE, Salem, Oregon 97301, with the filing fee of \$20 and license fee of \$20 — total \$40.

1500421



STATE OF OREGON
DEPARTMENT OF COMMERCE
CORPORATION DIVISION

Submit Original and One
True Copy
No Fee Required

ARTICLES OF AMENDMENT
By Directors
(ORS 57.370)

1. Name of corporation prior to amendment Shared Communication Services, Inc.
2. Date Amendment adopted by a majority of the directors Feb. 7, 1986
3. State article number(s) and set forth article(s) as amended

Article 1: SHARED COMMUNICATIONS SERVICES, INC.
Article 6: Charles F. Columbus, 4710 Dalke Court NE, Salem, OR 97306
James E. Umsted, 2276 Songbird Ct. SE, Salem, OR 97305
Dolores J. Davey, 407 Sandrodee Drive SE, Salem, OR 97301

4. Corporation has not issued any shares of stock.

We the undersigned officers, declare under the penalties of perjury that we have examined the foregoing and to the best of our knowledge and belief it is true, correct and complete.

Charles F. Columbus and Dolores J. Davey
President or Vice President Secretary or Assistant Secretary

Dated February, 1986.

Person to contact about this filing.

Michael Mills, Registered Agent 588-0556
NAME PHONE NUMBER

Submit the original and one true copy to the Corporation Division, Commerce
Bldg., 158 12th Street, NE, Salem, Oregon 97310.

5-8
3-5
124

Submit the original
and one true copy
\$10.00

Registry Number:

2300481



SECRETARY OF STATE
Corporation Division
Business Registry
158 12th Street NE
Salem, OR 97310-0210
(503) 378-4166

THIS SPACE FOR OFFICE USE ONLY
FILED
IN THE OFFICE OF THE SECRETARY
OF STATE OF THE STATE OF ORE.

JAN -8 1993

CORPORATION DIVISION

ARTICLES OF AMENDMENT

By Incorporators, Directors or Shareholders

PLEASE TYPE OR PRINT LEGIBLY IN BLACK INK

1. Name of the corporation prior to amendment:

SHARED COMMUNICATIONS SERVICES, INC.

2. State the article number(s) and set forth the article(s) as it is amended to read or attach a separate sheet.

ARTICLE 3: 200,000 shares - No Par Value

3. The amendment(s) was adopted on December 15, 1989. (If more than one amendment was adopted, identify the date of adoption of each amendment.)

4. Check the appropriate statement:

☒ Shareholder action was required to adopt the amendment(s). The vote was as follows:

Class or series of shares	Number of shares outstanding	Number of votes entitled to be cast	Number of votes cast for	Number of votes cast against
NPV Common	150	150	150	-0-

☐ Shareholder action was not required to adopt the amendment(s). The amendment(s) was adopted by the board of directors without shareholder action.

☐ The corporation has not issued any shares of stock. Shareholder action was not required to adopt the amendment(s). The amendment(s) was adopted by the incorporators or by the board of directors.

Execution:

[Signature] D. Michael Mills Attorney-in-Fact
Signature Printed name Title

Person to contact about this filing:

MICHAEL MILLS 588-0556
Name Daytime phone number

01119301014 31.219 10 00

Make checks payable to the Corporation Division. Submit the completed form and fee to: Corporation Division, Business Registry, 158 12th Street NE, Salem, Oregon 97310-0210.

BC-2 (9/91)

01248668393

33211

FILED

STATE OF OREGON
DEPARTMENT OF COMMERCE
CORPORATION DIVISION

JAN 23 1988

JOHN R. ANDERSON
CORPORATION COMMISSIONERSTATE OF OREGON
DEPARTMENT OF COMMERCE
CORPORATION DIVISION

01800481

BUSINESS CORPORATION
ARTICLES OF INCORPORATION
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TOTAL \$40(831.115)

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200 shares = No Par Value

(Insert statement as to par value of each share or a statement that all of such shares are to be without par value.)

BC-1 (7-75)

Jim

0-0-0-0 0-0-0-0

ARTICLE 6. Names and addresses of the persons who are to serve as initial directors until the first annual meeting of shareholders or until their successors are elected and shall qualify

<u>Name</u>	<u>Address</u>
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We, the undersigned incorporators, declare under penalties of perjury that we have examined the foregoing and, to the best of our knowledge and belief, it is true, correct and complete. (Those named in Article 8 should sign here.)



(Signature)

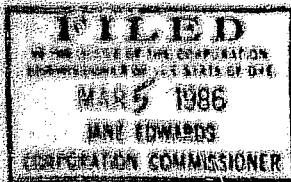
(Signature)

Dated January 21, 19 86.

Person to contact about this filing.

<u>Michael Mills</u>	<u>588-0556</u>
NAME	PHONE NUMBER

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4. Corporation has not issued any shares of stock.

We the undersigned officers, declare under the penalties of perjury that we have examined the foregoing and to the best of our knowledge and belief it is true, correct and complete.

Charles F. Columbus
President or Vice President

and

Delores J. Davey
Secretary or Assistant Secretary

Dated February, 1986.

Person to contact about this filing.

Michael Mills, Registered Agent

NAME

588-0556

PHONE NUMBER

Submit the original and one true copy to the Corporation Division, Commerce
Bldg., 150 12th Street, NE, Salem, Oregon 97310.

DS-2 (8/85)

507
3-5
PA

Submit the original
and one true copy
\$15.00

Registry Number:



SECRETARY OF STATE
Corporation Division
Business Registry
158 12th Street NE
Salem, OR 97310-0210
(503) 378-4166

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OF STATE OF THE STATE OF ORE.

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CORPORATION DIVISION

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By Incorporators, Directors or Shareholders

PLEASE TYPE OR PRINT LEGIBLY IN BLACK INK

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Execution:

Signature

D. Michael Mills

Printed name

Attorney-in-Fact

Title

Person to contact about this filing:

MICHAEL MILLS

Name

588-0556

Daytime phone number

01119301014 831.219

10.00

Make checks payable to the Corporation Division. Submit the completed form and fee to: Corporation Division, Business Registry, 158 12th Street NE, Salem, Oregon 97310-0210.

BC-2 (5/91)

4/10/93
R/M

NEXT

DOCUMENT (S)

BEST IMAGE

POSSIBLE

AGREEMENT AND PLAN OF REORGANIZATION

BY AND AMONG

ADVANCED TELCOM GROUP, INC.,

TRAILBLAZER ACQUISITION CORPORATION,

SHARED COMMUNICATIONS SERVICES, INC.,

U.S. BANK TRUST, N.A.

AS ESCROW AGENT

AND

THE

SHAREHOLDER REPRESENTATIVE

Dated as of June __, 1999

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Exhibit A	Form of Employment Agreement
Exhibit B	Form of Voting Agreement
Exhibit C	Non-Competition Agreement
Exhibit D	Form of Articles of Merger
Exhibit E	Company Schedules
Exhibit F	Form of Legal Opinion of Counsel to the Company
Exhibit G	Shareholder Non-Competition Agreement
Exhibit H	Escrow Agent Fee Schedule
Exhibit I	Form of Cancellation Election Agreement
Exhibit J	List of Employees Required to Execute Employment and Non-Competition Agreements
Exhibit K	Acquiror Schedules
Exhibit L	List of Principal Shareholders
Exhibit M	Bonus List
Exhibit N	Stockholder Agreement
Exhibit O	Shareholder Representative Notice Information

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THIS AGREEMENT AND PLAN OF REORGANIZATION (the "Agreement") is made and entered into as of June __, 1999 by and among Advanced TelCom Group, Inc., a Delaware corporation ("Parent"), Trailblazer Acquisition Corporation, an Oregon corporation and a wholly-owned subsidiary of Parent ("Sub"), Shared Communications Services, Inc., an Oregon corporation (the "Company"), Charles F. Columbus, James E. Umsted and Delores J. Davry and their related trusts signatory hereto (each, a "Founder", and collectively, the "Founders"), and with respect to Articles VII and IX only, U.S. Bank Trust, N.A., as Escrow Agent (the "Escrow Agent"), and a Shareholder Representative to be selected by the Company prior to the Closing Date (the "Shareholder Representative").

RECITALS

A. The Boards of Directors of each of Parent, Sub and the Company believe it is in the best interests of each company and its respective shareholders that Parent acquire the Company through the statutory merger of Sub with and into the Company (the "Merger") and, in furtherance thereof, have approved the Merger.

B. Pursuant to the Merger, among other things, (i) all of the issued and outstanding capital stock of the Company shall be converted into the right to receive the cash consideration set forth herein, and (ii) all issued and outstanding options, warrants and other rights to purchase capital stock of the Company shall be cancelled.

C. A portion of the cash otherwise payable by Parent in connection with the Merger shall be placed in escrow by Parent as security for the indemnification obligations set forth in this Agreement.

D. The Company and the Founders, on the one hand, and Parent and Sub, on the other hand, desire to make certain representations, warranties, covenants and other agreements in connection with the Merger.

E. As a material inducement to Parent and Sub to enter into this Agreement, the individuals set forth on Exhibit J hereto are entering into an Employment Agreement and a Non-Competition Agreement, in the forms attached hereto as Exhibit A and Exhibit C (collectively, the "Employment and Non-Competition Agreements") within five (5) business days following the execution and delivery of this Agreement, and the Principal Shareholders are entering into Voting Agreements in the form attached hereto as Exhibit B (the "Voting Agreements"), with Parent and Non-Competition Agreements in the form attached hereto as Exhibit G (the "Shareholder Non-Competition Agreements") simultaneous with the execution hereof.

F. Parent will not be assuming the Company Options (as defined in Section 1.6 hereof). As a result, upon the effectiveness of the Merger, all outstanding Company Options shall be cancelled and terminated.

NOW, THEREFORE, in consideration of the mutual agreements, covenants and other promises set forth herein, the mutual benefits to be gained by the performance thereof, and for

(b) Unless otherwise determined by Parent prior to the Effective Time, the bylaws of Sub, as in effect immediately prior to the Effective Time, shall be the bylaws of the Surviving Corporation at the Effective Time until thereafter amended in accordance with Oregon Law and as provided in the articles of incorporation of the Surviving Corporation and such bylaws.

1.5 Directors and Officers

(a) Unless otherwise determined by Parent prior to the Effective Time, the directors of Sub immediately prior to the Effective Time shall be the directors of the Surviving Corporation immediately after the Effective Time, each to hold the office of a director of the Surviving Corporation in accordance with the provisions of Oregon Law and the articles of incorporation and bylaws of the Surviving Corporation until their successors are duly elected and qualified.

(b) Unless otherwise determined by Parent prior to the Effective Time, the officers of Sub immediately prior to the Effective Time shall be the officers of the Surviving Corporation immediately after the Effective Time, each to hold office in accordance with the provisions of the bylaws of the Surviving Corporation.

1.6 Effect of Merger on the Capital Stock of the Constituent Corporations

(a) Definitions For all purposes of this Agreement, the following terms shall have the following respective meanings:

"Assets" shall mean total current assets of the Company as determined in accordance with GAAP.

"Bonus" shall mean that certain one-time bonus of \$4,400,000 in the aggregate declared by the Company's board of directors to those certain individuals set forth on Exhibit M hereto.

"Closing Date Balance Sheet" shall mean the estimated balance sheet of the Company, dated the earlier of (i) twenty-seven (27) days prior to the Closing Date and (ii) the last day of the immediately preceding calendar month prior to the Closing Date, which shall be delivered to Parent at least three (3) business days prior to the Closing Date, that has been prepared in accordance with GAAP (except that such balance sheet need not contain the footnotes required by GAAP) and that presents (based on good faith assumptions and estimates) the estimated balance sheet of the Company as of the date thereof.

"Commitments" shall mean any obligation of the Company (including, without limitation, any agreements, liabilities, or obligations relating to facility construction and the Siemens Commitments, to the extent not reflected as a liability on the Closing Date Balance Sheet but excluding all equipment, real property, operating leases and the Bonus) which is not set forth as a liability on the Closing Date Balance Sheet and which exists on the Closing Date.

provided, however, that "Commitments" shall not include (i) Scheduled Debt or (ii) obligations arising after the date of this Agreement and permitted under Section 4.1 hereof.

"Company Capital Stock" shall mean shares of Company Common Stock and shares of any other capital stock of the Company.

"Company Common Stock" shall mean shares of common stock, no par value, of the Company.

"Common Stock Per Share Consideration" shall mean the quotient obtained by dividing (i) the Total Consideration by (ii) the total number of shares of Company Capital Stock issued and outstanding immediately prior to the Effective Time, calculated on a fully diluted basis, including, without limitation, all Company Options subject to Section 1.6(c) hereof.

"Company Options" shall mean all issued and outstanding options, warrants or other rights to purchase or otherwise acquire Company Capital Stock (whether or not vested), including employee stock options, held by any person or entity.

"Current Amount" shall mean the amount which Assets minus Liabilities, as determined in accordance with GAAP, are less than \$4,500,000 on the Closing Date; provided, however, that for purposes of this calculation, any assets or liabilities for pre-paid taxes, tax receivables or accrued taxes payable (or other taxes payable) shall not be included as Assets or Liabilities.

"Escrow Amount" shall mean an amount of cash equal to \$5 million.

"Estimated Long Term Debt" shall mean the Long Term Debt of the Company as set forth on the Closing Date Balance Sheet plus items classified as the current portion of long-term indebtedness and the current portion of capitalized leases on the Closing Date Balance Sheet less Scheduled Debt.

"Final Long Term Debt" shall mean Long Term Debt as set forth on the Adjusted Balance Sheet, plus items classified as the current portion of long term indebtedness and the current portion of capitalized leases on the Adjusted Balance Sheet less Scheduled Debt.

"GAAP" shall mean United States generally accepted accounting principles consistently applied.

"Knowledge" or "knowledge" shall mean the actual knowledge of the Founders and Mr. Jeffrey Raines, Ms. Charlene Yarno, Mr. Brad Mathewson, Mr. Rod Anderson, Mr. Lance Stapleton, Mr. Richard Ballard or Mr. Karl Wetzel (each, an "Individual" and, collectively, the "Individuals"); provided, further, that Knowledge by one Founder or Individual of a particular fact or other matter shall be deemed to be Knowledge by all of the Founders and Individuals.

the \$250,000 line item on the Company's balance sheet labelled "Siemens deposit" shall not be included in the calculation of Commitments solely to the extent previously paid by the Company.

"Third Party Expenses" shall mean all expenses, including without limitation all legal, accounting, financial advisory, consulting and other fees in connection with the negotiation or effectuation of this Agreement or consummation of the Merger.

"Total Consideration" shall mean \$79,600,000 (i) minus Estimated Long Term Debt, (ii) minus Commitments, (iii) minus the Company's Third Party Expenses and (iv) minus the Current Amount calculated based on the Closing Date Balance Sheet.

(b) Effect on Company Capital Stock. At the Effective Time, by virtue of the Merger and without any action on the part of the Company or any of the Shareholders, and upon the terms and subject to conditions set forth below and throughout this Agreement, including, without limitation, Sections 1.6(d) and (d) hereof and the escrow provisions set forth in Article VII hereof and described in Section 1.8(b) hereof. Each share of Company Common Stock issued and outstanding immediately prior to the Effective Time (other than any Dissenting Shares (as defined in Section 1.7(a) hereof) will be cancelled and extinguished and be converted automatically into the right to receive, upon surrender of the certificate representing such share of Company Common Stock in the manner provided for in Section 1.8(c) hereof, an amount of cash (without interest) equal to the Common Stock Per Share Consideration.

(c) Company Options.

(i) Immediately prior to the Effective Time, (A) each then outstanding Company Option, whether or not then exercisable or vested, shall become fully exercisable and vested, (B) each then outstanding Company Option shall be cancelled, and (C) in consideration of such cancellation and subject to Section 1.6(c)(ii) and (iii) hereof and the escrow provisions set forth in Article VII hereof, the holder of such Company Option (the "Option Holder") shall be entitled to receive as soon as practicable after the Effective Time an amount in cash (subject to any applicable withholding tax required by law to be withheld by the Company) equal to the excess, if any, of the Common Stock Per Share Consideration over the per share exercise price of such Company Option for each share of Company Common Stock subject to such Company Option (the "Option Consideration"). The surrender of a Company Option to the Company in exchange for the Option Consideration shall, to the extent permitted by law, be deemed a release of any and all rights the Option Holder had or may have had in respect of such Company Option.

(ii) As a condition to receiving the Option Consideration, the Option Holder must execute and deliver to Parent, prior to the Effective Time, a Cancellation Election Agreement in the form attached hereto as Exhibit I and contribute such Option Holder's Pro Rata Portion of the Escrow Amount (as defined below) to the Escrow Fund (as defined below).

(iii) Notwithstanding the provisions in Section 1.6(c)(i) hereof, each Option Holder's Pro Rata Portion of the Escrow Amount shall be deposited in the Escrow Fund on behalf of the Option Holders pursuant to Article VII hereof.

(d) Withholding Taxes. Any cash amounts payable to any Shareholder or Option Holder pursuant to Sections 1.6(b) or 1.6(c) hereof shall be subject to, and reduced by an amount equal to, the amount of any state, federal and foreign withholding taxes required by law to be withheld.

(e) Shareholder Loans. In the event that any Shareholder has outstanding loans from the Company as of the Effective Time, the cash amounts payable to such Shareholder pursuant to Section 1.6(b) hereof shall be reduced by an amount equal to the outstanding principal plus accrued interest of such Shareholder's loans as of the Effective Time.

(f) Capital Stock of Sub. At the Effective Time, by virtue of the Merger and without any action on the part of Parent, Sub or the Company, each share of Common Stock, par value \$0.0001 per share, of Sub issued and outstanding immediately prior to the Effective Time shall be converted into and exchanged for one validly issued, fully paid and nonassessable share of Common Stock of the Surviving Corporation. Each stock certificate evidencing ownership of any such shares of Common Stock of Sub shall thereafter evidence ownership of an equivalent number of shares of Common Stock of the Surviving Corporation.

1.7 Dissenting Shares

(a) Notwithstanding any other provisions of this Agreement to the contrary, any shares of Company Capital Stock held by a holder who has exercised and perfected dissenters' rights for such shares in accordance with Oregon Law and who, as of the Effective Time, has not effectively withdrawn or lost such dissenters' rights ("Dissenting Shares"), shall not be converted into or represent a right to receive the consideration for Company Capital Stock set forth in Section 1.6 hereof, but the holder thereof shall only be entitled to such rights as are provided by Oregon Law.

(b) Notwithstanding the provisions of Section 1.7(a) hereof, if any holder of Dissenting Shares shall effectively withdraw or lose (through failure to perfect or otherwise) such holder's dissenters' rights under Oregon Law, then, as of the later of the Effective Time and the occurrence of such event, such holder's shares shall automatically be converted into and represent only the right to receive the consideration for Company Capital Stock set forth in Section 1.6 hereof, without interest thereon, upon surrender of the certificate representing such shares.

(c) The Company shall give Parent (i) prompt notice of any dissenting shareholder's written notice of intent to demand payment for such shareholder's shares received by the Company pursuant to the applicable provisions of Oregon Law, and (ii) the opportunity to participate in all negotiations and proceedings with respect to such notices. The Company shall not, except with the prior written consent of Parent, make any payment with respect to any such notices or offer to settle or settle any such notices. To the extent that Parent or the Company makes any payment or payments in respect of any Dissenting Shares, Parent shall be entitled to recover as Losses under the terms of Article VII hereof (without regard to the Basket Amount (as defined in Section 7.3(a)) the aggregate amount by which such payment or payments exceed the

aggregate consideration that otherwise would have been payable in respect of such Dissenting Shares pursuant to Section 1.6 hereof if such Dissenting Shares were not the subject of a dissenting shareholder's written notice of intent to demand payment.

1.8 Surrender of Certificates

(a) **Exchange Agent.** The Corporate Secretary of Parent shall serve as the exchange agent (the "Exchange Agent") for the Merger.

(b) **Parent to Provide Cash.** At the Closing, Parent shall make available to the Exchange Agent for exchange in accordance with this Article I the cash consideration payable pursuant to Sections 1.6(b) and 1.6(c) hereof in exchange for (i) all of the outstanding shares of Company Capital Stock, less the Escrow Amount which Parent shall deposit into the Escrow Fund (as defined in Section 7.3(a) hereof) on behalf of the Shareholders and the Option Holders pursuant to Article VII hereof and (ii) for the Option Conversion. Each Shareholder and Option Holder shall be deemed to have contributed his Pro Rata Portion of the Escrow Amount to the Escrow Fund.

(c) **Exchange Procedures.** On the Closing Date, the Shareholders will surrender the certificates representing their Company Capital Stock (the "Company Stock Certificates") to the Exchange Agent for cancellation together with a letter of transmittal in such form and having such provisions that Parent may reasonably request. Upon surrender of a Company Stock Certificate for cancellation to the Exchange Agent, or such other agent or agents as may be appointed by Parent, together with such letter of transmittal, duly completed and validly executed in accordance with the instructions thereto, subject to the terms of Section 1.8(c) hereof, the holder of such Company Stock Certificate shall be entitled to receive from the Exchange Agent in exchange therefor the amount of cash (without interest) payable in exchange for such Company Stock Certificate pursuant to this Article I (less the amount of cash to be deposited into the Escrow Fund on such holder's behalf pursuant to Section 1.8(b) and Article VII hereof), and the Company Stock Certificate so surrendered shall be cancelled. Until so surrendered, each outstanding Company Stock Certificate will be deemed from and for all corporate purposes, to evidence only the right to receive cash payment (without interest) pursuant to this Article I. On the Closing Date, and subject to and in accordance with the provisions of Article VII hereof, Parent shall deposit with the Escrow Agent the amount of cash to be deposited in the Escrow Fund on the Shareholders' behalf pursuant to Article VII hereof. The cash deposited with the Escrow Agent shall be available to compensate Parent as provided in Article VII hereof.

(d) **No Liability.** Notwithstanding anything to the contrary in this Section 1.8 hereof, neither the Exchange Agent, the Surviving Corporation nor any party hereto shall be liable to a holder of shares of Company Capital Stock for any amount properly paid to a public official pursuant to any applicable abandoned property, escheat or similar law.

(e) **No Further Ownership Rights in Company Capital Stock.** The cash paid in respect of the surrender for exchange of shares of Company Capital Stock in accordance with the

hereof, shall be deemed to be full satisfaction of all rights pertaining to such shares of Company Capital Stock, and there shall be no further registration of transfers on the records of the Surviving Corporation of shares of Company Capital Stock which were outstanding immediately prior to the Effective Time. If, after the Effective Time, Company Stock Certificates are presented to the Surviving Corporation for any reason, they shall be cancelled and exchanged, as provided in this Article I.

1.10 Lost, Stolen or Destroyed Certificates. In the event any certificates evidencing shares of Company Capital Stock shall have been lost, stolen or destroyed, the Exchange Agent shall issue in exchange for such lost, stolen or destroyed certificates, upon the making of an affidavit of that fact by the holder thereof, such amount, if any, as may be required pursuant to Section 1.6 hereof; provided, however, that Parent may, in its discretion and as a condition precedent to the issuance thereof, require the Shareholder who is the owner of such lost, stolen or destroyed certificates to deliver a bond in such amount as it may reasonably direct against any claim that may be made against Parent or the Exchange Agent with respect to the certificates alleged to have been lost, stolen or destroyed.

1.11 Taking of Necessary Action; Further Action. If at any time after the Effective Time, any further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Corporation with full right, title and possession to all assets, property, rights, privileges, powers and franchises of the Company, Parent, and the officers and directors of the Company and Parent are fully authorized in the name of their respective corporations or otherwise to take, and will take, all such lawful and necessary action.

1.12 Bonus. At the Closing, Parent shall take all necessary actions to cause Surviving Corporation to distribute the Bonus to the individuals set forth on Exhibit M hereto.

ARTICLE II REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND THE FOUNDERS

The Company and each of the Founders hereby jointly and severally represents and warrants to Parent, subject to such exceptions as are specifically disclosed on Exhibit E hereto (referencing the appropriate Section and paragraph numbers) (the "Company Schedules"), that on the date hereof and as of the Effective Time as though made at the Effective Time as follows:

2.1 Organization of the Company. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Oregon. The Company has the corporate power to own its properties and to carry on its business as now being conducted. The Company is duly qualified or licensed to do business and in good standing as a foreign corporation in each jurisdiction in which it conducts business. The Company has delivered to Parent a true and correct copy of the Company's articles of incorporation and bylaws, each as amended to date and in full force and effect on the date hereof. Company Schedule 2.1 lists the directors and officers of the Company. Except as set forth in Company Schedule 2.1, the operations now being conducted by the Company are not now and have never been conducted by

the Company under any other name. Except as set forth in Company Schedule 2.1, the Company does not have and has never had, any subsidiaries and does not otherwise own and has not otherwise owned, any share in the capital of or any interests in, or control, directly or indirectly, any corporation, partnership, association, joint venture or other business entity.

2.2 Company Capital Structure.

(a) The authorized capital stock of the Company consists of (i) 200,000 shares of Company Common Stock, of which 156,265 shares are issued and outstanding as of the date hereof. As of the date hereof, the capitalization of the Company is as set forth in Company Schedule 2.2(a). The Company Capital Stock is held by the persons with the domicile addresses and in the amounts set forth in Company Schedule 2.2(a). All outstanding shares of Company Capital Stock are duly authorized, validly issued, fully paid and non-assessable and not subject to preemptive rights created by statute, the articles of incorporation or bylaws of the Company, or any agreement to which the Company is a party or by which it is bound, and have been issued in compliance with federal and state securities laws. The designations, powers, preferences, rights, qualifications, limitations and restrictions in respect of the Company Preferred Stock are as set forth in the Company's articles of incorporation. No Preferred Stock of the Company is authorized, issued or outstanding. There are no declared or accrued but unpaid dividends with respect to any shares of Company Capital Stock. The Company has no other capital stock authorized, issued or outstanding.

(b) Except as set forth in Company Schedule 2.2(b), the Company has never adopted or maintained any stock option plan or other plan providing for equity compensation of any person. The Company has reserved 11,968 shares of Company Common Stock for issuance to employees and directors of, and consultants to, the Company upon the exercise of options granted under such plans, of which (i) 11,274 shares are issuable, as of the date hereof, upon the exercise of outstanding, unexercised options granted under such plans; (ii) 609 shares have been issued, and (iii) options to purchase 85 shares have been terminated as of the date hereof, upon the exercise of options granted under such plans. Company Schedule 2.2(b) sets forth for each outstanding Company Option, the name of the holder of such option, the domicile address of such holder, the particular plan or agreement pursuant to which such option was granted, the number of shares of Company Common Stock issuable upon the exercise of such option and the exercise price and vesting schedule of such option (including a description of the circumstances under which such vesting schedule can or will be accelerated). Except as set forth in Company Schedule 2.2(b), there are no options, warrants, calls, rights, commitments or agreements of any character, written or oral, to which the Company is a party or by which it is bound obligating the Company to issue, deliver, sell, repurchase or redeem, or cause to be issued, delivered, sold, repurchased or redeemed, any shares of the capital stock of the Company or obligating the Company to grant, extend, accelerate the vesting of, change the price of, otherwise amend or enter into any such option, warrant, call, right, commitment or agreement. There are no outstanding or authorized stock appreciation, phantom stock, profit participation, or other similar rights with respect to the Company. Except as contemplated by this Agreement, there are no voting trusts, proxies, or other agreements or understandings with respect to the voting stock of

the Company. As a result of the Merger, assuming Parent is the sole shareholder of Sub, Parent will be the sole record and beneficial holder of all issued and outstanding Company Capital Stock and all rights to acquire or receive any shares of Company Capital Stock, whether or not such shares of Company Capital Stock are outstanding.

2.3 Authority. The Company and each of the Founders has all requisite power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Company, and no further action is required on the part of the Company to authorize the Agreement and the transactions contemplated hereby, subject only to the approval of this Agreement by the Shareholders. This Agreement and the Merger have been unanimously approved and declared advisable by the Board of Directors of the Company. This Agreement has been duly executed and delivered by the Company and each of the Founders, and assuming the due authorization, execution and delivery by the other parties hereto, constitutes the valid and binding obligations of the Company and each of the Founders, enforceable against the Company and each of the Founders in accordance with its terms, except as such enforceability may be subject to the laws of general application relating to bankruptcy, insolvency and the relief of debtors and rules of law governing specific performance, injunctive relief or other equitable remedies.

2.4 No Conflict. Except as set forth on Company Schedule 2.4, the execution and delivery by the Company and each of the Founders of this Agreement, and the consummation of the transactions contemplated hereby, will not conflict with or result in any violation of or default under (with or without notice or lapse of time, or both) or give rise to a right of termination, cancellation, modification or acceleration of any obligation or loss of any benefit under (any such event, a "Conflict") (i) any provision of the articles of incorporation or bylaws of the Company, (ii) any mortgage, indenture, lease, contract, covenant or other agreement, instrument or commitment, permit, concession, franchise or license (each a "Contract" and collectively the "Contracts") to which the Company or any of its properties or assets (including intangible assets), or to which any of the Founders, is subject, or (iii) any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to the Company or any of its properties (tangible and intangible) or assets, or applicable to any of the Founders. Except as set forth on Company Schedule 2.4, the Company is in compliance with and has not breached, violated or defaulted under, or received notice that it has breached, violated or defaulted under, any of the terms or conditions of any Contract, nor to the knowledge of the Company or any Founder is there any event that would constitute such a breach, violation or default with the lapse of time, giving of notice or both. Except as set forth on Company Schedule 2.4, each Contract is in full force and effect and the Company is not subject to any default thereunder, nor to the knowledge of the Company and any Founder is any party obligated to the Company pursuant to any such Contract subject to any default thereunder. The Company has obtained or will obtain prior to the Effective Time, all necessary consents, waivers and approvals of parties to any Contract as are required thereunder in connection with the Merger, or for any such Contract to remain in full force and effect without limitation, modification or

operation after the Effective Time. Except as set forth on Company Schedule 2.4, following the Effective Time, the Company will be permitted to exercise all of its rights under the Contracts without the payment of any additional amounts or consideration other than ongoing fees, royalties or payments which the Company would otherwise be required to pay pursuant to the terms of such Contracts had the transactions contemplated by this Agreement not occurred.

2.5 Consents. Except as set forth in Company Schedule 2.5, no consent, waiver, approval, order or authorization of, or registration, declaration or filing with any court, administrative agency or commission or other federal, state, county, local or other foreign governmental authority, instrumentality, agency or commission (each, a "Governmental Entity") or any third party, including a party to any agreement with the Company (so as not to trigger any conflict), is required by or with respect to the Company and/or the Founders in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby and thereby, except for (i) such consents, waivers, approvals, orders, authorizations, registrations, declarations and filings as may be required under applicable securities laws, and (ii) the filing of the Articles of Merger with the Secretary of State of the State of Oregon.

2.6 Company Financial Statements. Company Schedule 2.6 sets forth (i) the Company's audited balance sheet as of September 30, 1998 and as of September 30, 1997, and the related audited statements of income, cash flow and shareholders' equity for the twelve (12) month periods ended September 30, 1998 and September 30, 1997 (collectively, the "Year-End Financials"), and (ii) the Company's unaudited balance sheet as of March 31, 1999, and the related unaudited statements of income for the six month period then ended (the "Interim Financials"). The Year-End Financials and the Interim Financials are correct in all material respects and have been prepared in accordance with GAAP consistently applied on a basis consistent throughout the periods indicated and consistent with each other (except that the Interim Financials do not contain footnotes and other presentation items that may be required by GAAP). The Year-End Financials and Interim Financials present fairly the financial condition (in the case of both the Year-End Financials and Interim Financials), operating results (in the case of the Year-End Financials) and cash flows (in the case of the Year-End Financials) of the Company as of the dates and during the periods indicated therein, subject in the case of the Interim Financials to normal year-end adjustments, which are not material in amount or significance in any individual case or in the aggregate. The Company's unaudited balance sheet as of March 31, 1999 is referred to hereinafter as the "Current Balance Sheet."

2.7 No Undisclosed Liabilities. Except as set forth in Company Schedule 2.7, the Company does not have any liability, indebtedness, obligation, expense, claim, deficiency, guaranty or endorsement of any type, whether accrued, absolute, contingent, matured, unmatured or other (whether or not required to be reflected in financial statements in accordance with GAAP), which individually or in the aggregate (i) has not been reflected in the Current Balance Sheet, or (ii) has not arisen in the ordinary course of business consistent with past practices since the date of the Current Balance Sheet and if incurred after the date of the Current Balance Sheet, will not be reflected on the Closing Date Balance Sheet.

2.8 No Changes. Except as set forth on Company Schedule 2.8, since March 31, 1999, there has not been, occurred or arisen any:

- (a) transaction by the Company except in the ordinary course of business as conducted on that date and consistent with past practices;
- (b) amendments or changes to the articles of incorporation or bylaws of the Company;
- (c) capital expenditure or commitment by the Company exceeding \$25,000 individually or \$75,000 in the aggregate other than commitments to make expenditures contemplated by this Agreement;
- (d) payment, discharge or satisfaction, in any amount in excess of \$25,000 in any one case, or \$75,000 in the aggregate, of any claim, liability or obligation (absolute, accrued, asserted or unasserted, contingent or otherwise), other than payment, discharge or satisfaction in the ordinary course of business;
- (e) destruction of, damage to or loss of any material assets, material business or material customer of the Company (whether or not covered by insurance);
- (f) labor trouble or claim of wrongful discharge or other unlawful labor practice or action;
- (g) change in accounting methods or practices (including any change in depreciation or amortization policies or rates) by the Company other than as required by GAAP;
- (h) change in any election in respect of Taxes (as defined below), adoption or change in any accounting method in respect of Taxes, agreement or settlement of any claim or assessment in respect of Taxes, or extension or waiver of the limitation period applicable to any claim or assessment in respect of Taxes;
- (i) revaluation by the Company of any of its assets;
- (j) declaration, setting aside or payment of a dividend or other distribution (whether in cash, stock or property) in respect of any Company Capital Stock, or any split, combination or reclassification in respect of any shares of Company Capital Stock, or any issuance or authorization of any issuance of any other securities in respect of, in lieu of or in substitution for shares of Company Capital Stock, or any direct or indirect repurchase, redemption, or other acquisition by the Company of any shares of Company Capital Stock (or options, warrants or other rights convertible into, exercisable or exchangeable therefor), except in accordance with the agreements evidencing Company Options;
- (k) Except for the salary increases set forth on Company Schedule 2.8(k) made in the ordinary course of business, consistent with past practices and the Bonus, increase in the salary or other compensation payable or to become payable by the Company to any of its

officers, directors, employees or advisors, or the declaration, payment or commitment or obligation of any kind for the payment, by the Company, of a severance payment, termination payment, bonus or other additional salary or compensation to any such person;

(l) any agreement, contract, covenant, instrument, lease, license or commitment to which the Company is a party or by which it or any of its assets (including intangible assets) are bound or any termination, extension, amendment or modification the terms of any agreement, contract, covenant, instrument, lease, license or commitment to which the Company is a party or by which they or any of their assets are bound;

(m) sale, lease, license or other disposition of any of the assets or properties of the Company exceeding, in the aggregate, \$25,000 in value, and outside of the ordinary course of business consistent with past practices or any creation of any security interest in such assets or properties;

(n) loan by the Company to any person or entity, incurring by the Company of any indebtedness, guaranteeing by the Company of any indebtedness, issuance or sale of any debt securities of the Company or guaranteeing of any debt securities of others, except for advances to employees for travel and business expenses in the ordinary course of business consistent with past practices;

(o) waiver or release of any right or claim of the Company, including any write-off or other compromise of any account receivable of the Company, outside of the ordinary course of business;

(p) the commencement, settlement, notice or, to the knowledge of the Company or the Founders, threat of any lawsuit or proceeding or other investigation against the Company or its affairs, or any reasonable basis for any of the foregoing;

(q) notice of any claim or notice of any potential claim of ownership by any person other than the Company of the Company Intellectual Property (as defined in Section 2.12 hereof) or of infringement by the Company of any other person's Intellectual Property (as defined in Section 2.12 hereof);

(r) issuance or sale, or contract to issue or sell, by the Company of any shares of Company Capital Stock or securities convertible into, or exercisable or exchangeable for, shares of Company Capital Stock, or any securities, warrants, options or rights to purchase any of the foregoing, except for issuances of Company Capital Stock upon the exercise of Company Options;

(s) (i) sale or license of any Company Intellectual Property or entering into of any agreement with respect to the Company Intellectual Property with any person or entity or with respect to the Intellectual Property of any person or entity, (ii) purchase or license of any Intellectual Property or entering into of any agreement with respect to the Intellectual Property of any person or entity, (iii) agreement with respect to the development of any Intellectual

Property with a third party, or (iv) change in pricing or royalties set or charged by the Company to its customers or licensees or in pricing or royalties set or charged by persons who have licensed Intellectual Property to the Company;

(i) agreement or modification to any agreement pursuant to which any other party was granted marketing, distribution, development or similar rights of any type or scope with respect to any products or technology of the Company;

(ii) any event or condition of any character that has had or, to the Knowledge of the Company or the Founders, is likely to have a Material Adverse Effect on the Company; or

(v) agreement by the Company, or any officer or employees on behalf of the Company, to do any of the things described in the preceding clauses (a) through (u) of this Section 2.8 (other than negotiations with Parent and its representatives regarding the transactions contemplated by this Agreement).

2.9 Tax Matters.

(a) **Definition of Taxes.** For the purposes of this Agreement, the term "Tax" or, collectively, "Taxes" shall mean (i) any and all federal, state, local and foreign taxes, assessments and other governmental charges, duties, impositions and liabilities, including taxes based upon or measured by gross receipts, income, profits, sales, use and occupation, and value added, ad valorem, transfer, franchise, withholding, payroll, recapture, employment, excise and property taxes and assessments for public improvements, together with all interest, penalties and additions imposed with respect to such amounts and (ii) any liability for the payment of any amounts of the type described in clause (i) of this Section 2.9(a) as a result of being a member of an affiliated, consolidated, combined or unitary group for any period.

(b) Tax Returns and Audits.

(i) As of the Effective Time, the Company will have prepared and timely filed all required federal, state, local and foreign returns, estimates, information statements and reports ("Returns") relating to any and all Taxes concerning or attributable to the Company or its operations for all periods ending on or prior to the Closing Date, if such Returns are due on or before the Closing Date, and any extensions or amendments thereof, are true and correct and have been completed in accordance with applicable law.

(ii) Except as set forth on Company Schedule 2.9, as of the Effective Time, the Company (A) will have paid all Taxes it is required to pay and will have withheld with respect to its employees all federal and state income taxes, Federal Insurance Contribution Act ("FICA"), Federal Unemployment Tax Act ("FUTA") and other Taxes required to be withheld on or before the Closing Date and has, within the time and in the manner required by law, withheld and paid to the proper governmental authorities all amounts required to be paid on or before the Closing Date; and (B) will have accrued on the date of the Current Balance Sheet all Taxes attributable to the periods preceding the Current Balance Sheet and will not have incurred

any liability for Taxes for the period commencing after the date of the Current Balance Sheet and ending immediately prior to the Effective Time, other than in the ordinary course of business and as will be set forth on the Closing Date Balance Sheet.

(iii) There is no Tax deficiency outstanding, assessed or proposed against the Company, nor has the Company executed any waiver of any statute of limitations on or extending the period for the assessment or collection of any Tax.

(iv) No audit or other examination of any Return of the Company is presently in progress, nor has the Company been notified of any request for such an audit or other examination.

(v) The Company does not have and, as of the Effective Time shall not have, any liabilities for unpaid federal, state, local and foreign Taxes which have not been accrued or reserved on the Current Balance Sheet, whether asserted or unasserted, contingent or otherwise, and the Company has not incurred any liability for Taxes since the date of the Current Balance Sheet other than in the ordinary course of business and as will be set forth on the Closing Date Balance Sheet.

(vi) The Company has made available to Parent or its legal counsel, copies of all foreign, federal, state and local income and all state and local sales and use Returns for the Company filed for all periods since its inception.

(vii) There are (and immediately following the Effective Time there will be) no liens, pledges, charges, claims, restrictions on transfer, mortgages, security interests or other encumbrances of any sort (collectively, "Liens") on the assets of the Company relating to or attributable to Taxes other than Liens for Taxes not yet due and payable.

(viii) None of the Company's assets is treated as "tax-exempt use property," within the meaning of Section 168(h) of the Code.

(ix) The Company has not filed any consent agreement under Section 341(f) of the Code or agreed to have Section 341(f)(4) of the Code apply to any disposition of a subsection (f) asset (as defined in Section 341(f)(4) of the Code) owned by the Company.

(x) Except as set forth on Company Schedule 2.9, the Company (A) has never been a member of an affiliated group filing a consolidated tax return, (B) is not a party to any tax sharing, indemnification or similar agreement nor does the Company owe any amount under any such agreement, and (C) is not liable for the Taxes of any other person under Treasury Regulation § 1.1502-6 (or any similar provision of state, local or foreign law, as a transferee, or successor or by contract or otherwise).

(xi) The Company's tax basis in its assets for purposes of determining its future amortization, depreciation and other federal income Tax deductions is accurately reflected on the Company's tax books and records.

(xii) The Company is not, and has not been at any time, a "United States Real Property Holding Corporation" within the meaning of Section 897(c)(2) of the Code.

(xiii) To the Knowledge of the Company and any Founder, no adjustment relating to any Return filed by the Company has been proposed formally or informally by any tax authority to the Company or any representative thereof.

(xiv) The Company has not requested or received a ruling from any taxing authority or signed a closing agreement with any taxing authority.

(c) Executive Compensation Tax. Except as set forth in Company Schedule 2.9(c), there is no contract, agreement, plan or arrangement to which the Company is a party, including, without limitation, the provisions of this Agreement, covering any employee or former employee of the Company, which, individually or collectively, could give rise to the payment of any amount that would not be deductible pursuant to Sections 280G, 404 or 162(m) of the Code.

2.10 Restrictions on Business Activities. Except as set forth in Company Schedule 2.10 and except for such federal and state laws generally applicable to the telecommunications industry, there is no agreement (non-compete or otherwise), commitment, judgment, injunction, order or decree to which the Company is a party or otherwise binding upon the Company which has or may reasonably be expected to have the effect of prohibiting or impairing any business practice of the Company, any acquisition of property (tangible or intangible) by the Company, the conduct of business by the Company or otherwise limiting the freedom of the Company to engage in any line of business or to compete with any person. Without limiting the generality of the foregoing, except as set forth in Company Schedule 2.10, the Company has not entered into any agreement under which the Company is restricted from selling, licensing or otherwise distributing any technology or products to or providing services to, customers or potential customers or any class of customers, in any geographic area, during any period of time or in any segment of the market.

2.11 Title of Properties; Absence of Liens and Encumbrances; Condition of Equipment.

(a) Company Schedule 2.11(a) sets forth a list of all real property currently or previously leased by the Company since January 1, 1996 (separately designates as leased currently or in the past) (the "Leased Properties"), and, with respect to currently leased property, the name of the lessor, the date of the lease and each amendment thereto and, with respect to any current lease, the aggregate annual rental payable under any such lease. The Company has provided Parent with true, complete and correct copies of each such lease; no term or condition of any such lease has been modified, amended or waived except as shown in such copies; each

such lease constitutes the entire agreement of the landlord and the tenant thereunder; and there are no other agreements or arrangements whatsoever relating to the Company's use or occupancy of any of the premises described in such leases. The Company has not transferred or assigned any interest in any such lease, nor has the Company subleased or otherwise granted rights of use or occupancy of any of the premises described therein to any other person or entity. All such current leases are in full force and effect, are valid and effective in accordance with their respective terms, and there is not, under any of such leases, any existing default or event of default (or event which with notice or lapse of time, or both, would constitute a default) by the Company, and to the knowledge of the Company and any Founder, by any third party.

(b) The Company has good and valid title to, or, in the case of leased properties and assets, valid leasehold interests in, all of its tangible properties and assets, real, personal and mixed, currently used or held for use in its business, free and clear of any Liens, except (i) as reflected in the Current Balance Sheet, and (ii) Permitted Encumbrances.

(c) Company Schedule 2.11(c) lists all material items of equipment (the "Equipment") currently owned or leased by the Company and except as set forth on Company Schedule 2.11(c), such Equipment is (i) adequate for the conduct of the business of the Company as currently conducted and proposed to be conducted, and (ii) in good operating condition, regularly and properly maintained, subject to normal wear and tear.

(d) Except as set forth in Company Schedule 2.11(d), the Company has ownership, free and clear of any Liens, of all customer lists, customer contact information, customer correspondence and customer licensing and purchasing histories relating to its current and former customers (the "Customer Information"). No person other than the Company possesses any claims or rights with respect to use of the Customer Information.

(e) Company Schedule 2.11(e)(1) sets forth a list of all real property currently owned by the Company, the date of acquisition, and the square footages of the land and all buildings situated thereon. Such real property is referred to herein individually as an "Owned Property" and collectively as the "Owned Properties". The Company owns good and marketable fee simple title to the Owned Properties free and clear of any liens, mortgages, pledges, security interests, options, rights, leases, charges, encumbrances or restrictions of any kind except as described on Company Schedule 2.11(e)(2).

(f) Except as set forth in Company Schedule 2.11(f), there are no pending or (to the Company's Knowledge) threatened special assessments or improvements or activities of any public or quasi-public body either planned, in process, or completed which may give rise to any special assessment against any Owned Property or any portion thereof.

(g) The Company has no information or Knowledge that there are judicial or administrative actions to which the Company is a party, or any action by adjacent landowners, or natural or artificial conditions upon any Owned Property, which could, in the aggregate, have a material and adverse effect upon any Owned Property or its value which have not been disclosed in the Company Schedules to this Agreement. The Company has not received any notice from

any third party of any defects or inadequacies in any Owned Property or Leased Property or any part thereof which could materially and adversely affect the insurability of such Owned Property or Leased Property or the premiums for the insurance thereof. No notice has been given by any insurance company which has issued a policy with respect to any portion of any Owned Property or Leased Property or by any board of fire underwriters (or other body exercising similar functions) requesting the performance of any repairs, alterations or other work with which compliance has not been made.

(h) Except for the Company, there are no parties in possession of any portion of any Owned Property, whether as tenants, tenants at sufferance, trespassers or otherwise, other than those tenants listed on Company Schedule 2.11(h). For each party identified on Company Schedule 2.11(h), the Company has set forth the name of the party, the date of the occupancy agreement entered into with such party and any amendment thereto, and the expiration date of such agreement.

(i) Except as set forth in Company Schedule 2.11(i) all improvements existing on the land on which the Owned Properties are located (including the buildings and all drives, parking lots, landscaping, curbs, sidewalks, sewers and other utilities) have been constructed and installed in accordance with plans and specifications approved by all governmental authorities having jurisdiction. Except as set forth in Company Schedule 2.11(i) all such improvements (including all parking areas) are private and have not been dedicated to any public authority.

(j) No law, ordinance, regulation or restriction is, or as of the Closing Date will be, violated by the continued occupancy, maintenance, operation or use of the Owned Properties or the Leased Properties in their present manner. No improvements on or use of the Owned Properties violate any restrictive covenants or easements affecting the Owned Properties.

(k) There are currently in existence no service, operating or management agreements or arrangements with respect to any Owned Property, except as described on Company Schedule 2.11(k) hereto.

(l) There are presently in existence water, sewer, gas and electrical lines and surface drainage systems serving each Owned Property which have been licensed, permitted, completed, installed and paid for and which are sufficient as licensed and permitted to service the operations of each Owned Property when fully occupied and operational. All utility lines serving each Owned Property are located in the right-of-way of public roadways to the boundary of the land on which such Owned Property is situated.

(m) Except as set forth on Company Schedule 2.11(m), as of the Closing Date, there will be no structural, electrical, mechanical, plumbing, roof, paving or other defects in the Owned Properties, the roofs shall be free of leaks and in sound structural condition, and the operating systems for each Owned Property will be in good working order.

(n) There is no pending or, to the Knowledge of the Company and the Founders, threatened condemnation or similar proceeding affecting any Owned Property or Leased Property or any portion thereof, and neither the Company nor the Founders has Knowledge that any such action is currently contemplated. Except as set forth on Company Schedule 2.11(n), there are no legal actions, suits or other legal or administrative proceedings pending or, to the Knowledge of the Company and the Founders, threatened against the Company affecting any Owned Property or Leased Property, and neither the Company nor any Founder has any Knowledge of any facts which might result in any such action, suit or proceeding.

(o) Except as set forth on Company Schedule 2.11(o), with respect to every mortgage, deed of trust or other instrument now or hereafter encumbering any Owned Property, (i) no default, event of default, or event which with the giving of notice or passage of time or both could constitute a default or event of default exist thereunder or under any instrument evidencing, securing or otherwise relating to the indebtedness secured thereby, and the Company has not been given notice by any holder of any such instrument of such a default, event of default or other event, and (ii) the Company's sale of the Owned Properties and prepayment of any indebtedness evidenced or secured thereby is not prohibited by the holder of any such instrument.

2.12 Intellectual Property

(a) **Definitions.** For all purposes of this Agreement, the following terms shall have the following respective meanings:

(i) "**Technology**" shall mean any or all of the following: (i) works of authorship including, without limitation, computer programs, source code and executable code, whether embodied in software, firmware or otherwise, documentation, designs, files, net lists, records, data and mask works; (ii) inventions (whether or not patentable), improvements, tools, methods, processes and technology; (iii) proprietary and confidential information, including technical data and customer and supplier lists, trade secrets, know how, tools, methods and processes; (iv) databases, data compilations and collections and technical data; (v) logos, trade names, trade dress, trademarks, service marks, World Wide Web addresses and domain names; and all instantiations of the foregoing in any form and embodied in any media.

(ii) "**Intellectual Property Rights**" shall mean any or all of the following and all rights in, arising out of, or associated therewith: (i) all United States and foreign patents and utility models and applications therefor and all reissues, divisions, re-examinations, renewals, extensions, provisionals, continuations and continuations-in-part thereof, and equivalent or similar rights anywhere in the world in inventions and discoveries including without limitation invention disclosures ("**Patents**"); (ii) all trade secrets and other rights in know-how and confidential or proprietary information; (iii) all copyrights, copyrights registrations and applications therefor and all other rights corresponding thereto throughout the world ("**Copyrights**"); (iv) all mask works, mask work registrations and applications therefor, and any equivalent or similar rights in semiconductor masks, layouts, architectures or topology

("Maskworks"); (v) all industrial designs and any registrations and applications therefor throughout the world; (vi) all rights in World Wide Web addresses and domain names and applications and registrations therefor, all trade names, logos, common law trademarks and service marks, trademark and service mark registrations and applications therefor and all goodwill associated therewith throughout the world ("Trademarks"); and (vii) any similar, corresponding or equivalent rights to any of the foregoing anywhere in the world.

(iii) "Company Intellectual Property" shall mean any Technology and Intellectual Property Rights including the Company Registered Intellectual Property Rights (as defined below) that are owned by or exclusively licensed to the Company.

(iv) "Registered Intellectual Property Rights" shall mean all United States, international and foreign: (i) Patents, including applications therefor; (ii) registered Trademarks, applications to register Trademarks, including intent-to-use applications, or other registrations or applications related to Trademarks; (iii) Copyrights registrations and applications to register Copyrights; (iv) Maskwork registrations and applications to register Maskworks; and (v) any other Technology that is the subject of an application, certificate, filing, registration or other document issued by, filed with, or recorded by, any state, government or other public legal authority at any time.

(b) Company Schedule 2.12(b) lists all Registered Intellectual Property Rights owned by, filed in the name of, or applied for, by the Company (the "Company Registered Intellectual Property Rights"), and any and all invention disclosures, and lists any proceedings or actions before any court, tribunal (including the United States Patent and Trademark Office (the "PTO") or equivalent authority anywhere in the world) related to any of the Company Registered Intellectual Property Rights or Company Intellectual Property.

(c) Except as set forth in Company Schedule 2.12(c), each item of Company Registered Intellectual Property Rights is valid and subsisting, and all necessary registration, maintenance and renewal fees in connection with such Company Registered Intellectual Property Rights have been paid and all necessary documents and certificates in connection with such Company Registered Intellectual Property Rights have been filed with the relevant patent, copyright, trademark or other authorities in the United States or foreign jurisdictions, as the case may be, for the purposes of maintaining such Registered Intellectual Property Rights. Except as set forth on Company Schedule 2.12(c), there are no actions that must be taken by the Company within one hundred twenty (120) days of the Closing Date, including the payment of any registration, maintenance or renewal fees or the filing of any responses to PTO office actions, documents, applications or certificates for the purposes of obtaining, maintaining, perfecting or preserving or renewing any Registered Intellectual Property Rights. In each case in which the Company has acquired any Technology or Intellectual Property Right from any person, the Company has obtained a valid and enforceable assignment sufficient to irrevocably transfer all rights in such Technology and the associated Intellectual Property Rights to the Company. To the maximum extent provided for by, and in accordance with, applicable laws and regulations, the Company has recorded each such assignment of a Registered Intellectual Property Right assigned to the Company with the relevant Governmental Entity, including the PTO, the U.S.

Copyright Office, or their respective equivalents in any relevant foreign jurisdiction, as the case may be. Except as set forth on Company Schedule 2.12(c), the Company has not claimed a particular status, including "Small Business Status," in the application for any Intellectual Property Rights, which claim of status was not at the time made, or which has since become, inaccurate or false.

(d) Except as set forth in Company Schedule 2.12(d), the Company Intellectual Property is enforceable in the United States of America. Without limiting the foregoing, except as set forth on Company Schedule 2.12(d), to the knowledge of the Company and any Founder, there is (are) no information, materials, facts, or circumstances, including any information or fact that would constitute prior art, that would render any of the Company Registered Intellectual Property Rights or any of the Company Intellectual Property invalid or unenforceable, or would adversely effect any pending application for any Company Registered Intellectual Property Right and the Company has not misrepresented, or failed to disclose, and has no knowledge of any misrepresentation or failure to disclose, any fact or circumstances in any application for any Company Registered Intellectual Property Right that would constitute fraud or a misrepresentation with respect to such application or that would otherwise affect the validity or enforceability of any Company Registered Intellectual Property Right.

(e) Except as set forth in Company Schedule 2.12(e), each item of Company Intellectual Property is free and clear of any Liens. Except as set forth in Company Schedule 2.12(e), the Company is the exclusive owner of all Company Intellectual Property.

(f) Except as set forth in Company Schedule 2.12(f) and except for "shrink-wrap" and similar widely available commercial end-user licenses, all Technology used in or necessary to the conduct of Company's business as presently conducted was written and created solely by either (i) employees of the Company acting within the scope of their employment or (ii) by third parties who have validly and irrevocably assigned all of their rights, including Intellectual Property Rights therein, to the Company, and no third party owns or has any rights to any of the Company Intellectual Property.

(g) Except as set forth on Company Schedule 2.12(g), all employees of the Company have entered into a valid and binding written agreement with the Company sufficient to vest title in the Company of all Technology, including all accompanying Intellectual Property Rights, created by such employee in the scope of his or her employment with the Company.

(h) Except as set forth on Company Schedule 2.12(h), the Company has taken reasonable steps to protect the Company's rights in confidential information and trade secrets of the Company or provided by any other person to the Company.

(i) The Company has not transferred ownership of, or granted any exclusive license of or right to use, or authorized the retention of any exclusive rights to use or joint ownership of, any Technology or Intellectual Property Right that is or was Company Intellectual Property, to any other person.

(i) Except as set forth on Company Schedule 2.12(j), the Company Intellectual Property constitutes all the Technology and Intellectual Property Rights used in and/or necessary to the conduct of the business of the Company as it currently is conducted and when conducted by Parent and/or Surviving Corporation in substantially the same manner following closing, including, without limitation, the design, development, manufacture, use, import and sale of products, technology and performances of services.

(k) Other than inbound "shrink-wrap" and similar publicly available commercial binary code end-user licenses, the contracts, licenses and agreements listed in Company Schedule 2.13(o) lists all contracts, licenses and agreements to which the Company is a party with respect to any Technology or Intellectual Property Rights. The Company is not in breach of or has the Company failed to perform under, any of the foregoing contracts, licenses or agreements and, to the Company's knowledge, no other party to any such contract, license or agreement is in breach thereof or has failed to perform thereunder.

(l) No person who has licensed Technology or Intellectual Property Rights to the Company has ownership rights or license rights to improvements made by the Company in such Technology or Intellectual Property Rights.

(m) Company Schedule 2.13(m) lists all contracts, licenses and agreements between the Company and any other person wherein or whereby the Company has agreed to, or assumed, any obligation or duty to warrant, indemnify, reimburse, hold harmless, guaranty or otherwise assume or incur any obligation, or liability, or provide a right of rescission with respect to, the infringement or misappropriation by the Company or such other person of the Intellectual Property Rights of any person other than the Company.

(n) The operation of the business of the Company as it currently is conducted and when conducted by Parent and/or Surviving Corporation in substantially the same manner following closing, including but not limited to the use, branding, advertising, promotion, marketing and sale of the technology or services (including technology or services currently under development) of the Company does not and will not and will not when conducted by Parent and/or Surviving Corporation in substantially the same manner following the Closing, infringe or misappropriate any Intellectual Property Right of any person, violate any right of any person (including any right to privacy or publicity), or constitute unfair competition or trade practices under the laws of any United States state or federal jurisdiction, and the Company has not received notice from any person claiming that such operation or any act, product, technology or service (including technology or services currently under development) of the Company infringes or misappropriates any Intellectual Property Right of any person or constitutes unfair competition or trade practices under the laws of any jurisdiction (nor does the Company have knowledge of any basis therefor).

(o) There are no contracts, licenses or agreements between the Company and any other person with respect to Company Intellectual Property under which there is any dispute regarding the terms of such agreement, or performance under such agreement, including with respect to any payments to be made or received by the Company thereunder.

(3) To the Company's and Founders' Knowledge, no person is infringing or misappropriating any Company Intellectual Property Right.

(4) Except as set forth in Company Schedule 2.12(q), no Company Intellectual Property or service of the Company is subject to any proceeding or outstanding decree, order, judgment or settlement agreement or stipulation that restricts in any manner the use, transfer or licensing thereof by the Company or may affect the validity, use or enforceability of such Company Intellectual Property.

(5) To the Company's and Founders' Knowledge, no (i) product, technology, service or publication of the Company, (ii) material published or distributed by the Company, or (iii) conduct or statement of the Company constitutes a defamatory statement or material, false advertising or otherwise violates any applicable United States state or federal law or regulations.

(6) Except as set forth on Company Schedule 2.12(s), the Company does not design, develop, promote, market, manufacture, sell or license any products or software. Except as set forth on Company Schedule 2.12(s), all of the Company's Information Technology (as defined below) is Year 2000 Compliant (as detailed below), and will not cause an interruption in the ongoing operations of the Company's business on or after January 1, 2000. For purposes of the foregoing, the term "Information Technology" shall mean and include all software, hardware, firmware, telecommunications systems, network systems, embedded systems and other systems, components and/or services (other than general utility services including gas, electric, telephone and postal) that are owned or used by the Company in the conduct of its business, or purchased by the Company from third party suppliers. "Year 2000 Compliant" shall mean that the information item (i) will record, store, process, calculate and present calendar dates falling on and after (and if applicable, spans of time including) January 1, 2000, and will calculate any information dependent on or relating to such dates in the same manner, and with the same functionality, data integrity and performance, as the products record, store, process, calculate and present calendar dates on or before December 31, 1999, or calculate any information dependent on or relating to such dates.

(7) Except as set forth on Company Schedule 2.12(t), neither this Agreement nor the transactions contemplated by this Agreement, including the assignment to Parent or Surviving Corporation, by operation of law or otherwise, of any Contracts to which the Company is a party, will result in (i) either Parent's or the Surviving Corporation's granting to any third party any right in or with respect to any Technology or Intellectual Property Right owned by, or licensed to, either of them, (ii) either Parent's or the Surviving Corporation's being bound by, or subject to, any non-compete or other restriction on the operation or scope of their respective businesses, or (iii) either Parent's or the Surviving Corporation's being obligated to pay any royalties or other amounts to any third party in excess of those payable by Parent or Surviving Corporation, respectively, prior to the Closing.

(8) Except as set forth on Company Schedule 2.12(u), all Company Intellectual Property will be fully transferable, alienable or licensable by Surviving Corporation and its Parent without restriction and without payment of any kind to any third party.

(xii) any other agreement, contract or commitment that involves \$25,000 individually or \$75,000 in the aggregate or more and is not cancelable without penalty within thirty (30) days.

2.14 Interested Party Transactions Except as set forth in Company Schedule 2.14 no officer, director or shareholder of the Company (any ancestor, sibling, descendant or spouse of any of such persons, or any trust, partnership or corporation in which any of such persons has or has had an interest), has or has had, directly or indirectly, (i) an interest in any entity which furnished or sold, or furnishes or sells, services, products or technology that the Company furnishes or sells, or proposes to furnish or sell, or (ii) any interest in any entity that purchases from or sells or furnishes to the Company, any goods or services, or (iii) a beneficial interest in any Contract to which the Company is a party, *provided, however*, that ownership of no more than one percent (1%) of the outstanding voting stock of a publicly traded corporation shall not be deemed to be an "interest in any entity" for purposes of this Section 2.14.

2.15 Government Authorizations and Regulatory Compliance

(a) Except as set forth on Company Schedule 2.15(a) each Certificate of Public Convenience and Necessity or similar certificate, consent, license, permit, grant and other authorization (i) pursuant to which the Company currently operates or holds any interest in any of its properties, or (ii) which is required for the operation of the Company's business as currently conducted or the holding of any such interest (collectively, "Company Authorizations") has been issued or granted to the Company by the appropriate Governmental Entity. Except as set forth on Company Schedule 2.15(a) the Company Authorizations are in full force and effect and constitute all Company Authorizations required to permit the Company to operate or conduct its business or hold any interest in its properties or assets.

(b) Except as set forth on Company Schedule 2.15(b), the Company has filed with the appropriate Governmental Entities and maintains in effect all tariffs, notices, or similar documents required under the applicable regulations of any Governmental Entity with jurisdiction to regulate the services provided by the Company. The Company has complied with all applicable regulations, decisions, orders, or other requirements of any Governmental Entity with jurisdiction to regulate the services provided by the Company, the ownership of the Company, the property or facilities of the Company, the business transactions of the Company, or the Company.

2.16 Litigation Except as set forth in Company Schedule 2.16, there is no action, suit, claim or proceeding of any nature pending or, to the knowledge of the Company and the Founders, threatened, against the Company, its properties (tangible or intangible) or any of its officers or directors, nor, to the knowledge of the Company and the Founders, is there any reasonable basis therefor. Except as set forth in Company Schedule 2.16, there is no investigation or other proceeding pending or, to the knowledge of the Company and the Founders, threatened, against the Company, any of its properties (tangible or intangible) or any of its officers or directors by or before any Governmental Entity, nor, to the knowledge of the Company and the Founders, is there any reasonable basis therefor. Except as set forth in Company Schedule 2.16,

to the Knowledge of the Company and the Founders, no Governmental Entity has at any time challenged or questioned the legal right of the Company to conduct its operations as presently or previously conducted.

2.17 Accounts Receivable/Inventory:

(a) The Company has made available to Parent a list of all accounts receivable of the Company, together with a range of days elapsed since invoice.

(b) All of the Company's accounts receivable arose in the ordinary course of business, are carried at values determined in accordance with GAAP consistently applied, and are collectible except to the extent of reserves therefor set forth in the Current Balance Sheet or, for receivables arising subsequent to March 31, 1999, as reflected on the books and records of the Company (which are prepared in accordance with GAAP) and as, except to the extent of reserves therefor, will be set forth in the Closing Date Balance Sheet. Except as set forth in Company Schedule 2.17, no person has any Lien on any of the Company's accounts receivable and no agreement for deduction or discount has been made with respect to any of the Company's accounts receivable.

2.18 Minute Books: The minutes of the Company made available to counsel for Parent are the only minutes of the Company and contain accurate records of all meetings of the Board of Directors (or committees thereof) of the Company and their shareholders or actions by written consent since the time of incorporation of the Company.

2.19 Environmental Matters:

(a) **Hazardous Material:** Except as set forth on Company Schedule 2.19(a), the Company has not: (i) operated any underground storage tanks at any property that the Company has at any time owned, operated, occupied or leased, or (ii) illegally released any amount of any substance that has been designated by any Governmental Entity or by applicable federal, state or local law to be radioactive, toxic, hazardous or otherwise a danger to health or the environment, including, without limitation, PCBs, asbestos, petroleum, and urea-formaldehyde and all substances listed as hazardous substances pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or defined as a hazardous waste pursuant to the United States Resource Conservation and Recovery Act of 1976, as amended, and the regulations promulgated pursuant to said laws (a "Hazardous Material") (but excluding office and janitorial supplies properly and safely maintained) in an amount or concentration that would not require any investigation or remediation. Except as set forth on Company Schedule 2.19(a), no Hazardous Materials are present in, on or under any property, including the land and the improvements, ground water and surface water thereof, that the Company has at any time owned, operated, occupied or leased.

(b) **Hazardous Materials Activities:** Except as set forth in Company Schedule 2.19(b), the Company has not transported, stored, used, manufactured, disposed of, released or exposed its employees or others to Hazardous Materials in violation of any law in

effect on or before the Effective Time in a manner that would expose the Company to liability, nor has the Company disposed of, transported, sold, or manufactured any product containing a Hazardous Material (any or all of the foregoing being collectively referred to herein as "Hazardous Materials Activities") in violation of any rule, regulation, treaty or statute promulgated by any Governmental Entity in effect prior to or as of the date hereof to prohibit, regulate or control Hazardous Materials or any Hazardous Material Activity.

(c) Permits. The Company currently holds all environmental approvals, permits, licenses, clearances and consents (the "Environmental Permits") necessary for the conduct of the Company's Hazardous Material Activities, respectively, and other businesses of the Company as such activities and businesses are currently being conducted.

(d) Environmental Liabilities. No action, proceeding, revocation proceeding, amendment procedure, writ, injunction or claim is pending or, to the Knowledge of the Company and the Founders, threatened, concerning any Environmental Permit, Hazardous Material or any Hazardous Materials Activity of the Company.

2.20 Brokers' and Finders' Fees; Third Party Expenses. The Company has not incurred, nor will it incur, directly or indirectly, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with the Agreement or any transaction contemplated hereby. Company Schedule 2.20 sets forth the principal terms and conditions of any agreement, written or oral, with respect to such fees.

2.21 Employee Benefit Plans and Compensation

(a) Definitions. For all purposes of this Agreement, the following terms shall have the following respective meanings:

"Affiliate" shall mean any other person or entity under common control with the Company within the meaning of Sections 414(b), (c), (m) or (o) of the Code, and the regulations issued thereunder; provided, however, that to the extent any representation relates to a Multiemployer Plan, "Affiliate" means any other person or entity under common control with the Company within the meaning of Section 414(b) or (c) of the Code.

"Company Employee Plan" shall mean any plan, program, policy, practice, contract, agreement or other material arrangement providing for compensation, severance, termination pay, deferred compensation, performance awards, stock or stock-related awards, fringe benefits or other employee benefits or remuneration of any kind, whether written, unwritten or otherwise, funded or unfunded, including without limitation, each "employee benefit plan," within the meaning of Section 3(3) of ERISA which is or has been maintained, contributed to, or required to be contributed to, by the Company or any Affiliate for the benefit of any Employee, or with respect to which the Company or any Affiliate has or may have any liability or obligation.

"COBRA" shall mean the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

"DOL" shall mean the United States Department of Labor.

"Employee" shall mean any current or former employee, consultant or director of the Company or any Affiliate (but only with respect to his or her service with the Company).

"Employee Agreement" shall mean each management, employment, severance, consulting, relocation, repatriation, expatriation, visas, work permit or other agreement, or contract between the Company or any Affiliate and any Employee, including, but not limited to, the Founder Retirement Payments.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

"FMLA" shall mean the Family Medical Leave Act of 1993, as amended.

"International Employee Plan" shall mean each Company Employee Plan that has been adopted or maintained by the Company or an Affiliate, whether informally or formally, or with respect to which the Company or an Affiliate will or may have any liability, for the benefit of Employees who perform services outside the United States.

"IRS" shall mean the United States Internal Revenue Service.

"Multiemployer Plan" shall mean any "Pension Plan" (as defined below) which is a "multiemployer plan," as defined in Section 3(37) of ERISA.

"PBGC" shall mean the United States Pension Benefit Guaranty Corporation.

"Pension Plan" shall mean each Company Employee Plan which is an "employee pension benefit plan," within the meaning of Section 3(2) of ERISA.

(b) Company Schedule. Company Schedule 2.21(b) contains an accurate and complete list of each Company Employee Plan and each Employee Agreement, together with a schedule of all liabilities, whether or not accrued, under each such Employee Plan. The Company does not have any plan or commitment to establish any new Company Employee Plan or Employee Agreement, to modify any Company Employee Plan or Employee Agreement (except to the extent required by law or to conform any such Company Employee Plan or Employee Agreement to the requirements of any applicable law, in each case as previously disclosed to Parent in writing, or as required by this Agreement), or to enter into any Company Employee Plan or Employee Agreement. Company Schedule 2.21(b) also sets forth a table setting forth the name and current salary as of the date of this Agreement of each employee of the Company.

(c) Documents. The Company has made available to Parent (i) correct and complete copies of all documents embodying each Company Employee Plan and each Employee Agreement including, without limitation, all amendments thereto and all related trust documents, (ii) the most recent annual actuarial valuations, if any, prepared for each Company Employee Plan, (iii) the three (3) most recent annual reports (Form Series 5500 and all Company Schedules and financial statements attached thereto), if any, filed in connection with each Company Employee Plan, (iv) if the Company Employee Plan is funded, the most recent annual and periodic accounting of Company Employee Plan assets, if any, (v) the most recent summary plan description together with the summary(ies) of material modifications thereto, if any, required under ERISA with respect to each Company Employee Plan, (vi) the most recent IRS determination, opinion, notification and advisory letters, and all applications and correspondence to or from the IRS or the DOL with respect to any such application or letter, if any, (vii) all material written agreements and contracts relating to each Company Employee Plan, including, without limitation, administrative service agreements and group insurance contracts, (viii) all communications material to any Employee or Employees relating to any Company Employee Plan and any proposed Company Employee Plans, in each case, relating to any amendments, terminations, establishments, increases or decreases in benefits, acceleration of payments or vesting Company Schedules or other events which would result in any liability to the Company, (ix) all correspondence to or from any governmental agency relating to any Company Employee Plan, (x) all COBRA forms and related notices currently in use, (xi) all policies pertaining to fiduciary liability insurance covering the fiduciaries for each Company Employee Plan, (xii) all discrimination tests, if any, for each Company Employee Plan for the most recent plan year, and (xiii) the most recent registration statement, annual report (Form 11-K and all attachments thereto) and prospectus, if any, prepared in connection with each Company Employee Plan.

(d) Employee Plan Compliance. Except as set forth in Company Schedule 2.21(d), the Company has performed all obligations required to be performed by it under, is not in default or violation of, and has no knowledge of any default or violation by any other party to each Company Employee Plan, and each Company Employee Plan has been established and maintained in accordance with its terms and in compliance with all applicable laws, statutes, orders, rules and regulations, including but not limited to ERISA or the Code. Except as set forth in Company Schedule 2.21(d), each Company Employee Plan intended to qualify under Section 401(a) of the Code and each trust intended to qualify under Section 501(a) of the Code has either received a favorable determination, opinion, notification or advisory letter from the IRS with respect to each such Plan as to its qualified status under the Code, including all amendments to the Code, effected by the Tax Reform Act of 1986 and subsequent legislation, or has remaining a period of time under applicable Treasury regulations or IRS pronouncements in which to apply for such a letter and make any amendments necessary to obtain a favorable determination as to the qualified status of each such Company Employee Plan. No "prohibited transaction," within the meaning of Section 4975 of the Code or Sections 406 and 407 of ERISA, and not otherwise exempt under Section 4975 of the Code or Sections 407 or 408 of ERISA (or any administrative exemption issued thereunder), has occurred with respect to any Company Employee Plan. Except as set forth in Company Schedule 2.21(d), there are no actions, suits or claims pending, or, to the knowledge of the Company and any Founder, threatened or reasonably

anticipated (other than routine claims for benefits) against any Company Employee Plan or against the assets of any Company Employee Plan. Except as set forth in Company Schedule 2.21(d), each Company Employee Plan can be amended, terminated or otherwise discontinued after the Effective Time in accordance with its terms, without liability to Parent, the Company or any Affiliate (other than ordinary administration expenses). Except as set forth in Company Schedule 2.21(d), there are no audits, inquiries or proceedings pending or, to the knowledge of the Company, threatened by the IRS or DOL with respect to any Company Employee Plan. Neither the Company nor any Affiliate is subject to any penalty or tax with respect to any Company Employee Plan under Section 502(i) of ERISA or Sections 4975 through 4980 of the Code. The Company's money purchase pension plan (plan number 002) and the Company's profit sharing plan (plan number 001) have been terminated in accordance with their respective terms and in compliance with all applicable laws, statutes, orders, rules and regulations, including but not limited to, ERISA or the Code.

(e) No Pension Plans: Except as set forth in Company Schedule 2.21(e), neither the Company nor any Affiliate has ever maintained, established, sponsored, participated in, or contributed to, any Pension Plans subject to Title IV of ERISA or Section 412 of the Code.

(f) Multiemployer Plans: At no time has the Company or any Affiliate contributed to or been obligated to contribute to any Multiemployer Plan.

(g) No Post-Employment Obligations: No Company Employee Plan provides, or reflects or represents any liability to provide, retiree life insurance, retiree health or other retiree employee welfare benefits (within the meaning of Section 3(1) of ERISA) to any person for any reason, except as may be required by COBRA or other applicable law, statute, order, rule or regulation and the Company has never represented, promised or contracted (whether in oral or written form) to any Employee (either individually or to Employees as a group) or any other person that such Employee(s) or other person would be provided with retiree life insurance, retiree health or other retiree employee welfare benefit (within the meaning of Section 3(1) of ERISA), except to the extent required by law, statute, order, rule or regulation.

(h) COBRA: Neither the Company nor any Affiliate has, prior to the Effective Time and in any material respect, violated any of the health care continuation requirements of COBRA, the requirements of FMLA, the requirements of the Health Insurance Portability and Accountability Act of 1996, the requirements of the Women's Health and Cancer Rights Act, the requirements of the Newborns' and Mothers' Health Protection Act of 1996, or any similar provisions of state law applicable to its Employees.

(i) Effect of Transaction: (i) Except as set forth on Company Schedule 2.21(i) the execution of this Agreement and the consummation of the transactions contemplated hereby will not (either alone or upon the occurrence of any additional or subsequent events) constitute an event under any Company Employee Plan, Employee Agreement, trust or loan that will or may result in any payment (whether of severance pay or otherwise), acceleration, forgiveness of indebtedness, vesting, distribution, increase in benefits or obligation to fund benefits with respect to any Employee, except as expressly required by this Agreement.

(ii) No payment or benefit which will or may be made by the Company or its Affiliates with respect to any Employee as a result of the transactions contemplated by this Agreement or otherwise will be characterized as an excess "parachute payment," that will not be deductible under Section 280G of the Code.

(j) Employment Matters. The Company: (i) is in compliance with all applicable foreign, federal, state and local laws, rules and regulations respecting employment, employment practices, terms and conditions of employment and wages and hours, in each case, with respect to Employees, (ii) has withheld and reported all amounts required by law or by agreement to be withheld and reported with respect to wages, salaries and other payments to Employees, (iii) is not liable for any arrears of wages or any taxes or any penalty for failure to comply with any of the foregoing, and (iv) is not liable for any payment to any trust or other fund governed by or maintained by or on behalf of any governmental authority, with respect to unemployment compensation benefits, social security or other benefits or obligations for Employees (other than routine payments to be made in the normal course of business and consistent with past practice). There are no pending or, to the Knowledge of the Company and the Founders, threatened, or reasonably anticipated claims or actions against the Company under any worker's compensation policy or long-term disability policy.

(k) Labor. No work stoppage or labor strike against the Company is pending or, to the Knowledge of the Company and the Founders, threatened, or reasonably anticipated. The Company does not know of any activities or proceedings of any labor union to organize any Employees. There are no actions, suits, claims, labor disputes or grievances pending or threatened, or reasonably anticipated relating to any labor, safety or discrimination matters involving any Employee, including, without limitation, charges of unfair labor practices or discrimination complaints. The Company has not engaged in any unfair labor practices within the meaning of the National Labor Relations Act. The Company is not presently, nor has it been in the past, a party to, or bound by, any collective bargaining agreement or union contract with respect to Employees and no collective bargaining agreement is being negotiated by the Company.

(l) International Employee Plan. The Company does not now, nor has it ever had the obligation to, maintain, establish, sponsor, participate in, or contribute to any International Employee Plan.

(m) No Interference or Conflict. No officer, employee, consultant, or to the Knowledge of the Company or any Founder, shareholder of the Company is obligated under any contract or agreement subject to any judgment, decree or order of any court or administrative agency that would interfere with such person's efforts to promote the interests of the Company or that would interfere with the Company's business. Neither the execution nor delivery of this Agreement, nor the carrying on of the Company's business as presently conducted or proposed to be conducted by the Company as of the Effective Time nor any activity of such officers, directors, employees or consultants in connection with the carrying on of the Company's business as presently conducted or currently proposed to be conducted by the Company as of the Effective Time, will conflict with or result in a breach of the terms, conditions or provisions of,

or constitute a default under, any contract or agreement under which any of such officers, directors, employees or consultants is now bound.

2.22 Insurance. Company Schedule 2.22 lists all insurance policies and fidelity bonds covering the assets, business, equipment, properties, operations, employees, officers and directors of the Company or any Affiliate. There is no claim by the Company or any Affiliate pending under any of such policies or bonds as to which coverage has been questioned, denied or disputed by the underwriters of such policies or bonds. All premiums due and payable under all such policies and bonds have been paid, and the Company and its Affiliates are otherwise in compliance with the terms of such policies and bonds (or other policies and bonds providing substantially similar insurance coverage). Neither the Company nor any Founder has any knowledge of threatened termination of, or premium increase with respect to, any of such policies.

2.23 Compliance with Laws. Except as set forth in Company Schedule 2.23, the Company has complied with, is not in violation of, and has not received any notices of violation with respect to, any foreign, federal, state or local statute, law or regulation.

2.24 Warranties; Indemnities. Except for the warranties and indemnities contained in those contracts and agreements set forth in Company Schedule 2.12(m), warranties implied by law and as set forth on Company Schedule 2.24, the Company has not given any warranties or indemnities relating to products or technology sold or services rendered by the Company.

2.25 Complete Copies of Materials. The Company has delivered or made available true and complete copies of each document (or summaries of same) that has been requested by Parent or its counsel.

2.26 Representations Complete. None of the representations or warranties made by the Company or the Founders (as modified by the Company Schedules in this Agreement), and none of the statements made in any exhibit, Company Schedule or certificate furnished by the Company or the Founders pursuant to this Agreement contains or will contain at the Effective Time, any untrue statement of a material fact, or omits or will omit at the Effective Time to state any material fact necessary in order to make the statements contained herein or therein, in the light of the circumstances under which made, not misleading. The information furnished on or in any documents mailed, delivered or otherwise furnished to Shareholders in connection with the solicitation of their consent to this Agreement and the Merger, will not contain, at or prior to the Effective Time, any untrue statement of a material fact and will not omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which made, not misleading.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF PARENT AND SUB

Parent and Sub hereby represent and warrant to the Company that on the date hereof and as of the Effective Time as though made at the Effective Time as follows:

NEXT

DOCUMENT (S)

BEST IMAGE

POSSIBLE

3.1 Organization, Standing and Power. Parent is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Sub is a corporation duly organized, validly existing and in good standing under the laws of Oregon. Each of Parent and Sub has the corporate power to own its properties and to carry on its business as now being conducted and is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the failure to be so qualified or licensed would have a material adverse effect on the business, assets (including intangible assets), condition (financial or otherwise), results of operations or capitalization of Parent.

3.2 Authority. Each of Parent and Sub has all requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of Parent and Sub. This Agreement has been duly executed and delivered by Parent and Sub and constitutes the valid and binding obligations of Parent and Sub, enforceable in accordance with its terms, except as such enforceability may be limited by principles of public policy and subject to the laws of general application relating to bankruptcy, insolvency and the relief of debtors and rules of law governing specific performance, injunctive relief or other equitable remedies.

3.3 Consents. No consent, waiver, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity, or any third party is required by or with respect to Parent or Sub in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby, except for (i) such consents, waivers, approvals, orders, authorizations, registrations, declarations and filings as may be required under applicable securities laws, (ii) such consents, waivers, approvals, orders, authorizations, registrations, declarations and filings which, if not obtained or made, would not have a Material Adverse Effect on Parent, and (iii) the filing of the Articles of Merger with the Secretary of State of the State of Oregon.

3.4 HSR. ATG Group, Inc., a Delaware corporation ("Holding Company") is the Ultimate Parent Entity (as defined under the Hart-Scott-Rodino Anti-Trust Improvements Act of 1976, as amended and the rules and regulations promulgated thereunder ("HSR") of Parent. Based on a review of the most-recent, regularly-prepared, consolidated balance sheet of Holding Company and the most-recent, regularly-prepared annual statement of income and expense of Holding Company, each of which is dated not more than nine months prior to the date hereof, as of the date of the Agreement, Holding Company does not satisfy the \$100 million size-of-person test under Section 7A(a)(2)(B) of HSR.

ARTICLE IV CONDUCT PRIOR TO THE EFFECTIVE TIME

4.1 Conduct of Business of the Company. During the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement or the Effective Time, the Company agrees, and each Founder agrees to use its best efforts to cause the

Company, except to the extent that Parent shall otherwise consent in writing, to carry on the Company's business in the usual, regular and ordinary course in substantially the same manner as heretofore conducted, to pay the debts and Taxes of the Company when due, to pay or perform other obligations when due, and, to the extent consistent with such business, use its reasonable best efforts consistent with past practice and policies to preserve intact the Company's present business organizations, keep available the services of the Company's present officers and key employees and preserve the Company's relationships with customers, suppliers, distributors, licensors, licensees, and others having business dealings with it, all with the goal of preserving unimpaired the Company's goodwill and ongoing businesses at the Effective Time. The Company and each Founder shall promptly notify Parent of any event or occurrence or emergency not in the ordinary course of business of the Company and any material event involving the Company. Except as expressly contemplated by this Agreement or as set forth in Company Schedule 4.1, the Company shall not, without the prior written consent of Parent:

- (a) make any expenditures outside of the ordinary course of business consistent with past practices or otherwise or enter into any commitment or transaction exceeding \$25,000 individually or \$75,000 in the aggregate or any commitment or transaction of the type described in Section 2.8 hereof other than payroll transactions in the ordinary course of business consistent with past practices;
- (b) make any purchases of inventory, or enter into any Contract to purchase, any inventory in excess of \$25,000 in the aggregate, except any inventory purchased in accordance with an inventory purchase plan previously approved by Parent;
- (c) (i) sell, license or transfer to any person or entity any rights to any Company Intellectual Property or enter into any agreement with respect to any Company Intellectual Property with any person or entity or with respect to any Intellectual Property of any person or entity, (ii) buy or license any Intellectual Property or enter into any agreement with respect to the Intellectual Property of any person or entity, (iii) enter into any agreement with respect to the development of any Intellectual Property with a third party, or (iv) change pricing or royalties charged by the Company to its customers or licensees, or the pricing or royalties set or charged by persons who have licensed Intellectual Property to the Company;
- (d) ~~enter into~~ enter into or amend any Contract outside of the ordinary course consistent with past practices pursuant to which any other party is granted marketing, distribution, development or similar rights of any type or scope with respect to any products or technology of the Company;
- (e) amend or otherwise modify (or agree to do so), except in the ordinary course of business, or violate the terms of, any of the Contracts set forth or described in the Company Schedules;
- (f) commence or settle any litigation;

(d) except for the Bonus set forth on Company Schedule 4.1(g), declare, set aside or pay any dividends on or make any other distributions (whether in cash, stock or property) in respect of any Company Capital Stock, or split, combine or reclassify any Company Capital Stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of Company Capital Stock, or repurchase, redeem or otherwise acquire, directly or indirectly, any shares of Company Capital Stock (or options, warrants or other rights exercisable therefor) except in accordance with the agreements evidencing Company Options;

(h) except for the Bonus set forth on Company Schedule 4.1(g), issue, grant, deliver or sell or authorize or propose the issuance, grant, delivery or sale of, or purchase or propose the purchase of, any shares of Company Capital Stock or securities convertible into, or subscriptions, rights, warrants or options to acquire, or other agreements or commitments of any character obligating it to issue or purchase any such shares or other convertible securities, except for increases of Company Common Stock upon the exercise of Company Options;

(i) cause or permit any amendments to its articles of incorporation, bylaws or other organizational documents of the Company;

(j) acquire or agree to acquire by merging or consolidating with, or by purchasing any assets or equity securities of, or by any other manner, any business or any corporation, partnership, association or other business organization or division thereof, or otherwise acquire or agree to acquire any assets which are material, individually or in the aggregate, to the Company's business;

(k) sell, lease (or sub-lease), license or otherwise dispose of any of its properties or assets exceeding \$50,000 in the aggregate, except for licenses for Company Intellectual Property, which shall be governed by the provisions of Section 4.1(c) hereof;

(l) incur any indebtedness (other than trade payables in the ordinary course of business consistent with past practices) or guarantee any indebtedness or issue or sell any debt securities or guarantee any debt securities of others;

(m) grant any loans to others outside of the ordinary course of business consistent with past practices or purchase debt securities of others or amend the terms of any outstanding loan agreement;

(n) except as contemplated by Section 4.4 hereof, grant any severance or termination pay (i) to any director or officer, or (ii) to any other employee;

(o) except as contemplated by Sections 4.3 and 4.4 hereof and as set forth on Company Schedule 4.1(g), adopt or amend any Company Employee Plan, or enter into any employment contract, pay or agree to pay any special bonus or special remuneration to any director or employee, or increase the salaries or wage rates of its employees;

(p) revalue any of its assets, including without limitation writing down the value of inventory or writing off notes or accounts receivable other than in the ordinary course of business;

(q) pay, discharge or satisfy, in an amount in excess of \$25,000 in any one case, or \$75,000 in the aggregate, any claim, liability or obligation (absolute, accrued, asserted or unasserted, contingent or otherwise) other than trade payables and obligations incurred in the ordinary course of business consistent with past practices;

(r) make or change any election in respect of Taxes, adopt or change any accounting method in respect of Taxes, enter into any closing agreement, settle any claim or assessment in respect of Taxes, or consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of Taxes;

(s) enter into any strategic alliance or joint marketing arrangement or agreement;

(t) encourage any employee to terminate his employment with the Company, except for termination for cause or in the ordinary course of business consistent with past practices;

(u) enter into any contract not described in Sections 4.1(a) through 4.1(t) hereof which is not terminable by the Company without penalty or payment within thirty (30) days of notice;

(v) take, or agree in writing or otherwise to take, any of the actions described in Sections 4.1(a) through 4.1(u) hereof, or any other action that would make any of its representations or warranties contained in this Agreement untrue or incorrect, prevent the Company or any of the Shareholders, including without limitation, the Founders, from performing its covenants hereunder, or otherwise make the Company less valuable from Parent's reasonable perspective.

4.2 No Solicitation. Until the earlier of (i) the Effective Time, or (ii) the date of termination of this Agreement pursuant to the provisions of Section 8.1 hereof, neither the Company nor the Founders shall (nor shall the Company or the Founders permit any of the Company's officers, directors, employees, shareholders, agents, representatives or affiliates to), directly or indirectly, take any of the following actions with any party other than Parent and its designees: (a) solicit, encourage, initiate or participate in any inquiry, negotiations or discussions, or enter into any agreement, with respect to any offer or proposal to acquire all or any part of the Company's business, properties or technologies, or any of the Company Capital Stock (whether or not outstanding), whether by merger, purchase of assets, tender offer or otherwise, or effect any such transaction, (b) disclose any information not customarily disclosed to any person concerning the Company's business, technologies or properties, or afford to any person or entity access to its properties, technologies, books or records, not customarily afforded such access, (c) assist or cooperate with any person to make any proposal to purchase all or any

(p) revalue any of its assets, including without limitation writing down the value of inventory or writing off notes or accounts receivable other than in the ordinary course of business;

(q) pay, discharge or satisfy, in an amount in excess of \$25,000 in any one case, or \$75,000 in the aggregate, any claim, liability or obligation (absolute, accrued, asserted or unasserted, contingent or otherwise) other than trade payables and obligations incurred in the ordinary course of business consistent with past practices;

(r) make or change any election in respect of Taxes, adopt or change any accounting method in respect of Taxes, enter into any closing agreement, settle any claim or assessment in respect of Taxes, or consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of Taxes;

(s) enter into any strategic alliance or joint marketing arrangement or agreement;

(t) encourage any employee to terminate his employment with the Company, except for termination for cause or in the ordinary course of business consistent with past practices;

(u) enter into any contract not described in Sections 4.1(a) through 4.1(t) hereof which is not terminable by the Company without penalty or payment within thirty (30) days of notice;

(v) take, or agree in writing or otherwise to take, any of the actions described in Sections 4.1(a) through 4.1(u) hereof, or any other action that would make any of its representations or warranties contained in this Agreement untrue or incorrect, prevent the Company or any of the Shareholders, including without limitation, the Founders, from performing its covenants hereunder, or otherwise make the Company less valuable from Parent's reasonable perspective.

4.2 No Solicitation. Until the earlier of (i) the Effective Time, or (ii) the date of termination of this Agreement pursuant to the provisions of Section 8.1 hereof, neither the Company nor the Founders shall (nor shall the Company or the Founders permit any of the Company's officers, directors, employees, shareholders, agents, representatives or affiliates to), directly or indirectly, take any of the following actions with any party other than Parent and its designees: (a) solicit, encourage, initiate or participate in any inquiry, negotiations or discussions, or enter into any agreement, with respect to any offer or proposal to acquire all or any part of the Company's business, properties or technologies, or any of the Company Capital Stock (whether or not outstanding), whether by merger, purchase of assets, tender offer or otherwise, or effect any such transaction, (b) disclose any information not customarily disclosed to any person concerning the Company's business, technologies or properties, or afford to any person or entity access to its properties, technologies, books or records, not customarily afforded such access, (c) assist or cooperate with any person to make any proposal to purchase all or any

and Sub shall bear all costs, expenses, liabilities and Losses, as defined in Section 7.2 hereof (and shall reimburse, indemnify, defend and hold harmless the Shareholders from and against any costs, expenses, liabilities and Losses incurred or suffered by the Shareholders, directly or indirectly) as a result of such termination; provided, however, nothing in this Section 4.3 shall be considered a waiver or modification of Section 2.12(d) hereof.

4.4 Termination of Severance Plans. The Company and its Affiliates, as applicable, each agrees to terminate any and all group severance, separation or salary continuation plans, programs or arrangements prior to the Closing, whether or not such arrangements are covered under ERISA. The Parent shall receive from the Company evidence that the Company's and each Affiliate's (as applicable) plan(s) has been terminated pursuant to resolution of each such entity's Board of Directors (the form and substance of which resolutions shall be subject to review and approval of the Parent), effective as of the day immediately preceding the Closing Date.

ARTICLE V ADDITIONAL AGREEMENTS

1.1 Shareholder Approval. The Company shall promptly submit this Agreement and the transactions contemplated hereby to its Shareholders for approval and adoption as provided by Oregon Law and the articles of incorporation and bylaws of the Company. The Company shall use its best efforts to obtain the consent of its Shareholders sufficient to approve the Merger and this Agreement and to enable the Closing to occur as promptly as practicable. The materials to be submitted to the Company's Shareholders in connection with the solicitation of their approval of the Merger and this Agreement shall be subject to the prior review and consultation by Parent and shall include information regarding the Company, the terms of the Merger and this Agreement and the unanimous recommendation of the Board of Directors of the Company in favor, and declaring the advisability, of the Merger and this Agreement. The Company shall promptly submit for approval by the Shareholders by the requisite vote any payments of cash in exchange for Company Capital Stock or Company Options that may be deemed to constitute "parachute payments" pursuant to Section 280G of the Code, such that all such payments resulting from the transactions contemplated hereby shall not be deemed to be "parachute payments" pursuant to Section 280G of the Code or shall be exempt from such treatment under such Section 280G. The Company shall promptly submit for approval by the Shareholders by the requisite vote an amendment and restatement of the Company's articles of incorporation to include a provision to waive preemptive rights or other similar import approved by Parent.

1.2 Access to Information. The Company shall afford Parent and its accountants, counsel and other representatives, reasonable access during the period prior to the Effective Time to (i) all of the Company's properties (including real property), books, contracts, commitments and records, (ii) all other information concerning the business, properties and personnel (subject to restrictions imposed by applicable law) of the Company as Parent may reasonably request, and (iii) all employees of the Company as identified by Parent. The Company agrees to provide to Parent and its accountants, counsel and other representatives copies of internal financial statements (including Tax returns and supporting documentation) promptly upon request. No

information or knowledge obtained in any investigation pursuant to this Section 5.2 shall affect or be deemed to modify any representation or warranty contained herein or the conditions to the obligations of the parties to consummate the Merger in accordance with the terms and provisions hereof.

5.3 Confidentiality and Nonsolicitation. Each of the parties hereto hereby agrees that the information obtained in any investigation pursuant to Section 5.2 hereof, or pursuant to the negotiation and execution of this Agreement or the effectuation of the transactions contemplated hereby, and the obligations of nonsolicitation and non-hiring shall be governed by the terms of the Confidentiality Agreement effective as of May 3, 1999 between the Company and Parent (the "Confidentiality Agreement").

5.4 Expenses. Whether or not the Merger is consummated, all Third Party Expenses incurred by a party hereto in connection with the negotiation and effectuation of the terms and conditions of this Agreement and the transactions contemplated hereby, shall be the obligation of the respective party incurring such fees and expenses. The Company shall pay prior to the Closing or accrue on the Closing Date Balance Sheet any and all Third Party Expenses incurred by the Company.

5.5 Public Disclosure. Subject to Section 5.1 hereof, neither party shall issue any statement or communication to any third party, including, but not limited to customers (other than the respective agents of the parties) regarding the subject matter of this Agreement or the transactions contemplated hereby, including, if applicable, the termination of this Agreement and the reasons therefor, without the consent of the other party, which consent shall not be unreasonably withheld.

5.6 Consents. The Company shall use its best efforts to obtain the consents, waivers and approvals under any of the Contracts to which the Company is a party deemed appropriate or necessary by any party in connection with the Merger, including all consents, waivers and approvals set forth in the Company Schedules so as to preserve all rights of, and benefits to, the Company thereunder from and after the Effective Time. To the extent the efforts of Parent and Sub are necessary to obtain such consents or approvals, Parent and Sub shall use commercially reasonable efforts to assist the Company in its obligations under this Section 5.6.

5.7 FIRPTA Compliance. On the Closing Date, the Company shall deliver to Parent a properly executed statement (a "FIRPTA Compliance Certificate") in a form reasonably acceptable to Parent for purposes of satisfying Parent's obligations under Treasury Regulation Section 1.1445-2(c)(3).

5.8 Reasonable Efforts. Subject to the terms and conditions provided in this Agreement, each of the parties hereto shall use commercially reasonable efforts to take promptly, or cause to be taken, all actions, and to do promptly, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated hereby, to obtain all necessary waivers, consents and approvals and to effect all necessary registrations and filings and to remove any injunctions or other impediments.

or delays, legal or otherwise, in order to consummate and make effective the transactions contemplated by this Agreement for the purpose of securing to the parties hereto the benefits contemplated by this Agreement; provided, however, that Parent shall not be required to agree to any divestiture by Parent or the Company or any of Parent's subsidiaries or affiliates of shares of capital stock or of any business, assets or property of Parent or its subsidiaries or affiliates or of the Company, its affiliates, or the imposition of any material limitation on the ability of any of them to conduct their businesses or to own or exercise control of such assets, properties and stock.

5.9 Notification of Certain Matters. The Company or any of the Founders, as the case may be, shall give prompt notice to Parent of: (i) the occurrence or non-occurrence of any event, the occurrence or non-occurrence of which is likely to cause any representation or warranty of the Company or any Founder respectively and as the case may be, contained in this Agreement to be untrue or inaccurate in any material respect at or prior to the Effective Time, and (ii) any failure of the Company or any of the Founders, as the case may be, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder; provided, however, that the delivery of any notice pursuant to this Section 5.9 shall not limit or otherwise affect any remedies available to the party receiving such notice. No disclosure by the Company or the Founders pursuant to this Section 5.9, however, shall be deemed to amend or supplement the Company Schedules or prevent or cure any misrepresentations, breach of warranty or breach of covenant.

5.10 Additional Documents and Further Assurances. Each party hereto, at the request of another party hereto, shall execute and deliver such other instruments and do and perform such other acts and things as may be necessary or desirable for effecting completely the consummation of the Merger and the transactions contemplated hereby.

5.11 Closing Date Balance Sheet. The Company shall prepare and deliver to Parent, at least three (3) business days prior to the Closing Date, the Closing Date Balance Sheet.

5.12 [Reserved]

5.13 Amendment of Company Options. The Company shall take all reasonable best efforts, including, but not limited to, resolutions adopted by its Board of Directors and obtaining consents or releases from the Option Holders to (i) cause the appropriate Company Employee Plans to be amended to accelerate vesting of each unvested and outstanding Company Option so that each Company Option shall become fully vested immediately prior to the Effective Time and (ii) cause the terms of the Company Employee Plans relating to the Company Options and the Company to comply with Section 1.6(c) hereof.

5.14 Revenues of the Company. The Shareholders of the Company (including, but not limited to the Founders) covenant and agree that for the period beginning on the first day of the first calendar month subsequent to the Closing Date and ending on the last day of the ninth (9th) calendar month after the first day of the first calendar month following the Closing Date, the Company shall accrue Revenues (as defined below) of at least \$50,000 for services or

products provided to customers of the Company (the "Target Revenues"). "Revenues" for the purpose of this Section 5.14 shall mean all revenue accrued by the Company for services or products provided to customers of the Company existing on the Closing Date whether through products and services offered on the Closing Date or new products and services offered subsequent to the Closing Date. To the extent that following the Closing Date, Parent raises or lowers rates for the same services or products provided by the Company to the customers set forth on Company Schedule 5.14, the Target Revenue Amount shall be increased or decreased, as applicable, and adjusted proportionately. The amount of such adjustment shall be based on the period of time that such higher or lower rates applied, the percentage of Revenue that such service or product represented at the time of the change in rates and the amount of the change in rates. Within sixty (60) days after the nine (9) month period ends, Parent shall prepare the applicable adjustment and reflect such adjustment on the statement of Revenues (as defined in Section 7.5(h) hereof). Any disputes regarding the Statement of Revenues shall be subject to the provisions set forth in Section 7.5 hereof. Company Schedule 5.14 contains a complete and accurate list of all of the Company's customers as of the date hereof. The Company shall prepare and deliver to Parent, at least three (3) business days prior to the Closing Date an update of Company Schedule 5.14 as of the Closing Date. Notwithstanding the foregoing, the Revenues derived from any newly-signed residential customers of the Company after the Closing Date who reside in a multi-tenant building for which the Company is under a written agreement to provide residential multi-tenant service at the Closing Date shall nonetheless be included in the definition of Revenues for purposes of this Section 5.14.

5.15 Cancellation Election Agreement. The Company and the Founders shall take all reasonable best efforts to cause each Option Holder to execute and deliver to Parent a Cancellation Election Agreement in the form attached hereto as Exhibit I.

5.16 Consolidated Tax Return. The Shareholders shall bear all Losses, as defined in Section 7.2 hereof, incurred by the Company, Parent or Surviving Corporation, directly or indirectly as a result of, or in any way relating to or arising out of, or in connection with the consolidated tax return filed with Card Management Systems for the tax year ending September 30, 1994.

5.17 Profit Sharing Plan and Money Purchase Pension Plan. The Shareholders shall bear all Losses, as defined in Section 7.2 hereof, incurred or suffered by the Company, Parent or surviving corporation, directly or indirectly as a result of, or in any way relating to or arising out of, or in connection with, directly or indirectly, the Company's profit sharing plan (plan number 001) and the Company's money purchase pension plan (plan number 002), including, without limitation, any benefits or contributions of the money purchase pension plan and earnings thereon.

5.18 Company Schedules. The Company and the Founders shall have provided to Parent the Company Schedules in form and substance satisfactory to Parent, in its sole discretion, no later than 5:00 p.m. (California Time) on June 17, 1999.

ARTICLE VI CONDITIONS TO THE MERGER

6.1 Conditions to Obligations of Each Party to Effect the Merger. The respective obligations of the Company and Parent to effect the Merger shall be subject to the satisfaction at or prior to the Effective Time of the following conditions:

(a) No Order. No Governmental Entity shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, executive order, decree, injunction or other order (whether temporary, preliminary or permanent) which is in effect and which has the effect of making the Merger illegal or otherwise prohibiting consummation of the Merger.

(b) No Injunctions or Restraints: Illegality. No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the Merger shall be in effect, nor shall any proceeding brought by an administrative agency or commission or other governmental authority or instrumentality, domestic or foreign, seeking any of the foregoing be pending.

6.2 Conditions to the Obligations of Parent and Sub. The obligation of Parent and Sub to effect the Merger shall be subject to the satisfaction at or prior to the Effective Time of each of the following conditions, any of which may be waived, in writing, exclusively by Parent and Sub:

(a) Representations, Warranties and Covenants. (i) The representations and warranties of the Company and the Founders in this Agreement (other than the representations and warranties of the Company and the Founders as of a specified date, which will be true and correct as of such date) shall be true and correct on the date they were made and shall be true and correct in all material respects on and as of the Closing Date as though such representations and warranties were made on and as of such time, and (ii) the Company and the Founders shall have performed and complied in all material respects with all covenants and obligations under this Agreement required to be performed and complied with by the Company as of the Closing.

(b) Governmental Approval. The Company shall have obtained any and all approvals from any Governmental Entity and filed with each required Governmental Entity all such notices, registrations, applications, tariff filings, advice letters, or other documents required for the consummation of the transactions contemplated by this Agreement and the continued operations of the Company subsequent thereto.

(c) Third Party Consents. Parent shall have received all consents, waivers, approvals, and assignments listed in Company Schedule 2.4 and Company Schedule 2.5.

(d) Resignation of Directors. Parent shall have received a written resignation from each of the directors of the Company effective as of the Effective Time.

(e) Legal Opinions. Parent shall have received the legal opinions substantially in the form attached hereto as Exhibit E from Perkins Coie LLP, legal counsel to the Company, and, as to regulatory matters, from Davis Wright & Tremaine LLP, legal counsel to the Company.

(f) No Material Adverse Effect. There shall not have occurred any event or condition of any character that has had or is reasonably likely to have a Material Adverse Effect on the Company since the date of this Agreement.

(g) Employment and Non-Competition Agreements. Each of the individuals set forth on Exhibit I hereto shall have executed and delivered to Parent the Employment and Non-Competition Agreements and each of these agreements shall be in full force and effect.

(h) Shareholder Approval. The Shareholders holding (i) at least ninety-five percent (95%) of the Company Capital Stock, and (ii) a sufficient number of shares of Company Capital Stock as required under the Company's articles of incorporation and Oregon Law, shall have approved this Agreement, the Merger and the transactions contemplated hereby and thereby.

(i) Closing Date Balance Sheet. The Company shall have delivered the Closing Date Balance Sheet to Parent not less than three (3) business days prior to the Closing Date.

(j) Cancellation of Company Shareholder Agreement. The Company and the Founders shall have terminated those certain Shareholder Agreements referenced in Exhibit N pursuant to the terms set forth therein.

(k) Cancellation Election Agreements. Each holder of a Company Option shall have executed and delivered to the Parent a Cancellation Election Agreement in the form attached hereto as Exhibit I.

(l) [Reserved]

(m) Termination of 401(k) Plans. Unless Parent has agreed to sponsor and maintain the Company's 401(k) plans as provided for in Section 4.2 hereof, Parent shall have received from the Company evidence that the Company's 401(k) plans have been terminated pursuant to resolution of the Company's Board of Directors (the form and substance of which shall have been subject to review and approval of Parent), effective as of the day immediately preceding the Effective Date.

(n) FIRPTA Certificate. Parent shall have received the FIRPTA Compliance Certificate, validly executed by a duly authorized officer of the Company.

(o) Estoppel Certificates. The Company shall have obtained and delivered to Parent an estoppel certificate from each lender of any loan outstanding with respect to any Owned Property (including, without limitation, any construction loan) ("Property Loan"), in a

form acceptable to Parent, which certifies that such Property Loan is unmodified and in full force and effect, or, if modified, stating the nature of such modification and certifying that the Property Loan, as so modified, is in full force and effect; acknowledging that there are not, to the certifying party's knowledge, any uncured defaults on the part of the other party thereto, or if there are, stating their nature; and certifying such other information about the Property Loan as may be reasonably required by Parent.

(p) Certificate of Existence. Parent shall have received a form of Certificate of Existence of the Company certified by the Secretary of State of the State of Oregon, dated within a reasonable period prior to the Closing.

(q) Certificate of Secretary of Company. Parent shall have received a certificate, validly executed by the Secretary of the Company, certifying as to (i) the terms and effectiveness of the articles of incorporation and the bylaws of the Company, and (ii) the valid adoption of resolutions of the Board of Directors of the Company and the Shareholders approving this Agreement and the consummation of the transactions contemplated hereby.

(r) Shareholder Approval - Parachute Payments. All agreements or other arrangements that may result in the payments of cash in exchange for Company Capital Stock or Company Options that may be deemed to constitute "parachute payments" which are not tax deductible pursuant to Section 280G of the Code shall have been approved by such number of the Shareholders as is required by Section 280G(b)(5)(B) of the Code, and shall have been obtained in a manner which satisfies all applicable requirements of Section 280G(b)(5)(B) of the Code and the proposed Treasury Regulations promulgated thereunder (including, without limitation, Q-7 of Section 1.280G-1 of such proposed regulations) such that all such payments resulting from the transactions contemplated hereby shall not be deemed to be "parachute payments" pursuant to Section 280G of the Code or shall be exempt from such treatment under such Section 280G.

(s) Certificate of the Company and the Founders. Parent shall have received a certificate, validly executed by the Founders and the Chief Executive Officer and Chief Financial Officer of the Company for and on its behalf, to the effect that, as of the Closing:

(i) the representations and warranties of the Company and the Founders in this Agreement (other than the representations and warranties of the Company and the Founders as of a specified date, which will be true and correct as of such date) were true and correct on the date they were made and shall be true and correct in all material respects on and as of the Closing Date as though such representations and warranties were made on and as of such time;

(ii) the Company has performed and complied in all material respects with all covenants and obligations under this Agreement required to be performed and complied with by the Company or the Founders as of the Closing;

(iii) the conditions to the obligations of Parent and Sub set forth in this Section 6.2 have been satisfied (unless otherwise waived in accordance with the terms thereof).

(i) Presumptive Rights. Any applicable preemptive rights under Oregon Law shall either have been (i) waived by all of the Shareholders, or (ii) extinguished by the Company, under the procedures set forth under Oregon Law, including, without limitation, Section 60.174 of the Oregon Business Corporation Act.

Neither the closing of this transaction, the waiver by Parent and/or Sub, nor the determination by Parent and/or Sub that the foregoing conditions to Closing have been fulfilled shall waive or modify in any manner the rights and liabilities of the Company for misrepresentations contained in Article II of this Agreement.

6.3 Conditions to Obligations of the Company and the Founders. The obligations of the Company and each of the Founders to consummate and effect this Agreement and the transactions contemplated hereby shall be subject to the satisfaction at or prior to the Effective Time of each of the following conditions, any of which may be waived, in writing, exclusively by the Company:

(a) Representations, Warranties and Covenants. (i) The representations and warranties of Parent and Sub in this Agreement (other than the representations and warranties of Parent and Sub as of a specified date, which will be true and correct as of such date) shall be true and correct on the date they were made and shall be true and correct in all material respects on and as of the Closing Date as though such representations and warranties were made on and as of such time and (ii) Parent and Sub shall have performed and complied in all material respects with all covenants and obligations under this Agreement required to be performed and complied with by such parties as of the Closing.

(b) Certificate of Parent. Company shall have received a certificate executed on behalf of Parent by a duly authorized officer of Parent to the effect that, as of the Closing:

(i) the representations and warranties of Parent and Sub in this Agreement (other than the representations and warranties of the Parent and Sub as of a specified date, which will be true and correct as of such date) were true and correct on the date they were made and shall be true and correct in all material respects on and as of the Closing Date as though such representations and warranties were made on and as of such time; and

(ii) Parent and Sub have performed and complied in all material respects with all covenants and obligations under this Agreement required to be performed and complied with by Parent and Sub as of the Closing.

(c) Certificate of Secretary of Parent. Company shall have received a certificate, validly executed by the Secretary of the Parent, certifying as to the valid adoption of resolutions of the Board of Directors of the Parent approving the Agreement and the consummation of the transactions contemplated hereby.

(d) Certificate of Existence. Company shall have received a form of Certificate of Existence of the Sub certified by the Secretary of State of the State of Oregon, dated within a reasonable period prior to the Closing.

ARTICLE VII SURVIVAL OF REPRESENTATIONS AND WARRANTIES; ESCROW

7.1 Survival of Representations, Warranties and Covenants. The representations and warranties of the Company and the Founders contained in this Agreement, or in any certificate or other instrument delivered pursuant to this Agreement, shall survive the Merger and continue (regardless of any investigation made by or on behalf of the parties to this Agreement) until (i) with respect to the representations set forth in Sections 2.2 and 2.9 hereof, the expiration of all applicable statutes of limitation, and (ii) with respect to all other representations and warranties, at 11:59 p.m. (California time) on the day which is twelve months from the Closing Date. For purposes of this Agreement, the "Escrow Termination Date" shall mean the date which is twelve months following the Closing Date. Covenants contained in this Agreement shall survive the Effective Time to the extent by their terms they are intended to survive. The representations and warranties of Parent and Sub contained in this Agreement, or in any certificate or other instrument delivered pursuant to this Agreement, shall terminate at the Closing; provided, however, that the representation and warranty set forth in Section 3.4 hereof shall expire at 11:59 p.m. (California time) on the day which is twelve months from the Closing Date.

7.2 Indemnification. The Shareholders (including the Founders) jointly and severally agree to indemnify and hold Parent and its officers, directors and affiliates, including the Company after the Closing (the "Indemnified Parties"), harmless against all claims, losses, liabilities, damages, deficiencies, costs and expenses, including reasonable attorneys' fees and expenses of investigation and defense (hereinafter individually a "Loss" and collectively "Losses") incurred or suffered by the Indemnified Parties, or any of them (including the Company after the Closing), directly or indirectly, as a result of (i) any breach or inaccuracy of a representation or warranty of the Company or the Founders contained in this Agreement, (ii) any failure by the Company or the Founders to perform or comply with any covenant contained in this Agreement, including, without limitation Section 5.14 hereof, (iii) the failure of the Company to either pay prior to the Effective Time or accrue on the Closing Date Balance Sheet any and all Third Party Expenses incurred by the Company, (iv) the extent that Final Long Term Debt exceeds Estimated Long Term Debt reflected on the Closing Date Balance Sheet, (v) the extent that Commitments existed on the Closing Date which were not reflected on the Closing Date Balance Sheet or did not cause a reduction in the calculation of Total Consideration on the Closing Date, and (vi) the extent to which the Current Amount calculated based on the Adjusted Balance Sheet is less than both the Current Amount calculated based on the Closing Balance Sheet and \$4,500,000, then the lesser of (A) the difference (if any) of the Current Amount calculated on the Closing Date Balance Sheet subtracted by the Current Amount calculated on the Adjusted Balance Sheet and (B) the difference (if any) of \$4,500,000 subtracted by the Current Amount calculated on the Adjusted Balance Sheet; provided, however that the costs and expenses related to the actions by Parent and

Surviving Corporation incurred during the calculation of the Adjusted Balance Sheet under Section 7.3 hereof shall not be considered "Losses" for purposes of this Article VII.

The Shareholders (including, without limitation, the Founders) shall not have any right of contribution from the Company with respect to any Loss claimed by an Indemnified Party after the Effective Time. Nothing herein shall limit the liability of the Company, the Founders, the Parent or Sub for any breach or inaccuracy of any representation, warranty or covenant contained in this Agreement if the Merger does not close.

7.3 Escrow Arrangements.

(a) Escrow Fund. As partial security for the indemnity obligations set forth in this Agreement, and by virtue of this Agreement and the Articles of Merger, the Shareholders and the Option Holders will be deemed to have received and deposited with the Escrow Agent (as defined below) the Escrow Amount, without any act of any Shareholder or Option Holder. The Escrow Fund shall be available to compensate the Indemnified Parties, or any of them, for any claims by such Indemnified Parties for any Losses suffered or incurred by them. As soon as practicable after the Effective Time, the Escrow Amount, without any act of the Shareholders or the Option Holders, will be deposited with U.S. Bank Trust, N.A., as Escrow Agent hereunder, or another institution acceptable to Parent and the Shareholder Representative (as defined in Section 7.3 hereof), such deposit of the Escrow Amount to constitute an escrow fund (the "Escrow Fund") to be governed by the terms set forth herein. The Escrow Agent may execute this Agreement following the date hereof and prior to the Closing, and such later execution, if so executed after the date hereof, shall not affect the binding nature of this Agreement as of the date hereof between the other signatories hereto. Parent may not receive any proceeds from the Escrow Fund unless and until an Officer's Certificate(s) (as defined in Section 7.3(d) hereof) identifying Losses in excess of \$500,000 (the "Basket Amount") has or have been delivered to the Escrow Agent as provided in Section 7.3(d) hereof, in which case Parent shall be entitled to recover all Losses which, in the aggregate, exceed \$250,000. Notwithstanding the foregoing, Parent shall be entitled to receive payments out of the Escrow Fund for, and the Basket Amount shall not apply as a threshold to any and all claim or payments with respect to (i) the failure of the Company to either pay prior to Closing or accrue on the Closing Date Balance Sheet, Third Party Expenses incurred by the Company, (ii) any amounts in excess of the Total Consideration required to be paid to holders of Company Capital Stock in respect of their exercise of dissenter's rights, (iii) the breach by the Company or the Founders of the representation and warranty set forth in Section 2.2 hereof, and (iv) the extent that Commitments existed on the Closing Date which were not reflected on the Closing Date Balance Sheet or did not cause a reduction in the calculation of Total Consideration on the Closing Date.

(b) Escrow Period: Distribution of Remaining Escrow Amount upon Termination of Escrow Period. Subject to the following requirements, the Escrow Fund shall be in existence immediately following the Effective Time and shall terminate at 5:00 p.m., (California Time) on the date which is the Escrow Termination Date (the "Escrow Period"); provided, however, that the Escrow Period shall not terminate with respect to the lesser of (i) the monies then remaining in the Escrow Fund or (ii) the amount claimed in any Officer's Certificate

delivered to the Escrow Agent prior to the thirtieth (30th) calendar day following the termination of the Escrow Period with respect to facts and circumstances existing prior to the termination of such Escrow Period until the parties have resolved the claim(s) set forth in the Officer's Certificate(s), in accordance with the procedures set forth in Section 7.3 hereof. Any monies then remaining in the Escrow Fund that are not required for the payment of claims in the pending Officer's Certificate(s) shall, on the first business day after the thirtieth calendar day following the termination of the Escrow Period, or, subject to the provisions of Section 7.3(e) hereof, as promptly as practicable, be distributed to the Shareholders and Option Holders in proportion to their respective Pro Rata Portions of the Escrow Fund.

(c) Protection of Escrow Fund: Distribution of Interest from Escrow Fund.

(i) The Escrow Agent shall hold and safeguard the Escrow Fund during the Escrow Period, shall treat such fund as a trust fund in accordance with the terms of this Agreement and not as the property of Parent and shall hold and disburse the Escrow Fund only in accordance with the terms hereof.

(ii) The Escrow Amount shall be invested in U.S. Treasury bills with maturities of not more than thirty (30) days and any interest paid on such Escrow Amount shall be added to the Escrow Fund and deemed part thereof. For any period of time before such U.S. Treasury bills can be purchased by the Escrow Agent or after such bills mature, the Escrow Amount shall be invested in a business money market account of the Escrow Agent and any interest paid on such Escrow Amount during such time shall be added to the Escrow Fund and deemed part thereof. Each Shareholder shall be liable for any Taxes with respect to income earned on such Shareholder's Pro Rata Portion of the Escrow Fund.

(d) Claims for Indemnification. Upon receipt by (i) the Escrow Agent at any time on or before the thirtieth (30th) day following the last day of the Escrow Period, or (ii) the Shareholders at any time following the thirtieth (30th) day following the last day of the Escrow Period, of a certificate signed by any officer of Parent, (an "Officer's Certificate"): (A) stating that Parent has paid, incurred or properly accrued or reasonably anticipates that it will have to pay, incur or accrue Losses, (B) specifying in reasonable detail the individual items of Losses included in the amount so stated, the date each such item was paid, incurred or properly accrued, or the basis for such anticipated liability, and the nature of the misrepresentation, breach of warranty or covenant to which such item is related, and (C) indicating whether Parent is seeking to recover such Losses from the Escrow Fund or is seeking indemnification directly from the Shareholders, or both, the Escrow Agent shall, in the case of (i) above, subject to the provisions of Section 7.3(e) hereof, deliver to Parent out of the Escrow Fund, as promptly as practicable, cash held in the Escrow Fund equal to such Losses, or, the Shareholders shall, in the case of (ii) above, promptly, and in no event later than 30 days after delivery of the Officer's Certificate, wire transfer to Parent the amount of such Loss, unless the Shareholders contest such claim by following the procedures set forth in Section 7.3(f) hereof. In no event may Parent recover for the same Loss from both the Escrow Fund and directly from the Shareholders. If Parent delivers an Officer's Certificate to both the Escrow Agent and directly to the Shareholders, for the same Loss, the Shareholders shall not be required to indemnify Parent unless there are not sufficient

amounts in the Escrow Fund to satisfy the Loss being claimed together with all other Losses subject to outstanding claims. Parent shall be permitted to make claims (including sending notices) directly for indemnification against less than all of the Shareholders.

(c) Objections to Escrow Fund Claims. At the time of delivery of any Officer's Certificate to the Escrow Agent, a duplicate copy of such certificate shall be delivered to the Shareholder Representative. For a period of thirty (30) days after such delivery, the Escrow Agent shall make no delivery to Parent of any Escrow Amounts pursuant to Section 7.3(b) hereof unless and until the Escrow Agent shall have received written authorization from the Shareholder Representative to make such delivery. After the expiration of such thirty (30) day period, the Escrow Agent shall make delivery of the cash from the Escrow Fund in accordance with Section 7.3(b) hereof; *provided, however*, that no such payment or delivery may be made if the Shareholder Representative shall object in a written statement to the claim made in the Officer's Certificate, and such statement shall have been delivered to the Escrow Agent prior to the expiration of such thirty (30) day period.

(d) Resolution of Conflicts: Arbitration.

(i) In case the Shareholder Representative, in the case of a claim for indemnification against the Escrow Fund, or the Shareholders, in the case of a claim for indemnification against the Shareholders, shall object in writing to any claim or claims made in any Officer's Certificate to recover a Loss within thirty (30) days after delivery of such Officer's Certificate, the Shareholder Representative and Parent shall attempt in good faith to agree upon the rights of the respective parties with respect to each of such claims. In the event of a claim against the Escrow Fund, if the Shareholder Representative and Parent should so agree, a memorandum setting forth such agreement shall be prepared and signed by Parent and the Shareholder Representative and furnished to the Escrow Agent. The Escrow Agent shall be entitled to rely on any such memorandum and distribute cash from the Escrow Fund in accordance with the terms thereof.

(ii) If no agreement can be reached after good faith negotiation, either Parent or the Shareholder Representative or the Shareholders, as applicable, may demand arbitration of the matter unless the amount of the damage or Loss is at issue in pending litigation with a third party, in which event arbitration shall not be commenced until such amount is ascertained or all parties agree to arbitration, and in either such event the matter shall be settled by arbitration conducted by one arbitrator mutually agreeable to Parent and the Shareholder Representative or the Founders if the claim is for indemnification directly against the Shareholders. In the event that within forty-five (45) days after submission of any dispute to arbitration, Parent and the Shareholder Representative or the Founders, as the case may be, cannot mutually agree on one arbitrator, Parent, the Shareholder Representative or Founders, as the case may be, shall each select one arbitrator, and the two arbitrators so selected shall select a third arbitrator. The arbitrator or arbitrators, as the case may be, shall set a limited time period and establish procedures designed to reduce the cost and time for discovery while allowing the parties an opportunity, adequate in the sole judgment of the arbitrator or majority of the three arbitrators, as the case may be, to discover relevant information from the opposing parties about the subject

matter of the dispute. The arbitrator or a majority of the three arbitrators, as the case may be, shall rule upon motions to compel or limit discovery and shall have the authority to impose sanctions, including attorneys' fees and costs, to the extent as a competent court of law or equity, should the arbitrators or a majority of the three arbitrators, as the case may be, determine that discovery was sought without substantial justification or that discovery was refused or objected to without substantial justification. The decision of the arbitrator or a majority of the three arbitrators, as the case may be, as to the validity and amount of any claim in such Officer's Certificate shall be binding and conclusive upon the parties to this Agreement. Such decision shall be written and shall be supported by written findings of fact and conclusions which shall set forth the award, judgment, decree or order awarded by the arbitrator(s).

(iii) Judgment upon any award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Any such arbitration shall be held in Santa Clara County, California, under the rules then in effect of the American Arbitration Association. The arbitrator(s) shall determine how all expenses relating to the arbitration shall be paid, including without limitation, the respective expenses of each party, the fees of each arbitrator and the administrative fee of the American Arbitration Association.

(g) Third-Party Claims. In the event Parent becomes aware of a third-party claim which Parent reasonably believes may result in Losses, Parent shall notify the Shareholder Representative or the Founders if the claim is for indemnification directly against the Shareholders of such claim, and the Shareholder Representative or Founders as the case may be shall be entitled on behalf of the Shareholders, at their expense, to participate in, but not to determine or conduct, the defense of such claim. Parent shall have the right in its sole discretion to conduct the defense of and settle any such claim, provided, however, that no settlement of any such claim with third-party claimants shall be determinative of the amount or liability of any claim pursuant to Sections 7.1 and 7.2 hereof without the consent of the Shareholder Representative and/or the Founders if the claim is for indemnification directly against the Shareholders. In the event that the Shareholder Representative, or the Founders if the claim is for indemnification directly against the Shareholders, has consented to any such settlement, the Shareholders shall have no power or authority to object under any provision of this Article VII to the amount of any claim by Parent for Losses with respect to such settlement.

(h) Escrow Agent's Duties.

(i) The Escrow Agent shall be obligated only for the performance of such duties as are specifically set forth herein, and as set forth in any additional written escrow instructions which the Escrow Agent may receive after the date of this Agreement which are signed by an officer of Parent and the Shareholder Representative, and may rely and shall be protected in relying or refraining from acting on any instrument reasonably believed to be genuine and to have been signed or presented by the proper party or parties. The Escrow Agent shall not be liable for any act done or omitted hereunder as Escrow Agent while acting in good faith and in the exercise of reasonable judgment, and any act done or omitted pursuant to the advice of counsel shall be conclusive evidence of such good faith.

(ii) The Escrow Agent is hereby expressly authorized to disregard any and all warnings given by any of the parties hereto or by any other person, excepting only orders or process of courts of law, and is hereby expressly authorized to comply with and obey orders, judgments or decrees of any court. In case the Escrow Agent obeys or complies with any such order, judgment or decree of any court, the Escrow Agent shall not be liable to any of the parties hereto or to any other person by reason of such compliance, notwithstanding any such order, judgment or decree being subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without jurisdiction.

(iii) The Escrow Agent shall not be liable in any respect on account of the identity, authority or rights of the parties executing or delivering or purporting to execute or deliver this Agreement or any documents or papers deposited or called for hereunder.

(iv) The Escrow Agent shall not be liable for the expiration of any period under any statute of limitations with respect to this Agreement or any documents deposited with the Escrow Agent.

(v) In performing any duties under this Agreement, the Escrow Agent shall not be liable to any party for damages, losses, or expenses, except for negligence or willful misconduct on the part of the Escrow Agent. The Escrow Agent shall not incur any such liability for (A) any act or failure to act made or omitted in good faith, or (B) any action taken or omitted in reliance upon any instrument, including any written statement of affidavit provided for in this Agreement that the Escrow Agent shall in good faith believe to be genuine, nor will the Escrow Agent be liable or responsible for forgeries, fraud, impersonations, or determining the scope of any representative authority. In addition, the Escrow Agent may consult with legal counsel in connection with performing the Escrow Agent's duties under this Agreement and shall be fully protected in any act taken, suffered, or permitted by him/her in good faith in accordance with the advice of counsel. The Escrow Agent is not responsible for determining and verifying the authority of any person acting or purporting to act on behalf of any party to this Agreement.

(vi) If any controversy arises between the parties to this Agreement, or with any other party, concerning the subject matter of this Agreement, its terms or conditions, the Escrow Agent will not be required to determine the controversy or to take any action regarding it. The Escrow Agent may hold all documents and the Escrow Amount and may wait for settlement of any such controversy by final appropriate legal proceedings or other means as, in the Escrow Agent's discretion, may be required, despite what may be set forth elsewhere in this Agreement. In such event, the Escrow Agent will not be liable for damages. Furthermore, the Escrow Agent may at its option, file an action of interpleader requiring the parties to answer and litigate any claims and rights among themselves. The Escrow Agent is authorized to deposit with the clerk of the court all documents and the Escrow Amounts held in escrow, except all costs, expenses, charges and reasonable attorney fees incurred by the Escrow Agent due to the interpleader action and which the parties jointly and severally agree to pay. Upon initiating such action, the Escrow Agent shall be fully released and discharged of and from all obligations and liability imposed by the terms of this Agreement.

(vii) The parties and their respective successors and assigns agree jointly and severally to indemnify and hold Escrow Agent harmless against any and all losses, claims, damages, liabilities, and expenses, including reasonable costs of investigation, counsel fees, including allocated costs of in-house counsel and disbursements that may be imposed on Escrow Agent or incurred by Escrow Agent in connection with the performance of his/her duties under this Agreement, including but not limited to any litigation arising from this Agreement or involving its subject matter other than arising out of its negligence or willful misconduct.

(viii) The Escrow Agent may resign at any time upon giving at least thirty (30) days written notice to the Parent and the Shareholder Representative; *provided, however, that no such resignation shall become effective until the appointment of a successor escrow agent which shall be accomplished as follows:* Parent and the Shareholder Representative shall use their best efforts to mutually agree on a successor escrow agent within thirty (30) days after receiving such notice. If the parties fail to agree upon a successor escrow agent within such time, the Escrow Agent shall have the right to appoint a successor escrow agent authorized to do business in the State of California. The successor escrow agent shall execute and deliver an instrument accepting such appointment and it shall, without further acts, be vested with all the powers, properties, rights, powers, and duties of the predecessor escrow agent as if originally named as escrow agent. Upon appointment of a successor escrow agent, the Escrow Agent shall be discharged from any further duties and liability under this Agreement.

(ix) Fees. All fees of the Escrow Agent for performance of its duties hereunder shall be paid by Parent in accordance with the standard fee of the Escrow Agent. It is ~~understood~~ that the fees and usual charges agreed upon for services of the Escrow Agent shall be ~~considered~~ compensation for ordinary services as contemplated by this Agreement. In the event ~~that the conditions of this Agreement are not promptly fulfilled, or if the Escrow Agent renders any service not provided for in this Agreement, or if the parties request a substantial modification of its terms, or if any controversy arises, or if the Escrow Agent is made a party to, or intervenes in, any litigation pertaining to the Escrow Fund or its subject matter, the Escrow Agent shall be reasonably compensated for such extraordinary services and reimbursed for all costs, attorney's fees, including allocated costs of in-house counsel, and expenses occasioned by such default, delay, controversy or litigation.~~

(x) Consequential Damages. In no event shall the Escrow Agent be liable for ~~special, indirect or consequential~~ loss or damage of any kind whatsoever (including but not ~~limited in lost profits~~), even if the Escrow Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.

(xi) Successor Escrow Agents. Any corporation into which the Escrow Agent ~~in its individual capacity~~ may be merged or converted or with which it may be consolidated, or ~~the corporation resulting from any merger, conversion or consolidation to which the Escrow Agent in its individual capacity~~ shall be a party, or any corporation to which substantially all the ~~corporate trust business of the Escrow Agent in its individual capacity~~ may be transferred, shall ~~be the Escrow Agent under this Escrow Agreement without further act.~~

7.4 Shareholder Representative.

(a) The Shareholder Representative shall be selected by the Founders prior to the Closing Date and shall become each Shareholder's and Option Holder's agent and attorney-in-fact, for and on behalf of the Shareholders and Option Holders, to give and receive notices and communications, to authorize payment to Parent of cash from the Escrow Fund in satisfaction of claims by Parent, to object to such payments, to agree to, negotiate, enter into settlements and compromises of, and demand arbitration and comply with orders of courts and awards of arbitrators with respect to such claims against the Escrow Fund and for arbitration of indemnification claims as set forth in Section 7.3(f)(ii) hereof and to take all actions necessary or appropriate in the judgment of the Shareholder Representative for the accomplishment of the foregoing. Such agency may be changed by the Shareholders from time to time upon not less than thirty (30) days prior written notice to Parent; provided, however, that the Shareholder Representative may not be removed unless at least two of the Founders agree to such removal and to the identity of the substituted agent. Any vacancy in the position of Shareholder Representative may be filled by the vote of two of the Founders. No bond shall be required of the Shareholder Representative, and the Shareholder Representative shall not receive compensation for his or her services from Parent, the Company or the Surviving Corporation. Notices or communications to or from the Shareholder Representative shall constitute notice to or from the Shareholders.

(b) A decision, act, consent or instruction of the Shareholder Representative, including but not limited to an amendment, extension or waiver of this Agreement pursuant to Sections 1.1 and 1.4 hereof, shall constitute a decision of the Shareholders and shall be final, binding and conclusive upon the Shareholders; and the Escrow Agent and Parent may rely upon any such decision, act, consent or instruction of the Shareholder Representative as being the decision, act, consent or instruction of the Shareholders. The Escrow Agent and Parent are hereby relieved from any liability to any person for any acts done by them in accordance with such decision, act, consent or instruction of the Shareholder Representative.

7.5 Post-Closing Adjustments.

(a) Adjustments to Consideration. Within ninety (90) days following the Closing Date, Parent shall cause to be prepared and delivered to the Shareholder Representative an unaudited balance sheet of the Surviving Corporation as of the Closing Date (the "Adjusted Balance Sheet"). The Adjusted Balance Sheet will be prepared in accordance with GAAP on a basis consistent with the Current Balance Sheet. In the event that Parent determines (i) that the Current Amount calculated based on the Adjusted Balance Sheet is less than both the Current Amount calculated based on the Closing Balance sheet and \$4,500,000, then an amount equal to the lesser of the following shall be paid to Parent out of the Escrow Fund upon the delivery to the Escrow Agent of an Officer's Certificate in accordance with the terms of Section 7.3(d) hereof: (A) the difference (if any) of the Current Amount calculated on the Closing Date Balance Sheet subtracted by the Current Amount calculated on the Adjusted Balance Sheet and (B) the difference (if any) of \$4,500,000 subtracted by the Current Amount calculated on the Adjusted Balance Sheet and (ii) that Final Long Term Debt is in excess of Estimated Long Term Debt,

then an amount equal to the difference between Final Long Term Debt and Estimated Long Term Debt shall be paid to Parent out of the Escrow Fund upon the delivery to the Escrow Agent of an Officer's Certificate in accordance with the terms of Section 7.3(d) hereof; *provided, however*, that the Basket Amount shall not apply as a threshold to any and all claim or payments with respect to amounts paid to Parent pursuant to this Section 7.5(a) and to the extent any such amount to be paid to Parent pursuant to this Section 7.5(a) exceeds the amount in the Escrow Fund, Parent may submit the amount to be paid to the Shareholders for indemnification.

(b) Adjustment to Revenues Within sixty (60) days following the nine month anniversary of the Closing Date, Parent shall cause to be prepared and delivered to the Shareholder Representative an unaudited statement of Revenues prepared in accordance with GAAP (the "Statement of Revenues"), as adjusted pursuant to Section 5.14 hereof, if applicable. In the event that Parent determines that the requirements set forth in Section 5.14 hereof have not been satisfied, then an amount equal to the difference between actual Revenues and the Target Revenues shall be paid to Parent out of the Escrow Fund upon the delivery to the Escrow Agent of an Officer's Certificate in accordance with the terms of Section 7.3(d) hereof; *provided, however*, that the Basket Amount shall not apply as a threshold to any and all claim or payments with respect to amounts paid to Parent pursuant to this Section 7.5(a) and to the extent any such amount to be paid to Parent pursuant to this Section 7.5(a) exceeds the amount in the Escrow Fund, Parent may submit the amount to be paid to the Shareholders for indemnification.

(c) Following delivery by Parent to the Shareholder Representative of the Adjusted Balance Sheet and the Statement of Revenues, as the case may be, Parent shall give to the Shareholder Representative reasonable access during Parent's business hours to those books and records of the Surviving Corporation in the possession of Parent and any personnel which relate to the preparation of the Adjusted Balance Sheet or the Statement of Revenues, as the case may be, for purposes of resolving any disputes concerning the Adjusted Balance Sheet and the Statement of Revenues, as the case may be.

(d) The Shareholder Representative shall have thirty (30) days following delivery of the Adjusted Balance Sheet and the Statement of Revenues, as the case may be, during which to notify Parent in writing (the "Notice of Objection") of any good faith objections to the calculation of the Adjusted Balance Sheet and the Statement of Revenues, as the case may be, setting forth a reasonably specific and detailed description of its objections and the dollar amount of each objection. If the Shareholder Representative objects to the Adjusted Balance Sheet or the Statement of Revenues, as the case may be, or Parent's calculation of Assets, Final Long Term Debt, Liabilities or Revenues as reflected thereon, Parent and the Shareholder Representative shall attempt to resolve any such objections within fifteen (15) days of the receipt by Parent of the Notice of Objection.

(e) If Parent and the Shareholder Representative are unable to resolve any such dispute within the fifteen (15) day period referred to in Section 7.5(e) hereof, Parent and the Shareholder Representative shall submit the dispute to the Portland, Oregon office of PricewaterhouseCoopers, L.P. (the "Independent Accounting Firm"). Each of the parties to this Agreement shall, and shall cause their respective affiliates and representatives to, provide full

(f) If the Shareholder Representative does not deliver the Notice of Objection in accordance with Section 7.5(e) hereof (i.e., within a thirty day period), the Adjusted Balance Sheet (together with Parent's calculation of Assets, Final Long Term Debt and Liabilities reflected thereon) and the Statement of Revenues (together with Parent's calculation of Revenues reflected thereon), as the case may be, shall be deemed to have been accepted by all of the parties to this Agreement. In the event that the Shareholder Representative delivers a Notice of Objection in accordance with the provisions above and Parent and the Shareholder Representative are able to resolve such dispute by mutual agreement, (i) the Adjusted Balance Sheet, together with Parent's calculation of Assets, Final Long Term Debt and Liabilities reflected thereon and (ii) the Statement of Revenues, together with Parent's calculation of Revenues reflected thereon, to the extent modified by mutual agreement of such parties, as the case may be, shall be deemed to have been accepted by all of the parties to this Agreement. In the event that the Shareholder Representative delivers a Notice of Objection in accordance with the provisions set forth above and Parent and the Shareholder Representative are unable to resolve such dispute by mutual agreement, the determination of the Independent Accounting Firm shall be final and binding on the parties and the Adjusted Balance Sheet, together with Parent's calculation of Assets, Final Long Term Debt and Liabilities reflected thereon, and the Statement of Revenues, together with Parent's calculation of Revenues thereon, to the extent modified by the Independent Accounting Firm, as the case may be, shall be deemed to have been accepted by all of the parties to this Agreement. Subject to the foregoing provisions, the calculations of Assets, Final Long Term Debt and Liabilities reflected on any such Adjusted Balance Sheet and the calculation of Revenues reflected on any such Statement of Revenue, as the case may be, shall be conclusive and binding on all of the parties in this Agreement, no further adjustments shall be made thereto and neither Parent, the Shareholder Representative nor the Shareholders shall have any further right to challenge such calculation of Assets, Final Long Term Debt, Liabilities or Revenues, as the case may be, whether pursuant to the terms of Section 7.3 hereof or otherwise. Notwithstanding the foregoing, Parent shall have no obligation to prepare and provide an Adjusted Balance Sheet in accordance with the terms of this Section 7.5.

ARTICLE VIII TERMINATION, AMENDMENT AND WAIVER

8.1 Termination. Except as provided in Section 8.2 hereof, this Agreement may be terminated and the Merger abandoned at any time prior to the Closing:

- (a) by mutual agreement of the Company, the Founders and Parent;
- (b) by Parent or the Company if the Closing Date shall not have occurred by August 31, 1999; *provided, however*, that the right to terminate this Agreement under this Section 8.1(b) shall not be available to any party whose action or failure to act has been a principal cause of or resulted in the failure of the Merger to occur on or before such date and such action or failure to act constitutes a breach of this Agreement;
- (c) by Parent, the Founders, or the Company if: (i) there shall be a final non-appealable order of a federal or state court in effect preventing consummation of the Merger, or (ii) there shall be any statute, rule, regulation or order enacted, promulgated or issued or deemed applicable to the Closing by any Governmental Entity that would make consummation of the Closing illegal;
- (d) by Parent if there shall be any action taken, or any statute, rule, regulation or order enacted, promulgated or issued or deemed applicable to the Merger by any Governmental Entity, which would: (i) prohibit Parent's ownership or operation of any portion of the business of the Company, or (ii) compel Parent or the Company to dispose of or hold separate all or any portion of the business or assets of the Company or Parent as a result of the Merger;
- (e) by Parent if it is not in material breach of its obligations under this Agreement and there has been a material breach of any representation, warranty, covenant or agreement of the Company contained in this Agreement such that the conditions set forth in Section 6.2(a) would not be satisfied and such breach has not been cured within ten (10) calendar days after written notice thereof to the Company; *provided, however*, that no cure period shall be required for a breach which by its nature cannot be cured;
- (f) by the Company if the Company is not in material breach of its respective obligations under this Agreement and there has been a material breach of any representation, warranty, covenant or agreement contained in this Agreement such that the conditions set forth in Section 6.2(a) would not be satisfied and such breach has not been cured within ten (10) calendar days after written notice thereof to Parent; *provided, however*, that no cure period shall be required for a breach which by its nature cannot be cured; or
- (g) by the Parent if the Company shall not have provided the Company Schedules to Parent in form and substance satisfactory to Parent, in Parent's sole discretion, prior to 5:00 p.m. (California Time) on June 17, 1999.

8.2 Effect of Termination. In the event of termination of this Agreement as provided in Section 8.1 hereof, this Agreement shall forthwith become void and there shall be no liability or obligation on the part of Parent or the Company, or their respective officers, directors or shareholders; *provided, however*, that each party hereto shall remain liable for any breaches of this Agreement prior to its termination; and *provided further, however*, that the provisions of Sections 5.3, 5.4 and 5.5 hereof, Article IX hereof and this Section 8.2 shall remain in full force and effect and survive any termination of this Agreement pursuant to the terms of this Article VIII.

8.3 Amendment. This Agreement may be amended by the parties hereto at any time by execution of an instrument in writing signed on behalf of each of the parties hereto. For purposes of this Section 8.3, the Shareholders agree that any amendment of this Agreement signed by the Shareholder Representative shall be binding upon and effective against the Shareholders whether or not they have signed such amendment.

8.4 Extension; Waiver. At any time prior to the Closing, Parent, on the one hand, and the Company and the Shareholder Representative, on the other hand, may, to the extent legally allowed, (i) extend the time for the performance of any of the obligations of the other party hereto, (ii) waive any inaccuracies in the representations and warranties made to such party contained herein or in any document delivered pursuant hereto, and (iii) waive compliance with any of the agreements or conditions for the benefit of such party contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party. For purposes of this Section 8.4, the Shareholders agree that any extension or waiver signed by the Shareholder Representative shall be binding upon and effective against all Shareholders whether or not they signed such extension or waiver.

ARTICLE IX GENERAL PROVISIONS

9.1 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by commercial messenger or courier service, or mailed by registered or certified mail (return receipt requested) or sent via facsimile (with acknowledgment of complete transmission) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice); *provided, however*, that notices sent by mail will not be deemed given until received:

(a) If to Parent, to:

Advanced TelCom Group, Inc.
100 Stony Point Road
Santa Rosa, California 95401
Attention: Chief Executive Officer
Telephone No.: (707) 535-8900
Facsimile No.: (707) 535-8909

with a copy to:

Wilson Sonsini Goodrich & Rosati
Professional Corporation
650 Page Mill Road
Palo Alto, California 94304
Attention: Daniel R. Mitz, Esq.
Telephone No.: (650) 493-9300
Facsimile No.: (650) 493-6811

(b) if to the Company or the Founders, to:

Shared Communications Services, Inc.
3723 Fairview Industrial Drive SE
Salem, Oregon 97302
Attention: Jeffrey Raines
Telephone No.: (503) 316-4477
Facsimile No.: (503) 316-4478

with a copy to:

Perkins Cote LLP
1211 SW Fifth Avenue
Suite 1500
Portland OR 97204-3715
Attention: Allan R. Abrahanel, Esq.
Telephone No.: (503) 727-2000
Facsimile No.: (503) 727-2222

(c) If to the Shareholder Representative, to the address set forth on Exhibit O hereto, which shall be provided at the time the Shareholder Representative is selected.

(d) If to the Escrow Agent, to:

U.S. Bank Trust, N.A.
Global Escrow Depository Service
One California Street, Fourth Floor
San Francisco, CA 94111
Attention: Ann Gadsby
Telephone No.: (415) 273-4532
Facsimile No.: (415) 273-4593

9.2 **Interpretation.** The words "include," "includes" and "including" when used herein shall be deemed in each case to be followed by the words "without limitation." The table

of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

9.3 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party, it being understood that all parties need not sign the same counterpart; provided, however, the Shareholder Representative and the Escrow Agent may execute this Agreement following the date hereof and prior to the Effective Time, and such later execution, if so executed after the date hereof, shall not affect the binding nature of this Agreement as of the date hereof between the other signatories hereto.

9.4 Entire Agreement; Assignment. This Agreement, the Exhibits hereto, the Company Schedules, the Confidentiality Agreement, and the documents and instruments and other agreements among the parties hereto referenced herein: (i) constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings both written and oral; among the parties with respect to the subject matter hereof, (ii) are not intended to confer upon any other person any rights or remedies hereunder, and (iii) shall not be assigned by operation of law or otherwise, except that Parent may assign its rights and delegate its obligations hereunder to its affiliates as long as Parent remains ultimately liable for all of Parent's obligations hereunder.

9.5 Severability. In the event that any provision of this Agreement or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision to other persons or circumstances will be interpreted so as reasonably to effect the intent of the parties hereto. The parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.

9.6 Other Remedies. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party of any one remedy will not preclude the exercise of any other remedy.

9.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof. Each of the parties hereto irrevocably consents to the exclusive jurisdiction and venue of any court within Santa Clara County, State of California, in connection with any matter based upon or arising out of this Agreement or the matters contemplated herein, agrees that process may be served upon them in any manner authorized by the laws of the State of California for such persons and waives and covenants not to assert or plead any objection which they might otherwise have to such jurisdiction, venue and such process.

9.8 Rules of Construction. The parties herein agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Parent, Sub, the Company, the Founders, the Escrow Agent and the Shareholder Representative have caused this Agreement to be signed, all as of the date first written above.

ADVANCED TELCOM GROUP, INC.

By: C. G. Ridgway
Name: C. G. Ridgway
Title: Chairman

TRAILBLAZER ACQUISITION CORPORATION

By: C. G. Ridgway
Name: C. G. Ridgway
Title: Chairman

U.S. BANK TRUST, N.A.

ESCROW AGENT:
(as to Articles VII and IX only)

By: _____
Name: _____
Title: _____

SHARED COMMUNICATIONS SERVICES, INC.

By: _____
Name: _____
Title: _____

SHAREHOLDER REPRESENTATIVE:
(as to Articles VII and IX only)**FOUNDERS:**

Charles F. Columbus, an individual and as trustee of the C. F. Columbus Living Trust

James Umsted, an individual and as trustee of the J. E. Umsted Living Trust

Delores J. Davcy, an individual and as trustee of the D. J. Davcy Living Trust

[Signature Page to Agreement and Plan of Reorganization]

IN WITNESS WHEREOF, Parent, Sub, the Company, the Principal Shareholders, the Founders, the Escrow Agent and the Shareholder Representative have caused this Agreement to be signed, all as of the date first written above.

ADVANCED TELCOM GROUP, INC.

SHARED COMMUNICATIONS SERVICES, INC.

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

TRAILBLAZER ACQUISITION CORPORATION

SHAREHOLDER REPRESENTATIVE:
(as to Articles VII and IX only)

By: _____
Name: _____
Title: _____

U.S. BANK TRUST, N.A.
ESCROW AGENT
(as to Articles VII and IX only)

FOUNDERS:

By: *A. Gadsby*
Name: **ANN GADSBY**
Title: **VICE PRESIDENT**

[Signature Page to Agreement and Plan of Reorganization]

20000712 11:11 FAX 803 226 2224

Received Time JUN-10 2:01PM

DRAFT: 06/10/99 10:31 AM

TOTAL P. 02

00004-81

IN WITNESS WHEREOF, Parent, Sub, the Company, the Founders, the Escrow Agent and the Shareholder Representative have caused this Agreement to be signed, all as of the date first written above.

ADVANCED TELCOM GROUP, INC.

SHARED COMMUNICATIONS
SERVICES, INC.

By: _____
Name: _____
Title: _____

By: Charles F. Columbus
Name: CHARLES F. COLUMBUS
Title: CEO

TRAILBLAZER ACQUISITION
CORPORATION

SHAREHOLDER REPRESENTATIVE:
(as to Articles VII and IX only)

By: _____
Name: _____
Title: _____

U.S. BANK TRUST, N.A.
ESCROW AGENT
(as to Articles VII and IX only)

FOUNDERS:

Charles F. Columbus Trustee
Charles F. Columbus, an individual and as
trustee of the C. P. Columbus Living Trust

By: _____
Name: _____
Title: _____

James E. Ursted Trustee
James Ursted, an individual and as trustee of
the J. E. Ursted Living Trust

Delores J. Davey Trustee
Delores J. Davey, an individual and as trustee
of the D. J. Davey Living Trust

(Signature Page to the Agreement and Plan of Reorganization)

Witnessed This Jan. 16, 1999

EXHIBIT 2

APPLICANT'S CERTIFICATE OF
AUTHORITY TO TRANSACT BUSINESS
WITHIN THE STATE OF SOUTH DAKOTA

Secretary of State

State Capitol, Site 204
500 East Capitol Avenue
Pierre, South Dakota
57501-3070
Phone: 605/773-2100



JOYCE HAZELTINE
Secretary of State

TOM LECKEY
Deputy

September 14, 1998

TO: SHARED COMMUNICATIONS SERVICES INC.
PO BOX 12039
SALEM OR 97309

FROM: Corporations/pn

RE: SHARED COMMUNICATIONS SERVICES, INC.

The application for certificate of authority has been received and filed on behalf of the above named.

Enclosed is the Certificate attached to the duplicate application along with a receipt for the filing fee. Please note that number two has been crossed off. The exact corporate name is to be registered with our office and that is the corporate name to be used in SD. SD law requires a corporate ending to the name so number two would apply only to add a corporate ending to the exact corporate name.

SDCL: 47-9-3 requires the filing of a corporate annual report with our office between the anniversary date of qualification and prior to the first day of the second month following. The report is due the year following qualification. An annual report form will be mailed to the corporate address listed in number five on the application for timely filing. Please contact our office if the corporate address changes or if the form is not received.

Thank you.

SOUTH DAKOTA SECRETARY OF STATE

OFFICIAL RECEIPT

NUMBER 736469

FORM OF PAYMENT CHECK
CHECK NR 45902,46327

DATE 09/14/1998
AMOUNT \$ 1750.00
BY STKEWAR

SHARID COMMUNICATIONS SERVICES, INC.
1923 FAIRVIEW INDUSTRIAL DR SE
PO BOX 12019
SIOUX FALLS SD 57109

THIS RECEIPT IS IN REFERENCE TO:
SHARID COMMUNICATIONS SERVICES, INC.

TRANSACTION DESCRIPTION	AMOUNT
CERTIFICATE OF AUTHORITY,	\$ 1750.00

State of South Dakota



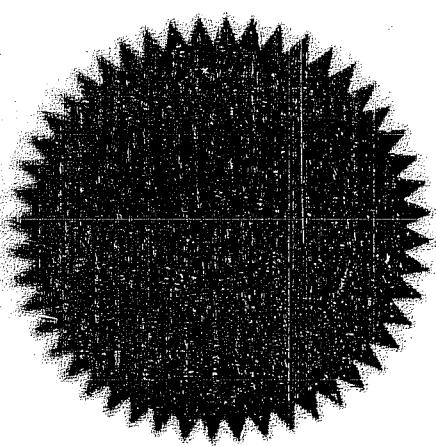
OFFICE OF THE SECRETARY OF STATE

CERTIFICATE OF AUTHORITY

I, JOYCE HAZELTINE, Secretary of State of the State of South Dakota, hereby certify that duplicate of the Application for a Certificate of Authority of SHARED COMMUNICATIONS SERVICES, INC. (OR) to transact business in this state duly signed and verified pursuant to the provisions of the South Dakota Corporation Acts, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I hereby issue this Certificate of Authority and attach hereto a duplicate of the application to transact business in this state under the name of SHARED COMMUNICATIONS SERVICES, INC.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, at Pierre, the Capital, this September 14, 1998.



Joyce Hazeltine

JOYCE HAZELTINE
Secretary of State

RECEIVED
SEP 04 1993
SA SEC. OF STATE
RECEIVED
SEP 14 1993
SA SEC. OF STATE

Application for Certificate of Authority

RECEIPT NO. _____

FILE NO. _____

The undersigned corporation hereby applies for a Certificate of Authority to transact business in the State of South Dakota and for that purpose submits the following statement:

(exact corporate name)

1. The name of the corporation does not contain the word "corporation", "company", "incorporated", or "limited", or does not contain an abbreviation of one of such words, then the name of the corporation with the word or abbreviation which it elects to add

Shared Communications

Oregon

Federal Taxpayer ID# 93-0914013

January 23, 1986

and the period of its duration, which may be

2. The corporation is a corporation under the laws of which it is incorporated is SE, Salem, OR

Zip Code 97302

3. The corporation has a statement that there is no street address, of its proposed registered office in the State of South Dakota is 113 S. Central Street, Pierre, South Dakota

Zip Code 57501

4. The name of the corporation as proposed is CT Corporation System

5. The purpose of the corporation is proposed to pursue in the transaction of business in the State of South Dakota are: (state specific purpose)

provision of telecommunications services

6. The names and respective addresses of its directors and officers are:

Officer Title

Street Address

City

State

Zip

(see attached list)

7. The aggregate number of shares which it has authority to issue, itemized by classes, par value of shares, shares without par value.

Par value per share or statement that shares are without par value

Series

Class

None

Common

No Par Value

10. The aggregate number of its issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, is as follows:

Number of shares	Class	Series	Par value per share or statement that shares are without par value
15,565	Common	None	Without Par Value

11. The amount of its stated capital is \$ 15,565,600
There is no par value equals stated capital. In the case of no par value stock, stated capital is the consideration received for the issued shares.

12. This application is accompanied by a CERTIFICATE OF FACT or a CERTIFICATE OF GOOD STANDING duly authenticated by the Secretary of State or other officer having custody of corporate records in the state or country under whose laws it is incorporated.

13. That each corporation shall not directly or indirectly combine or make any contract with any incorporated company, foreign or domestic, through their stockholders or the trustees or assigns of such stockholders, or with any copartnership or association of persons, or in any manner whatever to fix the prices, limit the production or regulate the transportation of any product or commodity or to prevent competition in such prices, production or transportation or to establish excessive prices therefor.

14. That each corporation, as a consideration of its being permitted to begin or continue doing business within the State of South Dakota, will comply with all the laws of the said State with regard to foreign corporations.

This application must be signed, in the presence of a notary public, by the chairman of the board of directors, or by the president or by another officer.

I DECLARE AND AFFIRM UNDER THE PENALTY OF PERJURY THAT THIS APPLICATION IS IN ALL THINGS, TRUE AND CORRECT.

Dated 8-28 19 98

Charlene Yarno
(Signature)
Assistant Secretary
(Title)

STATE OF Oregon
County of Marion
I, Heather L. Columbus

a notary public, do hereby certify that on this 28th day of August 19 98,
personally appeared before me Charlene Yarno, who, being by me first duly sworn, declared that he/she
is the Assistant Secretary of Shared Communications Services, Inc., that he/she signed the foregoing document as
officer of the corporation, and the statements therein contained are true.

2-8-99
Notary Commission Expires

(Notary Public)

Notary Seal

The Consent of Appointment below must be signed by the registered agent listed in number six.

CONSENT TO SERVE AS REGISTERED AGENT

CT Corporation System, located at 319 S. Coteau St., Pierre, SD 57501, does hereby consent to serve as Registered Agent for the following company:

SHARED COMMUNICATIONS SERVICES, INC.

We understand that as the agent, it will be our responsibility to receive service of process; to forward all such, and to immediately notify the Office of the Secretary of State in the event of our resignation, or of any changes in the Registered Office address.

DATE: August 26, 1998


Kathleen C. Gariopy, Asst. Secretary

SHARED COMMUNICATIONS SERVICES, INC.
LIST OF DIRECTORS AND OFFICERS

Director	Charles Columbus	3723 Fairview Industrial Dr. SE Salem, OR 97302
----------	------------------	--

Director Sec/Treas	Delores Davey	3723 Fairview Industrial Dr. SE Salem, OR 97302
-----------------------	---------------	--

Director V. President	James Umsted	3723 Fairview Industrial Dr. SE Salem, OR 97302
--------------------------	--------------	--

Asst. Secretary	Charlene Yarno	3723 Fairview Industrial Dr. SE Salem, OR 97302
--------------------	----------------	--

CEO	Charles Columbus	3723 Fairview Industrial Dr. SE Salem, OR 97302
-----	------------------	--

President	Jeff Raines	3723 Fairview Industrial Dr. SE Salem, OR 97302
-----------	-------------	--

CERTIFICATE

State of Oregon

OFFICE OF THE SECRETARY OF STATE
Corporation Division

I, **PHIL KEISLING**, Secretary of State of Oregon, and Custodian of the Seal of said State, do hereby certify:

SHARED COMMUNICATIONS SERVICES, INC.

was

incorporated

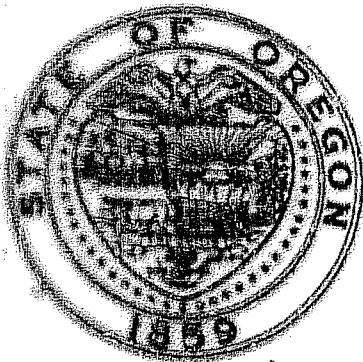
under the Oregon

Business Corporation Act

on

January 23, 1986

and is active on the records of the Corporation Division as
of the date of this certificate.



In Testimony Whereof, I have hereunto set
my hand and affixed hereto the Seal of the
State of Oregon.

PHIL KEISLING, Secretary of State

By

A handwritten signature in dark ink, appearing to read "Heather S. Davis", written over a horizontal line.

Heather S. Davis

August 31, 1998

EXHIBIT 3

APPLICANT'S INITIAL

PROPOSED TARIFF

SOUTH DAKOTA TELECOMMUNICATIONS TARIFF

This tariff applies to the telecommunications services furnished by Shared Communications Services, Inc. for calls throughout the State of South Dakota. This tariff is on file with the South Dakota Public Utilities Commission. A copy may be inspected during normal business hours at the SDPUC and at the Company's principal place of business, 3723 Fairview Industrial Dr. SE, Salem, Oregon 97302, (800) 285-6100.

Date of Issue: February 11, 2000

Date Effective:

Issued By: Jeff Raines, President
Shared Communications Services, Inc.
3723 Fairview Industrial Dr. SE
Salem, OR 97302

TARIFF FORMAT

Sheet Numbering - Sheet numbers appear in the upper right corner of the page. Sheets are numbered sequentially. However, new sheets are occasionally added to the tariff. When a new sheet is added between sheets already in effect, a decimal is added. For example, a new sheet added between sheets 14 and 15 would be 14.1.

Sheet Revision Numbers - Revision numbers also appear in the upper right corner of each page. These numbers are used to determine the most current sheet version on file with the South Dakota Public Utilities Commission (hereinafter referred to as the "SDPUC"). For example, the Fourth Revised Sheet No. 14 cancels the Third Revised Sheet No. 14. Because of various suspension periods, deferrals, etc. the SDPUC follows in its tariff approval process, the most current sheet number on file with the SDPUC is not always the tariff page in effect. Consult the Check Sheet for the sheet currently in effect.

Paragraph Numbering Sequences - There are five levels of paragraph coding. Each level of coding is subservient to its next higher level:

- 2.
- 2.1
- 2.1.1
- 2.1.1.1
- 2.1.1.1.1

Check Sheets - When a tariff filing is made with the SDPUC, an updated check sheet accompanies the tariff filing. The check sheet lists the sheet contained in the tariff, with a cross reference to the current revision number. When new pages are added, the check sheet is changed to reflect the revision. All revisions made in a given filing are designated by an asterisk (*). There will be no other symbols used on this page if these are the only changes made to it (i.e., the format, etc. remains the same, just revised revision levels on some pages). The tariff user should refer to the latest check sheet to find out if a particular sheet is the most current on file with the SDPUC.

Date of Issue: February 11, 2000

Date Effective:

Issued By: Jeff Raines, President
Shared Communications Services, Inc.
3723 Fairview Industrial Dr. SE
Salem, OR 97302

CHECK SHEET

NUMBER OF REVISIONS

PAGE (except as indicated)

EFFECTIVE DATE

Title	Original
1	Original
2	Original
3	Original
4	Original
5	Original
6	Original
7	Original
8	Original
9	Original
10	Original
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27	Original
28	Original
29	Original
30	Original

Date of Issue: February 11, 2000

Date Effective:

Issued By:

Jeff Raines, President

Shared Communications Services, Inc.

3723 Fairview Industrial Dr. SE

Salem, OR 97302

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Date of Issue: February 11, 2000

Date Effective:

Issued By: Jeff Raines, President
Shared Communications Services, Inc.
3723 Fairview Industrial Dr. SE
Salem, OR 97302

EXPLANATION OF SYMBOLS

- C** • to signify a change in regulation.
- D** • to signify a discontinued rate or regulation.
- I** • to signify a rate increase.
- M** • to signify material relocated from one page to another without change.
- N** • to signify a new rate, regulation or text.
- R** • to signify a rate reduction.
- T** • to signify a change in text, but no change in rate or regulation.

Date of Issue: February 11, 2000

Date Effective:

Issued By:

Jeff Raines, President
Shared Communications Services, Inc.
3723 Fairview Industrial Dr. SE
Salem, OR 97302

SECTION 1 - DEFINITIONS

Account Code: A numerical sequence available at a Customer's request which enables identification of account users and which allocates costs of the services accordingly. Account codes may be verified against a pre-defined list of codes maintained by the Company.

Authorized User: Any person, firm, partnership, corporation or other entity permitted to use Customer's account.

Called Station: The terminating point of a call (i.e., the called number).

Calling Card: A card issued by Company which enables the Customer to charge the call cost to a pre-authorized account. Customer accesses the account by entering a PIN.

Calling Station: The originating point of a call (i.e., the calling number).

Commission: South Dakota Public Utility Commission (SDPUC).

Company: Shared Communications Services, Inc (SCS).

Customer: Any person, firm, partnership, corporation or other entity which orders or is furnished with communications service and is responsible for payment of the charges and for compliance with the Company's tariff regulations.

Customer Dated Calling Card Station: Service where the charges for the call are billed to a Company's authorized Calling Card.

Day: Rate period from 8:00 AM to 4:59 PM Monday through Friday local time at the Calling Station.

Enhanced Communications Service: Service which employs computer processing applications that act on the format, content, code, protocol or similar aspects of the Customer's transmitted information; provides the Customer additional, different or restructured information; or involves Customer interaction with stored information.

Evening: Rate period from 5:00 PM to 10:59 PM Monday through Friday and Sunday local time at the Calling Station.

Date of Issue: February 11, 2000

Date Effective:

Issued By: Jeff Raines, President
Shared Communications Services, Inc.
1723 Fairview Industrial Dr. SE
Salem, OR 97302

SECTION I - DEFINITIONS (CONT.)

Holiday: Company-recognized holidays are New Year's Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. Evening rates apply to USA Calling Plan Program calls except when a lower rate would normally apply.

Incomplete Call: Any call where voice transmission between the Calling Station and the Called Station is not established (i.e., busy, no answer, etc.).

Intrastate (Narrow) Carrier (IXC): A carrier certified to provide intrastate telephone service.

Local Access and Transport Area (LATA): A geographic area established as required by the Modification of Final Judgment entered in United States v. Western Electric Co., Inc., 552 F. Supp. 111 (D.D.C. 1982), within which a local exchange company provides communication service.

Local Exchange Company: A telephone company utility which provides local telecommunications services to a specific geographical area for business and residential customers.

Message Telecommunications Service (MTS): Commonly known as "long distance service", MTS is the transmission of two-way interactive switched voice communication between local exchange areas for which charges are made on a per-unit basis and wide area telecommunications service or its equivalent.

Night: Rate period from 11:00 PM to 7:59 AM Monday through Thursday and 11:00 PM Friday to 4:59 PM Sunday local time at the Calling Station.

Operator-Dispatched Calling Card Station: Service which requires the assistance of a Company operator to complete the call and where the charges are billed to a Company-authorized Calling Card.

Operator Station: Service which requires the assistance of a Company operator to complete the call.

Date of Issue

February 11, 2000

Date Effective

Issued By

Jeff Raines, President
Shared Communications Services, Inc.
1723 Fairview Industrial Dr. SE
Salem, OR 97302

SECTION 1 - DEFINITIONS (CONT.)

Person-to-Person: Service for which the person originating the call specifies to the Company ~~operator~~ a particular person, department, extension or office to be reached.

PIN (Personal Identification Number): A number sequence which must be used by Customer to access the network for calling card services.

Point of Presence: The Company's physical presence in a LATA (as defined herein). Locations where Company maintains a terminal facility for purposes of providing telecommunications services.

SA N Shared Communications Services, Inc. or Company

SDPUC: South Dakota Public Utilities Commission

Special Services: Services provided and/or performed by the Company involving special design, engineering, programming, development and/or production activities to meet Customer's service request for which there is not a prescribed rate in this tariff.

Switched Access: The connection between Customer's premises and the Company's point of presence using the local exchange carrier's switch.

Date of Issue: February 11, 2000

Date Effective:

Issued By:

Jeff Raines, President
Shared Communications Services, Inc.
3723 Fairview Industrial Dr. SE
Salem, OR 97302

SECTION 2 - RULES AND REGULATIONS**2.1 UNDERTAKING OF THE COMPANY**

2.1.1 Company's services are furnished for the provision of telecommunications which originate and/or terminate within the State of South Dakota. Service is furnished subject to transmission, atmospheric and like conditions.

2.1.2 SCS is a resale common carrier providing intrastate and interstate long distance message telecommunications service and operator assistance services to Customers for their direct transmission and reception of voice, data, and other types of communications.

2.1.3 Company resells access, switching, transport and termination services provided by interexchange carriers (IXC).

2.1.4 Customer's monthly charges for Company's service are based on the total time Customer actually uses the service. For billing purposes, duration of each call will be rounded up in six-second increments unless otherwise specified.

2.1.5 Subject to availability, Customers may use account codes to identify the users or user groups on an account. The numerical composition of the codes shall be set by Company to assure compatibility with the Company's accounting and billing systems and to avoid the duplication of codes.

2.1.6 Company's services are provided on a monthly basis unless otherwise provided, and are available twenty-four hours per day, seven days per week.

2.1.7 Company's services are designed for small to medium-sized business Customers interested in the simplified rate structures provided by Company.

Date of Issue: February 11, 2000

Date Effective:

Issued By: Jeff Raines, President
Shared Communications Services, Inc.
3723 Fairview Industrial Dr. SE
Salem, OR 97302

SECTION 2 - RULES AND REGULATIONS (CONT.)

2.1 LIMITATIONS

2.1.1 Service is offered subject to the availability of the necessary facilities and/or equipment and subject to the provisions of this tariff.

2.1.2 Company reserves the right to discontinue service when necessitated by conditions beyond Company's control or when Customer is using the service in violation of the provisions of this tariff or in violation of the law.

2.1.3 The Company does not undertake to transmit messages, but offers the use of its facilities when available, and will not be liable for errors in transmission or for failure to establish connections.

2.1.4 Title to all facilities provided by Company under these regulations remains in or is leased in SCS' name.

2.1.5 Prior written permission from the Company is required before any assignment or transfer of service and/or account. All regulations and conditions contained in this tariff shall apply to all such permitted assignees or transferees, as well as all conditions of service.

Date of Issue: February 11, 2000

Date Effective:

Issued By:

Jeff Raines, President
Shared Communications Services, Inc.
3723 Fairview Industrial Dr. SE
Bellevue, OR 97007

SECTION 1 - RULES AND REGULATIONS (CONT.)

1.1 USE

1.1.1 Services provided under this tariff may be used only for the transmission of communications by the Customers in a manner consistent with the terms of this tariff and regulations of the Federal Communications Commission.

1.1.2 Services provided under this tariff shall not be used:

1.1.2.1 For unlawful purposes; or

1.1.2.2 For any purpose for which any payment or other compensation is received by the Customer, except when the Customer is an entity which holds itself out as being a communications common carrier or resale common carrier or entity which resells the Company's services as part of an enhanced communications service. This provision does not prohibit an arrangement between the Customer and an authorized user to share the cost of the service so long as the arrangement generates no profit for any participant in the arrangement.

Date of Issue: February 11, 2000

Date Effective:

Issued By: Jeff Rainer, President
Shared Communications Services, Inc.
1733 Fairview Industrial Dr. SE
Atlanta, GA 30329

SECTION 2 - RULES AND REGULATIONS (CONT.)**2.4 INTERCONNECTION**

2.4.1 Service furnished by Company may be interconnected with services or facilities of other authorized communications common carriers and with private systems, subject to the technical limitations established by Company. Any special interface of equipment or facilities necessary to achieve compatibility between the facilities of Company and other participating carriers shall be provided at the Customer's expense.

2.4.2 Interconnection between the facilities or services of other carriers shall be under the applicable terms and conditions of the other carriers' tariffs. The Customer is responsible for taking all necessary legal steps for interconnecting customer provided terminal equipment or communications equipment with Company's facilities. The Customer shall secure all licenses, permits, rights-of-way, and other such arrangements necessary for interconnection.

2.4.3 Customer is responsible for charges incurred for special construction and/or special facilities which Customer requests and which are ordered by Company on Customer's behalf.

2.4.4 If required for the provision of Company's services, Customer must provide equipment space, supporting structure, conduit and electrical power without charge to Company.

2.4.5 Customer is responsible for arranging access to its premises at a mutually agreeable time when required for Company to install, repair, maintain, program, inspect or remove equipment associated with the provision of Company's services.

2.4.6 Customer must pay for replacement or repair of damage to equipment or facilities of Company caused by negligence or willful act of Customer.

Date of Issue: February 11, 2000

Date Effective:

Issued By:

Jeff Raines, President
Shared Communications Services, Inc.
3723 Fairview Industrial Dr. SE
Salem, OR 97302

SECTION 2 - RULES AND REGULATIONS (CONT.)**2.1 LIABILITIES OF THE COMPANY**

2.1.1 The Company shall not be liable for claim or loss, expense or damage (including indirect, special or consequential damage) for any interruption, delay, error, omission, or defect in any service, facility (including services and facilities involved in emergency calling activity) or transmission provided under this tariff, if caused by any person or entity other than the Company, by any malfunction of any service or facility provided by any other carrier, by an act of God, fire, war, civil disturbance, or act of government, or by any other cause beyond the Company's direct control.

2.1.2 The Company shall not be liable for, and shall be fully indemnified and held harmless by Customer and Authorized User against any claim or loss, expense, or damage (including indirect, special or consequential damage) for defamation, libel, slander, invasion, infringement of copyright or patent, unauthorized use of any trademark, tradename or service mark, unfair competition, interference with or misappropriation or violation of any contract, proprietary or creative right, or any other injury to any person, property or entity arising out of the material, data, information, or other conduct revealed to, transmitted by, or used by the Company under this tariff; or for any act or omission of the Customer or Authorized User; or for any personal injury or death of any person caused directly or indirectly by the installation, maintenance, location, condition, operation, failure, presence, use, or removal of equipment or wiring provided by the Company, if not caused by negligence of the Company.

2.1.3 The Company shall not be liable for any defacement of or damages to the premises of a Customer or Authorized User, resulting from the furnishing of service, which is not the result of the Company's negligence.

2.1.4 Except when a court of competent jurisdiction finds that gross negligence, willful neglect, or willful misconduct on the Company's part has been a contributing factor, the liability of the Company for any claim or loss, expense or damage (including indirect, special or consequential damage) interruption, delay, error, omission, or defect in facilities involved in any service, facility (including services and facilities involved in emergency calling activity) or transmission provided under this tariff shall not exceed an amount equivalent to the prorata charge to the Customer or Authorized User for the period of service or facility usage during which such interruption, delay, error, omission or defect occurs. For the purpose of computing this amount, a month is considered to have thirty (30) days.

Date of Issue: February 11, 2000

Date Effective:

Issued By:

Jeff Raines, President
Shared Communications Services, Inc.
3723 Fairview Industrial Dr. SE
Salem, OR 97302

SECTION 2 - RULES AND REGULATIONS (CONT.)**2.6 SERVICE**

2.6.1 It shall be the obligation of Customer to notify Company of any interruptions of service. Before giving such notice, Customer shall ascertain that the trouble is not being caused by any action or omission of Customer, not within Customer's control, and is not in the wiring or equipment connected to the terminal of Company.

2.6.2 Credit allowance for interruptions of service which are not due to Company's testing or adjusting, to the negligence of Customer, or to the failure of channels, equipment and/or communications equipment provided by Customer, are subject to the general liability provisions set forth in Section 2.5, herein.

2.6.3 Without incurring liability, Company may interrupt the provision of services at any time in order to perform tests and inspections to assure compliance with tariff regulations and the proper installation and operation of Customer and Company's equipment and facilities and may continue such interruption until any item of noncompliance or improper equipment operation is rectified.

2.7 RESTORATION OF SERVICE

2.7.1 The use and restoration of service in emergencies shall be in accordance with Part 64, Subpart D of the Federal Communications Commission's Rules and Regulations, which specifies the priority system for such activities.

Date of Issue: February 11, 2000

Date Effective:

Issued By: Jeff Raines, President
Shared Communications Services, Inc.
3723 Fairview Industrial Dr. SE
Salem, OR 97302

SECTION 2 - RULES AND REGULATIONS (CONT.)

2.8 PAYMENTS AND BILLING

- 2.8.1** Service is provided and billed on a monthly (30 day) basis. Service continues to be provided until cancelled by the Customer (see Section 2.9) or by the Company (see Section 2.10).
- 2.8.2** Customer is responsible for the payment of all charges for services furnished. Charges are based on actual usage during a month and will be billed monthly in arrears.
- 2.8.3** Billing will be payable upon receipt and past due 30 days from invoice date. A late payment fee of 1.5% of the outstanding balance will be assessed for past due accounts.
- 2.8.4** The name(s) of the Customer(s) desiring to use the service must be set forth in the agreement for service.
- 2.8.5** Company does not require a deposit from Customer for use of Company's services.
- 2.8.6** Customers may receive credit adjustments up to an allowable amount for contested charges by contacting the Company whose number is shown on the Customer's bill. Adjustment may be authorized by the Company after appropriate investigation.
- 2.8.7** Customers have the right to refer billing disputes and any other complaints to Company at 3723 Fairview Industrial Dr. SE, Salem, OR 97302, (800) 285-6100. Unresolved billing disputes may also be referred to the South Dakota Public Utilities Commission at 500 E. Capitol Ave., Pierre, SD 57501-5070 or by calling (605) 773-3201.
- 2.8.8** All Federal state, local sales and excise taxes and similar taxes are billed as separate line items and are not included in quoted rates.

Date of Issue: February 11, 2000

Date Effective:

Issued By: Jeff Raines, President
Shared Communications Services, Inc.
3723 Fairview Industrial Dr. SE
Salem, OR 97302

SECTION 2 - RULES AND REGULATIONS (CONT.)

2.9 CANCELLATION OF SERVICE BY CUSTOMER

- 2.9.1 Where an agreement for service is cancelled by the Customer prior to the start of any design work or installation of facilities, no charge applies.
- 2.9.2 Where installation of facilities has been started prior to the cancellation, appropriate connection charges as shown in the Company's tariff will apply.
- 2.9.3 If cancellation is requested subsequent to the time installation has been started, the agreement will be canceled by the Company and the Company may collect a charge equal to the estimated costs incurred in the installation, less estimated net salvage.
- 2.9.4 Installation is considered to have been started when the Company incurs any expense in connection with, or in preparation for, provision of service which would not otherwise have been incurred, provided the customer has advised the Company to proceed with the installation, and the Company has accepted the order.
- 2.9.5 If cancellation is requested after completion of an installation, it will be treated as a discontinuance of service and the minimum requirements of the rate will be applicable.

Date of Issue: February 11, 2000

Date Effective:

Issued By: Jeff Raines, President
Shared Communications Services, Inc.
3723 Fairview Industrial Dr. SE
Salem, OR 97302

SECTION 2 - RULES AND REGULATIONS (CONT.)

2.10 CANCELLATION OF SERVICE BY COMPANY

2.10.1 Company will provide at least ten days written notice via first class mail before terminating service for non compliance with the provisions of this tariff, for neglect or refusal to provide reasonable access to Company for the purpose of inspection and maintenance, for outstanding indebtedness or non-payment of bills, or for non-compliances with State, local or other calls. However, Company reserves the right to immediately disconnect service without incurring liability when necessitated by conditions beyond the Company's control, for dangerous conditions, when Customer has obtained unauthorized service by illegal use or theft, or when Company is ordered to terminate service by a governmental official.

2.10.2 Service will not be terminated for failure to pay amounts in dispute if the past due amount is subject to a pending complaint with the SDPUC. The Company may issue a notice of termination of service with respect to that portion of a past due account which is not the subject of a pending complaint.

2.11 SERVICE PROMOTIONS

2.11.1 The Company on occasion and following informal written notification to the SDPUC, promote one or more regulated services in a non-discriminatory manner and for a specified period of time, by means of special introductory rates, free service offers, etc.

Date of Issue: February 11, 2000

Date Effective:

Issued By: Jeff Raines, President
Shared Communications Services, Inc.
3723 Fairview Industrial Dr. SE
Salem, OR 97302

SECTION 3 - DESCRIPTION OF SERVICES OFFERED

3.1 TIMING OF CALLS

3.1.1 On all calls, except Person-to-Person calls, communications originate when the connection between the Calling Station and Called Station is established. For example, direct dialed long distance calls originate when the Customer accesses the IXC switch by dialing the IXC's access code (10XXX) either directly or through the election of the IXC as the Customer's Primary Interexchange Company in Equal Access service areas, AND the called party answers the call. When the Customer hangs up, the communications charges will terminate for that call.

3.1.2 For Person-to-Person calls, chargeable time begins when the connection is established between the Calling Party and a specified person, station, department, office, or an agreed-upon alternate.

3.1.3 Unless otherwise specified in this price list, the minimum call duration for billing purposes is one-tenth of one minute, with one-tenth of a minute billing increments thereafter.

3.1.4 Any portion of an applicable increment, after the appropriate minimum time for the call, will be rounded upward to the next increment. Calls less than the minimum length will be rounded to the minimum length.

3.1.5 There is no billing for incomplete calls.

3.2 MINIMUM CALL COMPLETION AND MILEAGE CALCULATION

3.2.1 Customers can expect a call completion rate of not less than 95% during peak periods for Feature Groups A (FGA), B (FGB) and D (FGD) Services. The completion rate is calculated as the number of calls completed, including calls completed to a busy or unanswered line, divided by the number of calls attempted.

3.2.2 The Customer's total use of Company's services is charged at the applicable rate per minute set forth below, based on airline mileage between two points as determined by and shown in the airline mileage tables contained in AT&T Tariff FCC No. 10, incorporated herein by reference.

Date of Issue: February 11, 2000

Date Effective:

Issued By: Jeff Raines, President
Shared Communications Services, Inc.
3723 Fairview Industrial Dr. SE
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SECTION 3 - DESCRIPTION OF SERVICES OFFERED (CONT.)

3.3 SCS TELECOMMUNICATIONS SERVICES

3.3.1 USA Calling Plan Program

3.3.1.1 USA One Plus Service is a direct dial intrastate service available from equal access central offices. This service offers discounted direct dial, verified and non-verified account codes and six-second incremental billing.

3.3.1.2 USA Toll Free Service is available from equal access central offices nationwide where SCS owns, operates, leases, subleases or has contracted to utilize another company's facilities.

Date of Issue: February 11, 2000

Date Effective:

Issued By:

Jeff Raines, President
Shared Communications Services, Inc.
3723 Fairview Industrial Dr. SE
G.P. 07302

SECTION 3 - DESCRIPTION OF SERVICES OFFERED (CONT.)

3.3 SCS TELECOMMUNICATIONS SERVICES (CONT'D)

3.3.2 Calling Cards

- 3.3.2.1 Feature Plus Card Customers may access the Company's system via a toll free carrier access code dialed from any dual tone multifrequency signalling telephone. Customers are prompted to enter an account code and, upon validation, are able to dial a Called Station number.
- 3.3.2.2 One World Calling Card Customers may access the Company's system via a toll free carrier access code dialed from any dual tone multifrequency signalling telephone. Customers are prompted to enter an account code and, upon validation, are able to dial a Called Station number.
- 3.3.2.3 USA Calling Card Customers may access the Company's system via a toll free carrier access code dialed from any dual tone multifrequency signalling telephone. Customers are prompted to enter an account code and, upon validation, are able to dial a Called Station number.
- 3.3.2.4 New World Plus Calling Card Customers may access the Company's system via a toll free carrier access code dialed from any dual tone multifrequency signalling telephone. Customers are prompted to enter an account code and, upon validation, are able to dial a Called Station number.

Date of Issue: February 11, 2000

Date Effective:

Issued By: Jeff Raines, President
Shared Communications Services, Inc.
3723 Fairview Industrial Dr. SE

SECTION 3 - DESCRIPTION OF SERVICES OFFERED (CONT.)

3.3 SCS TELECOMMUNICATOINS SERVICES (CONT.)

3.3.4 Operator Assisted Calling Service

3.3.4.1 Operator Assisted Calling Service is available only to Customers of USA Calling Plan Program. This service permits Customers to access a live operator or automated operator to place specified types of interLATA subscriber-dialed and operator-assisted calls within the State of South Dakota by dialing 0 plus the number desired or 00 from a SCS presubscribed telephone. All (0+) intraLATA calls are routed to the appropriate LEC.

3.3.4.2 Calls will be billed at the established SCS Operator Assisted Calling Service per minute rates plus the appropriate surcharge (See Section 4.6).

3.3.5 DIRECTORY ASSISTANCE SERVICE

3.3.5.1 Directory Assistance Service is available only to Customers of USA Calling Plan Program.

Date of Issue: February 11, 2000

Date Effective:

Issued By: Jeff Raines, President
Shared Communications Services, Inc.
3723 Fairview Industrial Dr. SE
Salem, OR 97302

SECTION 4 - RATES AND CHARGES

4.1 PROGRAM CHARGES

- 4.1.1 Customers will be charged a basic monthly recurring program charge per billing location of \$6.00 for the first service.
- 4.1.2 An additional monthly recurring program charge per billing location of \$3.00 will be charged for each additional service.
- 4.1.3 The monthly program charge will be waived for a program if the customer does not incur at least \$25.00 worth of rate charges for the program.
- 4.1.4 One World Calling Card Service, Operator Assisted Calling Service and Directory Assistance Service are exempt from program charges.
- 4.1.5 The monthly program charge will be waived for USA Toll Free customers who have committed to a 24 month term agreement.

Date of Issue: February 11, 2000

Date Effective:

Issued By: Jeff Raines, President
Shared Communications Services, Inc.
3723 Fairview Industrial Dr. SE
Salem, OR 97302

SECTION 4 - RATES AND CHARGES (CONT.)

4.2 MONTHLY SERVICE CHARGES

4.2.1 USA Calling Plan Program

4.2.1.1 There is no monthly service charge for the USA One Plus product.

4.2.1.2 There is no monthly service charge for the USA Toll Free product.

Date of Issue: February 11, 2000

Date Effective:

Issued By: Jeff Raines, President
Shared Communications Services, Inc.
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SECTION 4 - RATES AND CHARGES (CONT.)

4.3 NON-RECURRING CHARGES

4.3.1 USA Calling Plan Program

4.3.1.1 There are no additional non-recurring charges for services offered under this program.

4.3.1.2 Notwithstanding the foregoing, charges for special services (as defined in Section 1) may apply to services offered under this program: when a Customer requests that SCS obtain facilities or provide technical assistance not normally required to provide standard MTS service; when special signalling, conditioning, equipment or other features are required to make Customer-provided equipment compatible with the Company's service; when installation or maintenance is performed or extended outside of normal business hours when not the fault of SCS; or when additional testing is requested in excess of the normal testing required to provide service.

4.3.1.3 Special services charges will be equivalent to the actual or estimated cost of furnishing such services, based on: the equipment and materials, engineering, labor and supervision; transportation; maintenance; and any identifiable cost related to the service provided.

Date of Issue: February 11, 2000

Date Effective:

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SECTION 4 - RATES AND CHARGES (CONT.)

4.4 USA CALLING PLAN PROGRAM RATES

4.4.1 USA One Plus Service Intrastate Rates

	Day		Evening		Night	
	Initial 18 seconds	Add'l 6 seconds	Initial 18 seconds	Add'l 6 seconds	Initial 18 seconds	Add'l 6 seconds
Entire State	.03870	.01290	.03870	.01290	.03870	.01290

4.4.1.1 Calls are billed in six-second increments with an 18-second minimum.

4.4.1.2 Verified account codes and non-verified account codes are available at no charge.

4.4.1.3 Customer must commit to a minimum 12 month term agreement to be eligible for this service.

4.4.2 USA Toll Free Service Intrastate Rates (Per Minute)

	Day		Evening		Night	
	Initial 18 seconds	Add'l 6 seconds	Initial 18 seconds	Add'l 6 seconds	Initial 18 seconds	Add'l 6 seconds
Entire State	.03270	.01090	.03270	.01090	.03270	.01090

4.4.2.1 Calls are billed in six-second increments with an 18-second minimum.

4.4.2.2 All intrastate and interstate calls are timed to the exact second, aggregated at the end of the month, and billed to the nearest six-second increment.

4.4.2.3 Customer must commit to a minimum 12 month term agreement to be eligible for this service.

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SECTION 4 - RATES AND CHARGES (CONT'D)

4.5 Feature Plus Card Intrastate Rates

Mileage Range	Day	Evening	Night
Entire State	.2500	.2500	.2500

4.5.1 Calls are billed in full minute increments with a one minute minimum.

4.5.2 The Customer Dialed Calling Card surcharge is \$0.25 per call.

4.6 One World Calling Card Intrastate Rates

Mileage Range	Day	Evening	Night
Entire State	.2500	.2500	.2500

4.6.1 Calls are billed in full minute increments with a one minute minimum.

4.6.2 The Customer Dialed Calling Card surcharge is \$0.25 per call.

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SECTION 4 - RATES AND CHARGES (CONT.)

4.7 USA Calling Card Service Intrastate Rates

Mileage Range	Day	Evening	Night
Entire State	.1800	.1800	.1800

4.7.1 Calls are bill in full minute increments with a one minute minimum.

4.7.2 The customer dialed calling card surcharge is \$.025 per call.

4.8 New World Plus Calling Card

Mileage Range	Day	Evening	Night
Entire State	.1800	.1800	.1800

4.8.1 Calls are billed full minute increments with a one minute minimum.

4.8.2 The customer dialed calling card surcharge is \$.025 per call.

Date of Issue: February 11, 2000

Date Effective:

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Shared Communications Services, Inc.
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SECTION 4 - RATES AND CHARGES (CONT.)

4.9 OPERATOR ASSISTED CALLING

4.9.1 Operator Assisted Calling Intrastate Rates (Per Minute)

	Day		Evening		Night	
Mileage Range	Initial Min.	Add'l Min.	Initial Min.	Add'l Min.	Initial Min.	Add'l Min.
0-9999	0.59	0.59	0.59	0.59	0.59	0.59

4.9.2 This service is available to USA Calling Card Program customers.

4.9.3 Calls are billed in full minute increments with a one minute minimum.

4.9.4 In addition to the per minute usage charge above, one of the following surcharges will apply. When a call is subject to more than one surcharge, only the highest surcharge applies.

4.9.4.1 The Operator Station - Collect surcharge is \$5.50.

4.9.4.2 The Operator Station - Third party surcharge is \$6.50.

4.9.4.3 The Person-to-Person surcharge is \$9.95.

4.9.4.4 The Operator Dialed surcharge is \$2.15.

4.9.4.5 The Customer Dialed Calling Card Station surcharge is \$3.45.

4.9.4.6 The Directory Assistance surcharge is \$.60.

4.9.4.7 The Busy Line Verify surcharge is \$15.00.

4.9.4.8 The Busy Line Verify/Emergency Interrupt surcharge is \$17.00.

Date of Issue: February 11, 2000

Date Effective:

Issued By: Jeff Raines, President
Shared Communications Services, Inc.
3723 Fairview Industrial Dr. SE
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SECTION 4 - RATES AND CHARGES (CONT.)

4.10 DIRECTORY ASSISTANCE

4.10.1 Directory Assistance call rates are based on the subscribed Program:

4.10.1.1 USA Calling Plan \$0.60 per call

Date of Issue: February 11, 2000

Date Effective:

Issued By: Jeff Raines, President
Shared Communications Services, Inc.
3723 Fairview Industrial Dr. SE

SECTION 4 - RATES AND CHARGES (CONT.)

4.11 TIME PERIODS

4.11.1 The applicable time periods for USA Calling Plan Program and Operator Assisted Calling Service are as follows:

	MON	TUE	WED	THUR	FRI	SAT	SUN
8:00 AM	Day	Day	Day	Day	Day	Night	Night
to							
4:59 PM							
5:00 PM	Eve	Eve	Eve	Eve	Eve	Night	Eve
to							
10:59 PM							
11:00 PM	Night	Night	Night	Night	Night	Night	Night
to							
7:59 AM							

4.11.2 If a call begins in one time period and ends in another, the call is billed at proportional split rates.

Date of Issue: February 11, 2000

Date Effective:

Issued By: Jeff Raines, President
Shared Communications Services, Inc.
3723 Fairview Industrial Dr. SE
Salem, OR 97302

EXHIBIT 4

APPLICANT'S AUDITED
INCOME STATEMENT AND
BALANCE SHEET
FOR THE FISCAL YEAR
OCTOBER 1, 1997
THROUGH
SEPTEMBER 30, 1998

ARTHUR ANDERSEN LLP

SHARED COMMUNICATIONS SERVICES, INC.

FINANCIAL STATEMENTS
AS OF SEPTEMBER 30, 1998 AND 1997
TOGETHER WITH AUDITORS' REPORT

ARTHUR ANDERSEN LLP

REPORT OF INDEPENDENT PUBLIC ACCOUNTANTS

To the Board of Directors of
Shared Communications Services, Inc.:

We have audited the accompanying balance sheets of Shared Communications Services, Inc. (an Oregon corporation) as of September 30, 1998 and 1997, and the related statements of operations, shareholders' equity and cash flows for each of the three years in the period ended September 30, 1998. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Shared Communications Services, Inc. as of September 30, 1998 and 1997, and the results of its operations and its cash flows for each of the three years in the period ended September 30, 1998, in conformity with generally accepted accounting principles.

Arthur Andersen LLP

Portland, Oregon,
November 19, 1998

ASSETS

CURRENT ASSETS:	
Cash and cash equivalents	\$ 2,100,000
Securities available for sale	500,000
Accounts receivable, net of allowance for doubtful accounts of \$130,438 and \$55,000	1,100,000
Unbilled revenue	1,000,000
Income taxes receivable	40,000
Other	40,000
Total current assets	\$ 5,200,000

FIXED ASSETS, net of accumulated depreciation of \$3,413,264 and \$2,650,357

INTANGIBLE ASSETS, net of accumulated amortization of \$1,996,574 and \$1,744,498

DEFERRED INCOME TAXES

Total assets

The accompanying notes are an integral part of these financial statements.

THARCO COMMUNICATIONS SERVICES, INC.

Balance Sheets (Continued) -- SEPTEMBER 30, 1998 AND 1997

LIABILITIES AND SHAREHOLDERS' EQUITY

	1998	1997
Current Liabilities:		
Accounts payable	\$ 3,236,575	\$ 2,531,691
Notes payable	724,498	435,870
Current liabilities of long-term debt	338,709	253,513
Current liabilities of long-term debt to related parties	-	447,066
Current portion of capital leases	119,376	67,767
Deferred income taxes	7,785	158,086
Accounts payable	384,000	-
Notes payable	60,000	15,000
Deferred income taxes	-	-
Total current liabilities	4,870,943	3,908,999
Long-Term Liabilities:		
Long-term debt	3,024,754	1,523,560
Capital leases	314,806	221,640
Deferred tax liability	136,000	-
Total long-term liabilities	3,475,560	1,745,200
Total liabilities	8,346,503	5,654,200
Shareholders' Equity:		
Common stock (no par value; 200,000 shares authorized; 113,417 shares issued and outstanding)	1,274,424	1,006,000
Preferred stock	75,757	32,000
Retained earnings	6,508,281	4,768,000
Total shareholders' equity	7,858,462	5,806,000
Total liabilities and shareholders' equity	\$16,204,965	\$11,460,200

The accompanying notes are an integral part of these balance sheets.

TRAPID COMMUNICATIONS SERVICES, INC.

STATEMENTS OF OPERATIONS

FOR THE YEARS ENDED SEPTEMBER 30, 1998, 1997 AND 1996

	<u>1998</u>	<u>1997</u>	<u>1996</u>
REVENUE	\$42,050,517	\$34,490,992	\$28,330,735
COST OF SALES	<u>27,971,082</u>	<u>24,417,652</u>	<u>20,356,543</u>
GROSS PROFIT	14,079,435	10,073,340	7,974,192
OPERATING EXPENSES:			
Selling, General and Administrative	9,869,610	7,537,761	6,952,489
Depreciation	915,509	761,025	571,471
Amortization	252,076	519,604	594,895
Operating Income (Loss)	<u>3,042,240</u>	<u>1,254,950</u>	<u>(144,663)</u>
FINANCIAL EXPENSE	(280,688)	(202,660)	(95,785)
FINANCIAL INCOME	105,847	88,638	182,151
OTHER INCOME	446,355	139,590	287,122
INCOME BEFORE INCOME TAXES	<u>3,313,754</u>	<u>1,280,518</u>	<u>228,825</u>
EXPENSES FOR INCOME TAXES	<u>1,566,000</u>	<u>688,089</u>	<u>295,527</u>
Net Income (Loss)	<u>\$ 1,747,754</u>	<u>\$ 592,429</u>	<u>\$ (66,702)</u>

The accompanying notes are an integral part of these statements.

	1996	1997	1998	1999	2000
BALANCE, September 30, 1995	155,356	779,553	8,029	4,388,405	5,171,987
Adjustment to securities available for sale	-	-	24,161	-	24,161
Dividends paid to stockholders	-	-	-	(212,522)	(212,522)
Compensation expense related to granting options below	-	230,633	-	-	230,633
fair market value	-	-	-	592,429	592,429
Net loss	-	-	-	-	-
BALANCE, September 30, 1996	155,356	1,006,186	32,190	4,768,312	5,806,688
Adjustment to securities available for sale	-	-	43,567	-	43,567
Dividends paid to stockholders	-	-	-	-	-
Compensation expense related to granting options below	-	-	-	(7,785)	(7,785)
fair market value	-	-	-	-	-
Net income	-	-	-	-	-
BALANCE, September 30, 1997	155,356	1,006,186	75,757	\$6,508,281	\$7,858,462
Adjustment to securities available for sale	-	-	-	-	-
Exercise of options	35	1	-	-	-
Dividends paid to stockholders	-	-	-	-	-
Compensation expense related to granting options below	-	268,237	-	-	268,237
fair market value	-	-	-	1,747,754	1,747,754
Net income	-	-	-	-	-
BALANCE, September 30, 1998	155,391	\$1,274,424	\$ 75,757	\$6,508,281	\$7,858,462

The accompanying notes are an integral part of these statements.

STATEMENTS OF CASH FLOWS

FOR THE YEARS ENDED SEPTEMBER 30, 1998, 1997 AND 1996

	1998	1997	1996
CASH FROM OPERATING ACTIVITIES:			
Net income (loss)	\$ 1,747,754	\$ 592,429	\$ (66,702)
Adjustments to reconcile net income (loss) to net cash provided by operating activities-			
Depreciation and amortization	1,167,585	1,280,629	1,166,366
Goodwill impairment expense	268,237	230,633	688,672
Gain on sale of investment	(9,752)	2,673	(2,957)
Gain on sale of property	(336,375)	-	-
Interest income earned	250,000	(386,605)	(85,469)
Changes in operating assets and liabilities:			
Accounts receivable	(401,157)	(494,865)	(574,255)
Accounts payable	(226,312)	(350,476)	(282,919)
Accounts receivable	308,000	223,212	(469,177)
Other current assets	(8,597)	(167,824)	44,392
Accounts payable	704,884	266,856	935,294
Other liabilities	288,628	3,501	148,979
Accounts payable	-	158,086	-
Accounts payable	384,000	-	(129,892)
Net cash provided by operating activities	4,136,895	1,358,249	1,372,332
CASH FROM INVESTING ACTIVITIES:			
Capital expenditures	(4,344,705)	(1,391,931)	(1,553,365)
Proceeds from sale of property	899,300	-	-
Proceeds of investments	(126,159)	(6,809)	(101,771)
Proceeds from sale of securities	103,543	50,000	178,054
Net cash used in investing activities	(3,468,021)	(1,348,740)	(1,477,082)
CASH FROM FINANCING ACTIVITIES:			
Proceeds on long-term debt	1,853,000	1,000,000	-
Payments on long-term debt	(713,677)	(364,049)	(752,869)
Payments on short-term obligations	-	(58,396)	(132,989)
Proceeds on line of credit	-	-	500,000
Proceeds from exercise of stock options (Note 5)	1	-	31,210
Payments on capital lease	(96,919)	(54,702)	(21,019)
Payments on	(158,086)	(212,522)	(4,653)
Net cash provided by (used in) financing activities	884,319	310,331	(380,320)
Net increase (decrease) in cash and cash equivalents	1,553,193	319,840	(485,070)
Cash and cash equivalents, beginning of year	1,155,790	835,950	1,321,020
Cash and cash equivalents, end of year	\$ 2,708,983	\$ 1,155,790	\$ 835,950
CASH FROM THE YEAR FOR:			
Interest	\$ 274,314	\$ 196,148	\$ 95,785
Income taxes	675,000	719,000	911,674
NONCASH INVESTING			
ACQUISITION AND FINANCING ACTIVITIES:			
Acquisition for financing	-	384,244	-
Accounts payable and obligations	241,686	40,860	324,274
Accounts payable	7,785	-	-
Accounts payable and property	135,000	-	-
Change in accounts payable on securities	43,567	24,161	-

The accompanying notes are an integral part of these statements.

SHARP COMMUNICATIONS SERVICES, INC.

NOTES TO FINANCIAL STATEMENTS

SEPTEMBER 30, 1998

1. DESCRIPTION OF THE BUSINESS:

Sharp Communications Services, Inc. (the Company) is a switched-based, telecommunications carrier incorporated in the state of Oregon. The Company provides 1+ services, toll services, T-1 and individual dedicated access lines, private lines for voice and data, travel cards, international services, voice mail, cellular services, long distance via Center Plus and customized billing. In addition, the Company provides telecommunications consulting, system management services and internet access.

The Company is regulated by the various states in which it does business. In the majority of states, the Company is allowed to establish its own rates and is required to report its rates to the regulatory agencies.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES:

Cash and Cash Equivalents

The Company considers all highly liquid investments with a maturity of three months or less at the date of purchase to be cash equivalents.

Securities Available for Sale

The Company classifies its security investments as available for sale based on the Company's intent. Securities available for sale are stated on the balance sheet at current fair market value. The Company uses the specific identification method for determining the cost to use in computing realized gains and losses.

Fixed Assets

Fixed assets are stated at cost. Depreciation is computed using the straight-line method over the estimated useful lives. Leasehold improvements are capitalized and amortized using the straight-line method over the shorter of the initial lease term or the estimated useful lives of the assets. Upon sale or other disposition, the cost and the related accumulated depreciation are removed from the accounts and a gain or loss, if any, is reflected in the statement of operations. Maintenance and repairs are expensed as incurred. The cost of additions and betterments of fixed assets are capitalized.

The following is a table of the useful lives of the fixed assets:

<u>Asset Class</u>	<u>Useful Lives</u>
Buildings	25
Cable and wiring	15
Equipment	5-7
Software	5
Switch	7
Switch software and improvements	5-7

Fixed assets are composed of the following as of September 30:

	1998	1997
Land	\$ 323,656	\$ 240,470
Buildings	2,906,352	1,053,118
Cable and wiring	2,883,791	1,971,638
Software and equipment	2,699,101	1,970,910
Switch, software and improvements	2,545,423	2,116,321
	11,358,323	7,352,457
Less- Accumulated depreciation	(3,413,264)	(2,650,357)
Fixed assets net	\$ 7,945,059	\$ 4,702,100

Intangibles

Intangibles consist of goodwill, noncompete agreements, customer lists and other purchased contracts. Intangibles are stated at cost less accumulated amortization computed using the straight-line method over estimate lives of three to fifteen years. Goodwill represents the excess of purchase price over fair value of the net assets purchased in a business acquisition.

Intangibles are composed of the following as of September 30:

	1998	1997
Goodwill	\$ 228,849	\$ 228,849
Noncompete agreements	613,058	613,058
Customer lists and contracts	1,288,177	1,288,177
	2,130,084	2,130,084
Less- Accumulated amortization	(1,996,574)	(1,744,498)
Intangibles, net	\$ 133,510	\$ 385,586

Revenues and Expenses

Revenues and related expenses are recognized in the period services are provided. The related accruals for revenues, expenses and unbilled revenues are included on the balance sheets.

Advertising Costs

All costs associated with advertising and promoting products and services are expensed in the year incurred. Advertising and promotion expenses were \$152,771 in 1998, \$137,741 in 1997 and \$105,270 in 1996.

Risk Estimates and Concentrations of Risk

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

The Company purchases telecommunication services for resale from a limited number of sources. The Company provides telecommunications services to customers located in several western states; the majority of its customers reside within Oregon, Washington and Nevada.

Equity-based Compensation

Statement of Financial Accounting Standards (SFAS) No. 123, "Accounting for Stock-based Compensation," requires expanded disclosures of equity-based compensation arrangements with employees and does not require, but encourages, compensation cost to be measured based on the fair value of equity instruments when awarded. The Company, as allowed, intends to continue to measure equity-based compensation using the current accounting method as described in Note 5 below, which recognizes compensation cost based on the intrinsic value of the equity instrument awarded.

Fair Value of Financial Instruments

The carrying value of the Company's marketable securities are based on quoted market prices for these or similar instruments. The fair value of long-term debt, including current portion, is estimated based on quoted market prices for the same or similar issues or on the current rates offered to the Company for debt of the same maturities. As of September 30, 1998 and 1997, the fair value of the Company's financial instruments approximated their carrying amounts.

Income Taxes

The Company accounts for income taxes in accordance with SFAS No. 109, "Accounting for Income Taxes." This pronouncement requires deferred tax assets and liabilities to be valued using the enacted tax rates expected to be in effect when the temporary differences are recovered or settled.

Reclassification

Reclassifications have been made to prior year amounts to conform to current year presentation.

6. DEBT

Financial Institutions

	1998	1997
Notes payable to financial institution, interest at 7.04%, principal and interest payable monthly until maturity on October 15, 2002, secured by receivables and equipment	\$ 440,319	\$ 500,000
Notes payable to financial institution, interest at 7.09%, principal and interest payable monthly, secured by receivables and equipment until maturity on May 15, 2002	774,651	946,446
Notes payable to financial institution, interest at 9.43%, principal and interest payable \$3,378 monthly, secured by land and buildings	315,115	330,628
Notes payable to financial institution, interest at 7.75%, principal and interest payable \$15,790 monthly, secured by land and buildings	1,833,378	-
	3,363,463	1,777,074
Current portion	(338,709)	(253,513)
Total long-term debt	\$3,024,754	\$1,523,561

	1998	1997
Notes payable to related parties, payable \$3,578 monthly, including 9.5% interest was due July 1, 2000, secured by real property which was sold during October 1997 and note was paid in full subsequent to September 30, 1997	\$ -	\$ 339,910
Notes payable to related parties, payable \$15,719 monthly, including interest at 8.00%, due April 1998, secured by receivables and equipment	-	107,156
Current portion	-	447,066
	-	(447,066)
Total long-term debt to related parties	\$ -	\$ -

Approximate maturities of long-term debt are as follows:

Year Ending September 30,	
1999	\$ 338,709
2000	367,527
2001	398,800
2002	353,022
2003	114,064
Thereafter	1,791,341

	\$3,363,463
	=====

Capital Leases:

The Company has acquired certain assets with capital lease financing. These assets are included in property and equipment, and were \$632,068 and \$390,380 at September 30, 1998 and 1997, respectively. The related accumulated depreciation at September 30, 1998 and 1997 was \$72,368 and \$54,168, respectively. The leases are payable in monthly installments with interest.

	1998	1997
Capitalized lease, secured by related equipment	\$ 434,182	\$289,413
Less: Current portion	(119,376)	(67,767)
	-----	-----
	\$ 314,806	\$221,646
	=====	=====

Future minimum lease payments required by this lease are as follows:

<u>Year Ending September 30,</u>	
1999	\$164,065
2000	164,065
2001	114,615
2002	71,727
2003	15,054
Total future minimum lease payments	529,526
Less: Amount representing interest	(95,344)
Present value of future minimum lease payments	\$434,182

STOCK OPTION PROGRAM:

Under the terms of the Company's nonqualified stock option plan (the Plan), the Board of Directors has the authority to determine all matters relating to options to be granted under the Plan, including the selection of individuals to be granted options, number of options granted, the exercise price and the term and vesting period, if any. Employees granted options must agree to remain employed for at least one year from the grant date. All options granted expire after ten years. Transactions under the Plan during fiscal 1998 and 1997 were as follows:

	<u>Shares</u> <u>Subject to</u> <u>Option</u>	<u>Option</u> <u>Exercise</u> <u>Price</u>
September 30, 1996	6,069	\$86.75
Grants	1,632	-
September 30, 1997	7,701	86.75
Grants	1,746	-
Exercises	(35)	-
Cancellations	(61)	-
September 30, 1998	9,351	\$86.75

As of September 30, 1996, all of the options granted were vested, but only 35 options had been exercised. The Company recognized \$268,197 and \$230,633 of compensation expense relating to the stock options granted for the years ended September 30, 1996 and 1997, respectively. The stock options were granted at strike prices that were below the fair market value of the stock. The options granted during the years ended September 30, 1998 and 1997, were executive compensation.

401(k) PLAN:

Effective on October 1, 1994, the Company adopted a Section 125, cafeteria plan. The plan is available to employees. Cafeteria plan participants are permitted \$300 per month after 90 days of service, to be allocated among their benefit selections including possible 401(k) contributions. In addition, the Plan provides for the employer to make matching contributions of two-thirds of the employee 401(k) contributions up to 6% of an individual's compensation after one year of service and 4% thereafter. Contributions made by the Company to this plan were \$10,315, \$103,946 and \$137,010 for the years ended September 30, 1998, 1997 and 1996, respectively.

7. Leases:

Leasing Liabilities

The Company leases certain telecommunications equipment, office space, vehicles and equipment that expire in one to four years. The Company's future minimum payments are as follows:

Year Ending September 30,	
1999	\$375,809
2000	199,889
2001	113,055
2002	16,683
2003	-

	\$705,436
	=====

Rental expense was \$303,489, \$177,676 and \$157,641 for the years ended September 30, 1998, 1997 and 1996, respectively.

The Company has entered into lease agreements for portions of its new building that expire in one to five years. Rental income was \$20,224, \$7,121 and \$35,747 for the years ended September 30, 1998, 1997 and 1996, respectively. Rental income is expected to be approximately \$70,000 in each of the next five years relating to lease agreements that had been entered into as of September 30, 1998.

Leases

The Company entered into a contract with a long-distance provider which extends through February 1999. The contract has a Carrier Transport monthly net usage commitment of \$175,000.

8. Year 2000

Based on a recent assessment, the Company determined that it is required to modify portions of its software so that its computer systems will properly utilize dates beyond December 31, 1999. The Company believes that with upgrades or modifications to existing software and/or equipment, the impact of the Year 2000 issue can be mitigated. However, if such upgrades, modifications and conversions are not made, or are not made in a timely manner, the Year 2000 issue could have a material impact on the Company's operations.

The Company will utilize both internal and external resources to reprogram, or replace, and test software for Year 2000 compliance. The Company has a committee dedicated to addressing Year 2000 compliance for the Company, clients and vendors. The Company plans to complete the Year 2000 project no later than July 1, 1999. The total Year 2000 project cost is estimated to be \$100,000 to \$200,000. Amounts incurred are expected to be expensed as incurred, unless new software and/or equipment is purchased which will be capitalized. The Company has not incurred significant costs prior to September 30, 1998 other than internal costs to evaluate the extent of Year 2000 compliance and to develop a compliance plan.

The scope of the Year 2000 project and the date on which the Company plans to complete Year 2000 modifications are based on management's best estimates, which were derived utilizing numerous assumptions of future events including the continued availability of certain resources, third party modification plans and other factors. However, there can be no guarantee that these estimates will be achieved and actual results could differ materially from those plans.

INCOME TAXES:

The components of the provision for income taxes consist of the following:

	September 30,		
	1998	1997	1996
CURRENT:			
Federal	\$1,165,000	\$ 834,000	\$308,837
State and local	151,000	108,000	72,159
	1,316,000	942,000	380,996
DEFERRED:			
Federal	221,000	(225,000)	(75,399)
State and local	29,000	(28,911)	(10,070)
	250,000	(253,911)	(85,469)
Total	\$1,566,000	\$ 688,089	\$295,527

In March 1997, the Company submitted an application to the Internal Revenue Service to change its method of accounting for unbilled revenue. The method change was approved and is effective for the tax year ended September 30, 1997. The Company is allowed to report the increase in taxable income related to the change over a four-year period.

The reconciliation of the statutory federal income tax rate to the Company's effective income tax rate is as follows:

	Year Ending September 30,	
	1998	1997
Federal statutory rate	34.0%	34.0%
Increase in tax rate resulting from:		
State and local taxes, net of federal income tax effect	3.8	6.0
Deductible expenses, including amortization	8.6	13.4
Other	0.9	0.3
Effective tax rate	47.3%	53.7%

The components of the net deferred tax assets and liabilities consist of the following:

	September 30,	
	1998	1997
DEFERRED TAX LIABILITIES:		
Current-		
Change in accounting method for unbilled revenue and related service costs	\$ (154,000)	\$ (68,000)
Long-term-		
Fixed assets	(442,000)	(90,000)
Change in accounting method for unbilled revenue and related service costs	(154,000)	(194,000)
	(596,000)	(284,000)
Total deferred tax liabilities	(750,000)	(352,000)
DEFERRED TAX ASSETS:		
Current-		
Accounts receivable and accrued liabilities	94,000	53,000
Long-term-		
Stock options vested	456,000	353,000
Other	4,000	-
	460,000	353,000
Total deferred tax assets	554,000	406,000
Net deferred tax assets (liabilities)	\$ (196,000)	\$ 54,000
CURRENT DEFERRED TAX LIABILITIES	\$ (60,000)	\$ (15,000)
LONG-TERM DEFERRED TAX LIABILITIES	(136,000)	69,000
	\$ (196,000)	\$ 54,000

EXHIBIT 5

APPLICANT'S INTERIM
FINANCIAL REPORTS
FOR THE MONTHS OF
OCTOBER 1, 1998 THROUGH
JULY 31, 1999

SHARED COMMUNICATIONS
BALANCE SHEET
AS OF JULY 31, 1999

CASH	\$ 10,344,698
RECEIVABLES	322,020
ACCOUNTS RECEIVABLE	3,814,394
UNPAID REVENUE	2,425,057
PAID IN ADVANCE TAXES (DEFERRED)	2,181,407
OTHER	6,535
TOTAL CURRENT ASSETS	19,094,111
FIXED ASSETS	8,357,640
INTANGIBLES	-
DEFERRED INCOME TAXES	-
OTHER	321,883
TOTAL NON-CURRENT ASSETS	8,679,523
TOTAL ASSETS	\$ 27,773,634
LINE OF CREDIT	\$ -
ACCOUNTS PAYABLE	2,506,627
UNPAID LIABILITIES	10,154,448
PAID TO/FROM PARENT	4,421,094
DIVIDENDS PAYABLE	-
CURRENT PORTION OF CAPITAL LEASES	119,376
INCOME TAXES PAYABLE	-
CURRENT PORTION OF LT DEBT	338,709
DEFERRED INCOME TAXES	-
TOTAL CURRENT LIABILITIES	17,540,254
LONG TERM DEBT	3,136,416
CAPITAL LEASES	229,592
DEFERRED LONG TERM DEBT	321,883
DEFERRED TAX LIABILITY	227,000
TOTAL LONG TERM LIABILITIES	3,914,891
COMMON STOCK	1,959,090
PAID IN CAPITAL	(10,336)
ASSET VALUATION ACCOUNT	-
PAYMENT FOR OPTIONS	-
RETAINED EARNINGS	6,508,281
CURRENT INCOME TAXES	(2,138,548)
TOTAL EQUITY	6,318,489
TOTAL LIABILITIES AND EQUITY	\$ 27,773,634

(0)

SHARED COMMUNICATIONS SERVICES, INC.
STATEMENT OF OPERATIONS
FOR THE TEN MONTH PERIOD ENDING JULY 31, 1999

REVENUE	\$ 39,938,062
COST OF SALES	<u>26,598,886</u>
GROSS PROFIT	13,339,175
OPERATING EXPENSES	
S.G. & A.	15,001,254
Depreciation	904,222
Amortization	<u>133,509</u>
Operating Income	(2,699,810)
OTHER INCOME	(1,185,389)
INTEREST EXPENSE	<u>259,577</u>
INCOME BEFORE INCOME TAXES	(4,144,776)
PROVISION FOR INCOME TAXES	<u>(2,006,231)</u>
Net Income(loss)	<u>\$ (2,138,545)</u>

EXHIBIT 6

COMPANY BROCHURES WHICH
MAY BE USED TO ASSIST IN
THE SALE OF SERVICES
WITHIN THE STATE OF SOUTH DAKOTA

NEXT

DOCUMENT (S)

BEST IMAGE

POSSIBLE

COMPANY OVERVIEW

SHARED COMMUNICATIONS

Shared Communications was founded in 1986, and has grown to become the largest single source telecommunication service provider based in the Pacific Northwest. The growth of Shared Communications can be attributed to a simple concept — "Provide customers with the best products and services, at the lowest possible cost, and treat every customer and employee with respect."

TECHNOLOGY

Telecommunications has become the lifeblood of every business. We understand the value of keeping the lines of communication open. As technology continues to change, Shared Communications continues to offer the best possible solutions. As a single source telecommunication service provider, we continue to add new products and services to ensure that our customers are connected.

LOCAL CUSTOMER SERVICE

Shared Communications maintains eleven local offices to better serve your needs. We feel there is no substitute for local service. When our customers call, they receive assistance from one of our highly trained telecommunication professionals. As your single point of contact, we help you concentrate on making your business succeed.

SINGLE MONTHLY INVOICE

Our customers receive a vast array of services, which are all billed on a single monthly invoice. The monthly statements are easy to read, include complete call detail, and provide a variety of management reports to help your business run more efficiently.

Shared Communications will save you time and money, while taking care of all your telecommunication needs.

PRODUCTS & SERVICES

At Shared Communications, our goal is to become your single point of contact for all your telecommunication needs. We have put together a wide array of products and services that can be customized for your business. As your in-house telecommunication department, we review your account to ensure the maximum benefit from our products and services. Because of this commitment to our customers, Shared Communications has become the Northwest's largest regional carrier.

PRODUCTS & SERVICES

- ▶ **ENHANCED LINE SERVICE:**
Enhanced local lines to improve the way you do business.
- ▶ **LONG DISTANCE SERVICE:**
Call anywhere, anytime, worldwide.
- ▶ **TOLL FREE SERVICE:**
800 service to meet your incoming call requirements.
- ▶ **VOICE MAIL:**
Never miss a call with our cost effective voice mail service.
- ▶ **CALLING CARD SERVICE:**
Travel cards to keep you in touch worldwide.
- ▶ **CONFERENCE CALLING:**
Connect from 3 parties to 300, as if you were right next door.
- ▶ **CONSOLIDATED BILLING:**
Easy to read customized invoices to fit your specific needs.
- ▶ **INTERNET ACCESS:**
High-bandwidth quick connections to a world of information.
- ▶ **DATA NETWORKS:**
Complete solutions from full Frame Relay Networks to individual private lines.
- ▶ **CONSULTING SERVICES:**
Whether your needs are voice or data, we offer complete project management consulting.
- ▶ **RESIDENTIAL SERVICE:**
Shared Communications contributes a portion of every residential service call to the Make-A-Wish Foundation granting wishes for terminally ill children.

CUSTOMER SERVICE

"As one of Shared Communications earliest customers in 1986, we have come to rely on their courteous, prompt service and appreciate the single point of contact service on any phone related issue."

Boldt, Carlisle & Smith

"We know if we need something, all we have to do is call and it will be taken care of."

Delon Auto Center

"We get a lot of offers from other long distance carriers, and although Shared Communications rates are very competitive, the main reason we stay with them is the service."

Columbia Sportswear

LOCAL OFFICES

At Shared Communications, we feel customers are best served by real people living and working in the same community. Our local service team takes the time to get to know you, your employees, and your business. Our personal approach helps us ensure that your telecommunication needs are being met. If necessary, a Shared Communications representative can be on-site in a matter of minutes. Our ever growing Customer Service Centers are located in Bellingham, Bend, Eugene, Klamath Falls, Medford, Olympia, Portland, Salem, Seattle, Yakima, and Reno.

SINGLE POINT OF CONTACT

When your company partners with Shared Communications, a single phone call is all that is required to answer your telecommunication requirements whether it concerns Long Distance, Local Dialtone, Data Networks, Voice Mail, or the Internet. If you are not sure about a hardware or network problem, call us, our trained professionals will assist in determining the cause and will dispatch the appropriate help to get the problem solved.

KNOWLEDGEABLE

Our Customer Service staff is trained in all aspects of telecommunications and ready to solve unique billing applications, local dialtone complexities, or long distance concerns. The telecommunication industry is vast and complex, let us manage this vital part of your business.

24 HOUR SUPPORT

The Customer Service department at Shared Communications is always open. We are available for emergencies, 24 hours a day, seven days a week. Simply call your local service number and one of our trained professionals will be available to assist you.

BILLING OPTIONS

Shared Communications has a wide variety of billing options to help you manage your telecommunication resources. Our goal is to provide the most convenient easy-to-read invoice available, customized to meet each customers specific needs.

LOCATION SUMMARY

The location summary is an easy tool to breakdown all of your telecommunication expenses, including taxes, for companies with multiple locations or cost centers. The location summary is provided at no additional charge.

MANAGEMENT REPORTS

Receive a complete package or individual reports. Management Report summaries are provided for outbound long distance, inbound Toll Free calls, and Calling Cards at no additional charge. The reports include:

- ▶ **AREA CODE SUMMARIES:**

A breakdown of calls by area code to aid in managing your marketing programs.

- ▶ **FREQUENT NUMBER SUMMARIES:**

Lists any number you called or that called your toll free number, 20 times or more. Often used to manage customer bases or possible employee telephone abuse.

- ▶ **CITY SUMMARIES:**

Lists any city called more than 20 times to manage marketing programs or monitor calling patterns.

- ▶ **DAY OF MONTH SUMMARIES:**

Summarizes calls by day allowing you to further manage marketing programs or monitor calling patterns.

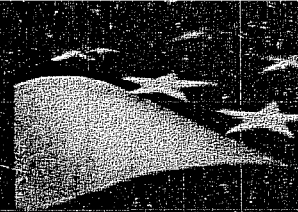
- ▶ **TIME OF DAY SUMMARIES:**

A breakdown of calls by hour increments to manage traffic volumes, staffing levels, and possible after hour telephone abuse.

CALL VISION SOFTWARE

For unlimited call management capabilities, we offer Call Vision, the premier call analysis software. Call Vision is a "Windows" based program for those businesses who want to better understand market trends, manage their sales, and control a wide variety of telecommunication expenses. Call Vision software will allow you to graph, map, and run custom reports that can answer any questions regarding your telephone usage patterns and expenses. Call Vision has a one-time setup fee of \$25 and a monthly charge of \$25.

USA CALLING PLAN



The USA Calling Plan is Shared Communications' inbound and outbound long distance plan for customers located throughout the U.S.

USA ONE PLUS		COST PER MINUTE	
State-to-State		10.9¢	
Intrastate		see below	
Alaska: 22.0¢ Hawaii: 22.0¢ Canada: 18.0¢			
Billing increments: 6-second increments with an 18-second minimum			
Setup fee: no charge			
Monthly product charge: \$6.00			

USA TOLL FREE		COST PER MINUTE	
State-to-State		10.9¢	
Intrastate		10.9¢	
Alaska: 38.5¢ Hawaii: 17.0¢ Canada: 42.0¢			
Billing increments: 6-second increments with an 18-second minimum			
Setup fee: no charge			
Monthly product charge: \$3.00 — waived with a 2-year term commitment			

USA ONE PLUS INTRASTATE RATES					
Colorado	17.9¢	Missouri	14.5¢	Rhode Island	13.9¢
Delaware	11.9¢	Montana	13.9¢	South Carolina	12.9¢
Florida	11.9¢	Nebraska	17.9¢	South Dakota	12.9¢
Idaho	24.9¢	New Hampshire	12.9¢	Tennessee	12.9¢
Iowa	14.9¢	New Mexico	19.9¢	Texas	11.9¢
Kansas	17.9¢	New York	13.9¢	Vermont	12.9¢
Maine	36.0¢	North Carolina	16.9¢	Virginia	13.9¢
Maryland	11.9¢	North Dakota	20.9¢	West Virginia	12.9¢
Minnesota	12.9¢	Pennsylvania	12.9¢	Wyoming	13.9¢

USA CALLING CARD



Shared Communications' USA Calling Card offers a wide variety of options. Each card is custom built to fit your unique calling needs.

FEATURES & BENEFITS

► TOLL FREE ACCESS NUMBER:

Ensures that you can reach our network from anywhere in the U.S. or Canada without the worry of unknown charges from other carriers.

► VOICE PROMPTS:

Easy to follow voice prompts that walk you through dialing.

► CUSTOM NUMBERS:

Easy to remember numbers to simplify dialing.

► CALL CORRECTION:

If you mis-dial a number, use our simple call correction feature.

► MULTIPLE CALLS:

If you want to make multiple calls, simply hit # * after each call and follow the voice prompt to enter the telephone number of your next call.

► SPEED DIAL:

With voice prompts, you can program up to nine frequently called numbers.

► FRAUD CONTROL:

Each card is custom built with dollar limits to protect from fraudulent use.

► DAILY LIMITS:

The standard limits are \$45 per day or up to 3 hours of domestic calling. Custom daily and weekly limits are available.

► INTERNATIONAL USAGE:

Cards can be restricted from international calling, offering increased fraud protection.

► WORLDWIDE ACCESS:

Your USA Calling Card can include the option to originate calls from almost anywhere.

► 18¢ per minute in the Continental U.S., 25¢ per call surcharge

EXHIBIT 7

COMPANY'S POLICIES FOR
SWITCHING AN EXISTING CUSTOMER
OF ANOTHER LONG DISTANCE CARRIER
(PIC) INSTRUCTIONS

Procedures to Verify Customer-ordered Changes in Presubscribed Carriers

Applicant's Customer is required to sign a service agreement which includes a Letter of Agency. The original service agreement is kept on file at Applicant's headquarters. Applicant submits an order to the Customer's prior carrier to effectuate the Customer's request to change intrastate toll carriers. The prior carrier is required to notify the local exchange carrier of the Customer's request. If the local exchange carrier requests confirmation of the Customer's services agreement, the Applicant will fax a copy of the signed Letter of Agency.

SHARED COMMUNICATIONS SERVICE INC.

P.O. BOX 12039 1-503-399-7000
SALEM, OR 97309-0039

BANK OF AMERICA
CORPORATE SERVICES
1850 GATEWAY BLVD.
CONCORD, CA 94520
11-35/1210

80217

PAY

The Sum of Two Hundred Fifty Dollars and 00 Cents

DATE

AMOUNT

2/10/00

\$**** 250.00

TO THE
ORDER
OF

SOUTH DAKOTA PUC
500 E. CAPITOL AVE.,

PIERRE

SD 57501-5070

Chavene Yarns

⑈080217⑈ ⑆121000358⑆ 12338 32260⑈

SECURITY FEATURES: MICRO PRINT TOP & BOTTOM BORDERS - COLORED PATTERN - ARTIFICIAL WATERMARK ON REVERSE SIDE - MISSING FEATURE INDICATES A COPY

SHARED COMMUNICATIONS SERVICE INC.

SD PUC

80217

80217

2/10/00 2/2000

FILING FEE

250.00

250.00

TC00-015

South Dakota Public Utilities Commission

WEEKLY FILINGS

For the Period of February 10, 2000 through February 16, 2000

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact
Delaine Kolbo within five business days of this filing.
Phone: 605-773-3705 Fax: 605-773-3809

CONSUMER COMPLAINTS

CT00-036 In the Matter of the Complaint filed by Fred Prael on behalf of Windows, Inc., DeSmet, South Dakota, against Inacom Communications, Inc. and U S WEST Communications, Inc. Regarding Unauthorized Switching of Services.

On February 10, 2000, the Commission received a complaint regarding unauthorized switching of service against Inacom Corp. and U S WEST. Windows, Inc. discovered that their phone service had been switched from 6 phone lines with hunting capabilities to the U S WEST Centrix 21 system on December 2, 1999. The complainant alleges Inacom obtained their signature to "verify that US West was the phone carrier for Windows, Inc." not to authorize a change in their telephone service. The complainant is requesting "to see this practice ended by taking away the licenses of the companies misrepresenting themselves in this manner and to prosecute persons representing these companies."

Staff Analyst: Heather Forney
Staff Attorney: Karen Cremer
Date Docketed: 02/10/00
Intervention Date: NA

CT00-037 In the Matter of the Complaint filed by Cheryl Plucker, Chancellor, South Dakota, against MCI WorldCom Regarding Unauthorized Switching of Services.

On February 11, 2000, the Commission received a complaint from Cheryl Plucker, Chancellor, South Dakota, against MCI regarding unauthorized switching of services. The complainant alleges that her long distance provider was switched to MCI without her authorization.

Staff Analyst: Keith Senger
Staff Attorney: Karen Cremer
Date Docketed: 02/14/2000
Intervention Date: N/A

EL00-003 In the Matter of the Filing by Montana-Dakota Utilities Co. for Approval of Waiver of Fuel Clause Rate 58 to Include Arbitration Costs.

Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., petitions the South Dakota Public Utilities Commission for a waiver of Fuel Clause Rate 58. The waiver is

requested to allow the pass-through, in the fuel cost adjustment, of arbitration costs that have resulted in savings to retail customers.

Staff Analyst: Michele Farris
Staff Attorney: Camron Hoseck
Date Docketed: 02/10/00
Intervention Date: 03/03/00

EL00-004 In the Matter of the Filing by Northern States Power Company for Confirmation of Angus C. Anson Combustion Turbine Facility.

Northern States Power Company seeks confirmation from the South Dakota Public Utilities Commission that proposed improvements to the Angus C. Anson Combustion Turbine facility continues to meet the conditions upon which the permit, as ordered in Docket Number EL91-001 signed on May 18, 1993, was issued.

Staff Analyst: Michele Farris
Staff Attorney: Camron Hoseck
Date Docketed: 02/15/00
Intervention Date: 03/03/00

CE00-001 In the Matter of the Filing by NorthWestern Public Service Company for Approval of Revised Bill Format.

Application by NorthWestern Public Service to revise customer bill text and associated sample form tariffs, to add notice on bills of the change and request for waiver of 30 day notice of change to the public.

Staff Analyst: Dave Jacobson
Staff Attorney: Karen Cremer
Date Docketed: 02/10/00
Intervention Deadline: NA

NC00-001 In the Matter of the Application of South Dakota Intrastate Pipeline Company to Recover Additional Costs.

On February 15, 2000, the Public Utilities Commission received a petition from South Dakota Intrastate Pipeline Company (SDIPC) seeking an amendment to its rate schedule to provide for an increase in its transportation charged to its only customer, Montana-Dakota Utilities Company. SDIPC proposes to make the change in its rate effective as of April 1, 2000.

Staff Analyst: Heather Forney
Staff Attorney: Karen Cremer
Date Docketed: 02/15/00
Intervention Date: 03/03/00

TC00-012 In the Matter of the Filing by U S WEST Communications, Inc. for Approval of Revisions to its Exchange and Network Services Tariff.

On February 10, 2000, U S WEST Communications, Inc. (U S WEST) filed an application for approval of revisions to its exchange and network services tariff. The purpose of the filing is to clarify the meaning of a fully assisted operator call and a partially assisted operator call. Rates will not be increased by this filing.

Staff Analyst: Heather Forney
Staff Attorney: Camron Hoseck
Date Docketed: 02/10/00
Intervention Date: 03/03/00

TC00-013 In the Matter of the Application of Adelphia Business Solutions Operations, Inc. for a Certificate of Authority to Provide Local Exchange Services in South Dakota.

Adelphia Business Solutions Operations, Inc. is seeking a Certificate of Authority to provide resold and facilities-based local exchange telecommunication services in South Dakota. Adelphia does not intend to provide service in the territories of rural telecommunication companies.

Staff Analyst: Keith Senger
Staff Attorney: Camron Hoseck
Date Docketed: 02/10/00
Intervention Date: 03/3/00

TC00-014 In the Matter of the Application of Comm South Companies, Inc. for a Certificate of Authority to Provide Local Exchange Services in South Dakota.

Comm South Companies, Inc. seeks to provide resold basic local exchange telecommunication services in areas of South Dakota currently served by U S WEST Communications and any other relevant incumbent facilities-based LEC or other authorized local exchange carrier, excluding service areas of rural telephone companies. A majority of the applicant's customers are residential consumers who are unable to obtain local telecommunication services from other local exchange carriers due to credit problems or prior disconnection. Services will include local calling, access to 911 emergency and 800 number services to residential customers on a prepaid basis. Applicant does not permit its customers of its local service to access usage-based services, such as direct-dial long distance calls, collect calls, operator-assisted calls and third-number billed calls.

Staff Analyst: Keith Senger
Staff Attorney: Camron Hoseck
Date Docketed: 02/10/00
Intervention Date: 03/03/00

**TC99-015 In the Matter of the Application of Shared Communications Services, Inc.
for a Certificate of Authority to Provide Telecommunications Services in
South Dakota.**

Shared Communications Services, Inc. (Shared) seeks a Certificate of Authority to provide resold interexchange telecommunications services. Shared intends to offer interLATA and intralATA switched message toll service, 800, calling card, directory assistance and operator services throughout South Dakota.

Staff Analyst: Heather Forney
Staff Attorney: Camron Hoseck
Date Docketed: 02/14/00
Intervention Date: 03/03/00

**TC99-016 In the Matter of the Application of TeleDistance, Inc. for a Certificate of
Authority to Provide Telecommunications Services in South Dakota.**

Qwest Communications Corporation, LCI International Telecom Corp., Phoenix Network, Inc. and TeleDistance, Inc., all wholly-owned, indirect subsidiaries of Qwest Communications International Inc. (the "Parties") filed a request for a Certificate of Authority for TeleDistance, Inc. to provide resold and facilities-based interexchange telecommunications services throughout South Dakota. TeleDistance, Inc. intends to offer retail and wholesale switched interLATA (and in certain instances intraLATA) long distance services (including direct dialed 1+ service and toll free service), retail and wholesale private line services, frame relay/ATM/IP transmission services, prepaid calling card services and operator services. The Parties also request that the Commission grant a waiver of Administrative Rules of South Dakota Chapter 20:10:34:02:01, governing unauthorized changes in carriers.

Staff Analyst: Michele Farris
Staff Attorney: Camron Hoseck
Date Docketed: 02/14/00
Intervention Date: 03/03/00

**TC99-017 In the Matter of the Application of Pathnet, Inc. for a Certificate of Authority
to Provide Local Exchange Services in South Dakota.**

Pathnet, Inc. is seeking a Certificate of Authority to provide resold and facilities-based local exchange telecommunication services in South Dakota. Pathnet intends to provide point to point private line and data services. They do not plan to provide basic local dial tone services to end-users.

Staff Analyst: Keith Senger
Staff Attorney: Camron Hoseck
Date Docketed: 02/15/00
Intervention Date: 03/3/00

**TC00-018 In the Matter of the Application of Pathnet, Inc. for a Certificate of Authority
to Provide Telecommunications Services in South Dakota.**

Pathnet, Inc. is seeking a Certificate of Authority to provide resold and facilities-based interexchange telecommunication services in South Dakota. Pathnet intends to provide point to point private line and data services.

Staff Analyst: Keith Senger

Staff Attorney: Camron Hoseck

Date Docketed: 02/16/00

Intervention Date: 03/03/00

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You may subscribe or unsubscribe to the PUC mailing lists at <http://www.state.sd.us/puc/>



SHARED COMMUNICATIONS

A wholly owned subsidiary of Advanced TelCom Group, Inc.

Salem, OR 97302

Tel (503) 599-7000

www.sharedcommunications.com

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MAY - 1 2000

VIA FEDERAL EXPRESS

April 28, 2000

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

Heather K. Forney, Utility Analyst
South Dakota Public Utilities Commission
State Capitol Building,
100 East Capitol Avenue
Pierre, SD 57501-5070

RE: TC00-015 - In the Matter of the Application of Shared Communications Services, Inc. for a
Certificate of Authority to Provide Telecommunications Services In South Dakota

Dear Ms. Forney:

Pursuant to your February 17, 2000 letter, Shared Communications Services, Inc., by and through this letter and attachments, hereby supplements and amends its February 14, 2000 Application for a Certificate of Authority and tariff as follows:

1. Applicant verifies that it intends to provide services under the name of Shared Communications Services, Inc.
2. Applicant maintains that it has sufficient technical, financial and managerial capabilities to offer the telecommunications services described in its application, as demonstrated in the financial information provided for the periods ending September 30, 1997 and 1998. Nonetheless, you have expressed concerns regarding the net loss in excess of \$2 million for the 10-month period ending July 31, 1999. Pursuant to Staff Attorney Camron Hoseck and your telephone conversations with SCS attorney Michael Dell Long, Applicant hereby submits the attached letter from SCS Western Region Controller Karl Wetzel to explain the extraordinary nature of this loss. SCS requests that the SDPUC confirm that it has sufficient financial capabilities to offer the telecommunications services described in its application and grant SCS the authority to offer prepaid services and collect customer deposits or advanced payments without bond or restrictions.
3. The e-mail address and fax number of the individual to whom all inquiries must be made regarding regulatory matters is: meadowco@shared.net

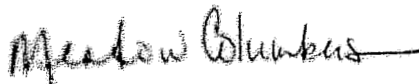
The individual to whom all inquiries must be made regarding complaints is:
Kath Thomas, VP, Regulatory and Public Policy, 110 Stony Pt. Rd., 2nd Floor, Santa Rosa,
CA 95401, (707)284-5284 (voice), (707)284-2327 (fax), kthomas@atgi.net.

A description of how Applicant handles customer billings and customer service matters was previously provided in Paragraph 10 of the Application.

4. Applicant has never had a complaint filed against it with any state or federal regulatory commission regarding the act of charging customers for services that have not been ordered.
5. Pursuant to your request, Applicant has modified Original Sheet No. 13 to remove Section 2.8.4. Applicant has attached the modified tariff sheet with this letter and requests that staff replace the prior Original Sheet No. 13 with the modified version of same.
6. Applicant has included the Commission's toll free information in Section 2.8.7 and requests that staff replace the prior Original Sheet No. 15 with the attached modified version of same.
7. Applicant has added the requested language concerning an 180 day time limit in which a customer can dispute charges on their bill, which language has been added to Section 2.8.6. on the modified Original Sheet No. 15.

If you should have any questions or require additional information regarding this application, please do not hesitate to contact me at your earliest convenience at (503) 316-4427.

Very truly yours



Meadow Columbus
Regulatory Manager

Cc: Michael Dell Long, Esq.

Encl



SHARED COMMUNICATIONS

A wholly owned subsidiary of Advanced TelCom Group, Inc.

Tel: (503) 389-7000

www.sharedcommunications.com

April 28, 2000

Heather K. Forney
Utility Analyst
South Dakota PUC
State Capitol Building
500 East Capitol Avenue
Pierre, South Dakota 57501-5070

Dear Heather:

This letter is in response to your concern regarding Shared Communications financial stability.

In Shared's application there were financial statements for the ten-month period ending July 31, 1999 which showed a net loss of \$2,138,545. This loss included three significant charges related to Shared's subsequent sale to Advanced TelCom Group ("ATG"). The loss included a \$4,400,000 charge for bonuses to key individuals, a \$500,000 charge to terminate a contract ATG did not want to assume and approximately \$1,000,000 in legal and broker fees directly related to the sale. By adding back all the charges incurred that were directly related to the sale of the company, the pre-tax income would have been \$1,755,224.

If you should have a questions please do not hesitate to call

Sincerely,

Karl Wetzel
Western Regional Controller

cc: Michael Dell Long, Esq.

SECTION 2 - RULES AND REGULATIONS (CONT.)**2.5 LIABILITIES OF THE COMPANY**

- 2.5.1** The Company shall not be liable for claim or loss, expense or damage (including indirect, special or consequential damage) for any interruption, delay, error, omission, or defect in any service, facility (including services and facilities involved in emergency calling activity) or transmission provided under this tariff, if caused by any person or entity other than the Company, by any malfunction of any service or facility provided by any other carrier, by an act of God, fire, war, civil disturbance, or act of government, or by any other cause beyond the Company's direct control.
- 2.5.2** The Company shall not be liable for, and shall be fully indemnified and held harmless by Customer and Authorized User against any claim or loss, expense, or damage (including indirect, special or consequential damage) for defamation, libel, slander, invasion, infringement of copyright or patent, unauthorized use of any trademark, tradename or service mark, unfair competition, interference with or misappropriation or violation of any contract, proprietary or creative right, or any other injury to any person, property or entity arising out of the material, data, information, or other conduct revealed to, transmitted by, or used by the Company under this tariff; or for any act or omission of the Customer or Authorized User; or for any personal injury or death of any person caused directly or indirectly by the installation, maintenance, location, condition, operation, failure, presence, use, or removal of equipment or wiring provided by the Company, if not caused by negligence of the Company.
- 2.5.3** The Company shall not be liable for any defacement of or damages to the premises of a Customer or Authorized User, resulting from the furnishing of service, which is not the result of the Company's negligence.

Date of Issue: February 11, 2000

Date Effective:

Issued By: Jeff Raines, President
Shared Communications Services, Inc.
3723 Fairview Industrial Dr. SE
Salem, OR 97302

SECTION 2 - RULES AND REGULATIONS (CONT.)

2.8 PAYMENTS AND BILLING

- 2.8.1** Service is provided and billed on a monthly (30 day) basis. Service continues to be provided until cancelled by the Customer (see Section 2.9) or by the Company (see Section 2.10).
- 2.8.2** Customer is responsible for the payment of all charges for services furnished. Charges are based on actual usage during a month and will be billed monthly in arrears.
- 2.8.3** Billing will be payable upon receipt and past due 30 days from invoice date. A late payment fee of 1.5% of the outstanding balance will be assessed for past due accounts.
- 2.8.4** The name(s) of the Customer(s) desiring to use the service must be set forth in the agreement for service.
- 2.8.5** Company does not require a deposit from Customer for use of Company's services.
- 2.8.6** Customers may receive credit adjustments up to an allowable amount for contested charges by contacting the Company whose number is shown on the Customer's bill. Adjustment may be authorized by the Company after appropriate investigation. Customers have 180 days to notify the Company of any disputed charges on a bill.
- 2.8.7** Customers have the right to refer billing disputes and any other complaints to Company at 3723 Fairview Industrial Dr. SE, Salem, OR 97302, (800) 285-6100. Unresolved billing disputes may also be referred to the South Dakota Public Utilities Commission at 500 E. Capitol Ave., Pierre, SD 57501-5070 or by calling (605) 773-3201, toll free (800) 332-1782, TTY Through Relay South Dakota (800) 877-1113.
- 2.8.8** All Federal state, local sales and excise taxes and similar taxes are billed as separate line items and are not included in quoted rates.

Date of Issue: February 11, 2000

Date Effective:

Issued By: Jeff Raines, President
Shared Communications Services, Inc.
3723 Fairview Industrial Dr. SE
Salem, OR 97302

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE APPLICATION OF)
SHARED COMMUNICATIONS SERVICES, INC.)
FOR A CERTIFICATE OF AUTHORITY TO)
PROVIDE TELECOMMUNICATIONS)
SERVICES IN SOUTH DAKOTA)

**ORDER GRANTING
CERTIFICATE OF
AUTHORITY**

TC00-015

On February 14, 2000, the Public Utilities Commission (Commission), in accordance with SDCL 49-31-3 and ARSD 20:10:24:02, received an application for a certificate of authority from Shared Communications Services, Inc. (SCS).

SCS proposes to offer interLATA and intraLATA switched message toll service, 800 service, and calling card services. SCS will also offer travel cards, directory assistance, and operator services to its presubscribed customers. These services will be offered to residential and business customers as a non-facilities based switchless reseller. A proposed tariff was filed by SCS. The Commission has classified long distance service as fully competitive.

On February 17, 2000, the Commission electronically transmitted notice of the filing and the intervention deadline of March 3, 2000, to interested individuals and entities. No petitions to intervene or comments were filed and at its May 17, 2000, meeting, the Commission considered SCS's request for a certificate of authority. Commission Staff recommended granting a certificate of authority.

The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapter 49-31, specifically 49-31-3 and ARSD 20:10:24:02 and 20:10:24:03. The Commission finds that SCS has met the legal requirements established for the granting of a certificate of authority. SCS has, in accordance with SDCL 49-31-3, demonstrated sufficient technical, financial and managerial capabilities to offer telecommunications services in South Dakota. The Commission approves SCS's application for a certificate of authority. As the Commission's final decision in this matter, it is therefore

ORDERED, that SCS's application for a certificate of authority is hereby granted. It is

FURTHER ORDERED, that SCS shall file informational copies of tariff changes with the Commission as the changes occur.

Dated at Pierre, South Dakota, this 23rd day of May, 2000.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: *Helene Kolbo*

Date: 5/25/00

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schøenfelder
LASKA SCHØENFELDER, Commissioner

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

CERTIFICATE OF AUTHORITY

To Conduct Business As A Telecommunications Company
Within The State Of South Dakota

Authority was Granted May 17, 2000
Docket No. TC00-015

This is to certify that

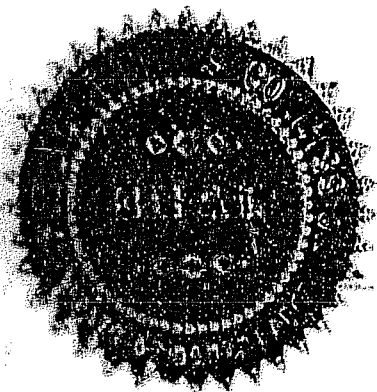
SHARED COMMUNICATIONS SERVICES, INC.

is authorized to provide telecommunications services in South Dakota.

This certificate is issued in accordance with SDCL 49-31-3 and ARSD 20:10:24:02, and is subject to all of the conditions and limitations contained in the rules and statutes governing its conduct of offering telecommunications services.

Dated at Pierre, South Dakota, this 23rd day of May, 2000.

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION:**



James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner