

P00000116251

Florida Department of State

Division of Corporations

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BASIC AMENDMENT

AUDIENCEBANK MEDIA, INC.

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T-245 P.002/010 F-765



FLORIDA DEPARTMENT OF STATE
Katherine Harris
Secretary of State

December 21, 2000

AUDIENCEBANK MEDIA, INC.
110 E BROWARD BLVD, STE 610
FT LAUDERDALE, FL 33301

SUBJECT: AUDIENCEBANK MEDIA, INC.
REF: P00000116251

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Darlene Connell
Corporate Specialist

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TALLAHASSEE, FLORIDA

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**ARTICLES OF AMENDMENT
TO THE ARTICLES OF INCORPORATION
OF
AUDIENCEBANK MEDIA, INC.**

The undersigned, being the President of AUDIENCEBANK MEDIA, INC., a corporation organized and existing under and by virtue of the Business Corporation Act of the State of Florida (the "Corporation"), bearing document number P00000116251, does hereby certify that the following resolutions were adopted pursuant to the authority of the Board of Directors as required by Section 607.0602 of the Florida Business Corporation Act:

RESOLVED, that pursuant to the authority expressly granted and vested in the Board of Directors of this Corporation in accordance with the provisions of its Articles of Incorporation, a series of 1,069,000 shares of the Corporation's authorized class of preferred stock, \$.001 par value, is hereby established as Series A Convertible Preferred Stock, \$.001 par value (the "Series A Preferred Stock"). The preferences and relative, participating, optional or other special rights of, and the qualifications, limitations and restrictions imposed upon the Series shall be as follows:

1. **Definition of Common Stock.** The term "Common Stock" as used in this Resolution shall mean all shares of the Corporation's common stock authorized at the date of the initial issuance of shares of the Series A Preferred Stock and, in the case of a reclassification or exchange of such common stock, shares of the Corporation's capital stock into or for which such common stock shall be reclassified or exchanged, and all provisions of this Resolution shall be applied appropriately thereto and to any capital stock resulting from any subsequent reclassification or exchange thereof.

2. **Voting Rights.** Each issued and outstanding share of Series A Preferred Stock shall entitle the registered holder thereof to fully participate in all meetings of the Corporation's shareholders and to cast that number of votes, on each matter with respect to which shareholders of the Corporation have the right or are asked to vote or provide their written consent, equal to the number of shares of Common Stock into which it is convertible under Section 5 hereof on the record date for determining shareholders eligible to vote on such matter or, if no such record date is established, on the date such vote is taken or any written consent of shareholders is solicited.

3. **Dividends.** Each holder of shares of the Series A Preferred Stock shall be entitled to receive quarterly dividends at a rate of 10% of the original issue price per annum. Such dividends shall be declared and paid before any dividends are declared and paid on the Common Stock, shall be cumulative, and if not declared by the Board of Directors on a quarterly basis, shall accrue and be payable upon redemption of the Series A Preferred Stock.

ROXANNE K. BEILLY, ESQ., FLA. BAR #851450
Atlas Pearlman, P.A.
350 East Las Olas Boulevard, Suite 1700
Fort Lauderdale, Florida 33301
Phone No.: (954) 763-1200

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4. **Redemption Rights.** On the fifth anniversary of the issuance date, any holder of shares of Series A Preferred Stock may furnish the Corporation with written notice requiring it, no later than fifteen days after the date of such notice, to repurchase all of such shares as are, as of the date of the notice, owned of record by such holder (the "Repurchase Notice").

The repurchase price to be paid by the Corporation for any such shares shall be equal to the sum of (a) the product of One and 403/1000 DOLLARS (\$1.403) times the number of such shares then being tendered for repurchase; and (b) the amount of all accrued and unpaid dividends to which such shares are entitled.

On the repurchase and redemption date, each holder of Series A Preferred Stock shall tender such shares for cancellation by the Corporation and against payment of the redemption price. Upon the consummation of any such redemption, each holder of shares of Series A Preferred Stock whose shares have been redeemed shall cease to be a shareholder with respect to such shares, shall have no interest in or claim against the Corporation by virtue thereof and shall have no voting or other rights with respect to such shares as are redeemed, and those shares shall resume the status of authorized but unissued shares of the Corporation's authorized preferred stock.

5. **Conversion.** Each share of Series A Preferred Stock is convertible by its holder into Common Stock as follows:

(a) **Conversion Option.** Subject to the terms and conditions of this Section 5, the holder of any share of Series A Preferred Stock may, at the holder's option, at any time and from time to time, convert any or all of its shares of Series A Preferred Stock into the number of fully paid and non-assessable shares of Common Stock determined pursuant to Section 5(c). The holders of Series A Preferred Stock may continue to exercise this conversion option notwithstanding their receipt of notice of a Liquidation Event.

(b) **Mandatory Conversion.** All shares of Series A Preferred Stock then outstanding will automatically be converted into the number of fully paid and non-assessable shares of Common Stock set forth in Section 5(c) as of the date that the Securities and Exchange Commission declares effective a registration of the Common Stock under the Securities Act of 1933, as amended, and the Corporation completes a bona fide offering of its Common Stock to the general public (a "Public Offering") (1) that is underwritten on a firm commitment basis by one or more nationally recognized underwriters, (2) from which the Corporation receives net cash proceeds of at least \$6,000,000, and (3) that provides for an initial offering price to the public per share of Common Stock of at least three times the Series A Conversion Price (as defined below) on the effective date.

(c) **Series A Conversion Price.** Each share of Series A Preferred Stock will be convertible into such number of shares of Common Stock as is determined by dividing \$1.403 by the Series A Conversion Price in effect on the Conversion Date (as defined below). The "Series A Conversion Price" at which shares of Common Stock will be issuable on conversion of shares of

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the Series A Preferred Stock initially will be \$1.403 and, thus, initially each such share of Series A Preferred Stock is convertible into one share of Common Stock. The Series A Conversion Price and the number of shares of Common Stock into which each share of Series A Preferred Stock is convertible will be subject to adjustment as set forth in Section 5(e). If the holder converts more than one share of Series A Preferred Stock, the number of shares of Common Stock issuable on conversion will be computed on the basis of the aggregate number of shares of Series A Preferred Stock so converted.

(d) **Mechanics of Conversion.** A holder may exercise the conversion right specified in Section 5(a) as to all or any part of its Series A Preferred Stock by surrendering to the Corporation (or to another person designated by the Board of Directors) the certificates evidencing the shares it elects to convert, endorsed and assigned to the Corporation in blank, and accompanied by written notice confirming the holder's exercise of its conversion option as to all or a specified portion of the shares evidenced by the certificates. Each holder of outstanding Series A Preferred Stock will promptly surrender its stock certificates to the Corporation on a mandatory conversion pursuant to Section 5(b). Conversion of shares of Series A Preferred Stock to Common Stock will be effective when the holder delivers to the Corporation notice of its election to convert and certificates evidencing the converted shares (for a conversion pursuant to Section 5(a)) or on the date of the Public Offering (for a conversion pursuant to Section 5(b)) (the foregoing respective dates are the "Conversion Date"). As promptly as practicable after the Conversion Date and in any event within five days after surrender of the certificate or certificates representing converted shares of Series A Preferred Stock, the Corporation will issue and deliver, or cause to be issued or delivered, at its expense to a converting holder (or to another person designated in writing by the holder consistently with the provisions of the Series A Shareholder Agreement dated the same date as this Agreement), a certificate evidencing the number of whole shares of Common Stock to which such holder is entitled. The person in whose name the certificate or certificates for Common Stock are to be issued will be deemed the holder of such Common Stock as of the close of business on the Conversion Date. On conversion of only a portion of the number of shares evidenced by a certificate surrendered for conversion, the Corporation will issue and deliver at its expense to the converting holder (or to another person designated in writing by the holder, consistently with the provisions of the Series A Shareholder Agreement) a new certificate for the number of shares of Series A Preferred Stock evidencing the unconverted portion of the surrendered certificate. At the close of business on the Conversion Date, (1) the converted shares of Series A Preferred Stock will cease to be outstanding, (2) the holders of the converted shares will cease to have any further rights with respect to those shares, except to receive Common Stock and cash (as specified below) with respect to the converted shares, and (3) the holders of the converted shares will be deemed to have become the holders of the Common Stock for all purposes.

(e) **Adjustments to Conversion Ratio for Series A Preferred Stock.**

(e)(1) **Stock Dividend or Split.** If the number of outstanding shares of the Corporation's Common Stock is increased by a stock dividend or stock split payable in shares of the Corporation's Common Stock, then, immediately after the determination of holders of Common Stock entitled to receive the stock dividend or split, the number of

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common shares into which each share of Series A Preferred Stock is convertible will be increased in proportion to the increase in the number of outstanding common shares.

(e)(2) Combination/Reclassification. If the number of outstanding shares of the Corporation's Common Stock is decreased by a combination or reclassification of shares of Common Stock, then immediately after the combination or reclassification, the number of common shares into which each share of Series A Preferred Stock is convertible will be decreased in proportion to the decrease in the number of outstanding shares.

(e)(3) Consolidation/Merger. If the Corporation effects any capital reorganization or reclassification of its Common Stock, or a consolidation or merger with another company, or the sale or other transfer of substantially all of its assets to another company or entity, then, as a condition to such transaction, the Corporation will make fair and lawful provision whereby the holders of Series A Preferred Stock will have the right to convert their shares of Series A Preferred Stock into, in lieu of Common Stock of the Corporation, such shares of stock, securities, or assets as may be issued or payable with respect to or in exchange for a number of outstanding shares of the Corporation's voting Common Stock into which their shares would be convertible at the applicable conversion ratio as of the effective date of such transaction. The Corporation will not effect any such transaction unless the resulting successor or purchasing entity (if not the Corporation) assumes by written instrument the obligation to deliver the applicable shares of stock, securities, or assets in accordance with the foregoing provision.

(e)(4) Issuance of Additional Securities. If the Corporation issues any Additional Securities, as defined below, for consideration per share less than the Series A Conversion Price, as adjusted, the number of common shares into which each share of Series A Preferred Stock is convertible will be increased by multiplying such number (immediately before the issuance of the additional securities) by the fraction the numerator of which is the Series A Conversion Price, as adjusted, and the denominator of which is the consideration per share of the Additional Securities. The term "Additional Securities" means and includes the issuance of common shares or any securities convertible into, exchangeable for, or exercisable for common shares. In the case of common shares, the consideration per share will be the total amount of cash plus the fair value (determined by the board of directors in good faith) of all other property or services received by the Corporation for issuance of such common shares divided by the number of shares issued. In the event other securities are issued together with common shares, then a proportion of such consideration will be allocated to the common shares by the board of directors in good faith. In the case of any securities convertible into, exchangeable for, or exercisable for common shares, the consideration per share will be the total amount of consideration received by the Corporation for the issuance of such securities plus the total amount of additional consideration receivable by the Corporation upon conversion, exchange or exercise of such securities divided by the maximum number common shares into which or for which such securities are convertible, exchangeable or exercisable.

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(e)(5) **Reports as to Adjustments.** Whenever the Series A Conversion Price or conversion ratio for Series A Preferred Stock is adjusted as provided in this subsection, the Corporation will promptly compute the adjustment and furnish to each holder of shares of the Series A Preferred Stock a certificate, signed by a principal financial officer of the Corporation, setting forth the new Series A Conversion Price and the number of shares of Common Stock into which each share of Series A Preferred Stock is convertible as a result of the adjustment, a brief statement of the facts requiring the adjustment, the computation of the adjustment, and when the adjustment will become effective.

(f) **Certain Issues of Common Stock Excepted.** Notwithstanding the foregoing provisions, the Corporation will not be required to adjust the Series A Conversion Price in the case of the issuance of, in the case of the Common Stock, for (1) up to 1,000,000 shares of Common Stock (adjusted for stock splits or stock dividends) issued to the Corporation's officers, directors, employees or service providers of the Corporation pursuant to the stock option plan approved by the Compensation Committee of the Board and adopted by the Board of Directors on or about even date herewith, and the exercise of those options, (2) shares of Common Stock issuable on conversion of the Series A Preferred Stock, (3) up to 841,000 shares of Common Stock issuable on conversion of Options issued and outstanding, or that will be issued and outstanding as of June 30, 2000, or (4) 500,000 shares of Common Stock issuable on conversion of a promissory note dated March 31, 2000.

(g) **Reservation of Stock Issuable Upon Conversion.** The Corporation will reserve out of its authorized but unissued Common Stock, solely for the purposes of effecting the conversion of the Series A Preferred Stock, the number of shares of Common Stock issuable on conversion of all outstanding Series A Preferred Stock. If at any time the number of authorized but unissued shares of Common Stock are not sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, in addition to such other remedies as are available to the holder to the Series A Preferred Stock, the corporation shall take the corporate action that in the opinion of its counsel is necessary to increase its authorized but unissued shares of Common Stock to the number of shares that are sufficient for those purposes, including engaging in its best efforts to secure the requisite shareholder approval of any needed amendment to these Certificate of Incorporation.

(h) **Payment of Taxes.** The Corporation shall pay any and all taxes, documentary or otherwise, that are payable with respect to the issuance or delivery of Common Stock on conversion of the Series A Preferred Stock. The Corporation will not, however, be required to pay tax with respect to a transfer involved in the issue or transfer and delivery of shares of Common Stock in a name other than the record name of the converted Series A Preferred Stock, and no issuance or delivery will be made unless and until the person requesting such issue pays to the Corporation the amount of any such tax or establishes to the Corporation's satisfaction payment of the tax or that no tax is due. In no event need the Corporation pay or reimburse a registered holder for any income tax or ad valorem tax payable by the holder because of the issuance of Common Stock on conversion of Series A Preferred Stock.

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(i) **No Reissuance of Series A Preferred Stock.** The Corporation will cancel shares of Series A Preferred Stock converted pursuant to this Section 5.

(j) **Validly Issued.** All shares of Common Stock which may be issued upon conversion of the shares of Series A Preferred Stock will upon issuance by the Corporation be validly issued, fully paid and non-assessable and free from all taxes, liens, and charges with respect to the issuance thereof.

(j) **Fractional Shares.** No fractional share shall be issued upon the conversion of any share or shares of Series A Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series A Preferred Stock by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after such aggregation, the conversion would result in the issuance of a fraction of a share of Common Stock, the Corporation shall, in lieu of issuing any fractional share, pay the holder otherwise entitled to such fraction a sum in cash equal to the fair market value of such fraction on the date of conversion (as determined in good faith by the Board of Directors of the Corporation).

6. Priority in the Event of Liquidation or Dissolution. In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or otherwise, after payment or provision for payment of the debts and other liabilities of the Corporation and before any distribution shall be made to the holders of Common Stock or any other series of preferred stock of the Corporation, each holder of Series A Preferred Stock shall, subject to the limitation imposed by the succeeding sentence, be entitled to receive, out of the net assets of the Corporation and as partial consideration for the tender and cancellation for each shares of Series A Preferred Stock so held, an amount equal to the product of ONE and 403/1000 DOLLARS (\$1.403) times the number of shares of Series A Preferred Stock held by each such holder, together with an amount equal to all dividends accrued and unpaid on each such share up to the date fixed for distribution (the "Priority Payment Amount"). If upon any liquidation, dissolution or winding up of the Corporation, the net assets of the Corporation available for distribution to shareholders shall be insufficient to set aside for or to pay to the holders of Series A Preferred Stock the Priority Payment Amount, each such holder shall be paid or have set aside for its benefit a proportionate part of such assets and no distribution shall be made to or set apart for the holders of Common Stock or shares of any other class of common stock or series of preferred stock then outstanding.

7. Material Transactions. Prior to consummation of a Public Offering of the Corporation, the Corporation will not, without the consent of at a majority of holders of the Series A Preferred Stock, (i) voluntarily liquidate, dissolve or enter into any consolidation, merger or other similar combination; (ii) convey, sell or lease, whether through a sale of stock, subsidiaries or otherwise, all, substantially all or the greater part of the assets or business of the Corporation and any subsidiaries taken as a whole; or (iii) redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any of the Common Stock; (iv) effect any reclassification or other change of any capital stock, or any recapitalization of the Company; (v) amend its Certificate of Incorporation or By-laws or change the authorized number of directors of the Company; or

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(vi) declare or pay, or authorize the declaration or payment, of dividends or other distributions with respect to the Common Stock of the Company.

8. **Notices.** All notices, requests, demands and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given when received if personally delivered; when transmitted if transmitted by telecopy or similar electronic transmission method; one day after it is sent, if sent by recognized expedited delivery service; and five days after it is sent, if mailed, first class mail, postage prepaid and telecopies simultaneous with such mailing. In each case notice shall be sent to:

If to the Corporation: Audiencebank Media, Inc.
110 East Broward Blvd., Suite 610
Ft. Lauderdale, FL 33301

With a copy to: Roxanne Beilly, Esq.
Atlas Pearlman, P.A.
350 East Las Olas Blvd., Suite 1700
Ft. Lauderdale, FL 33301

If to the Series A
Preferred Stockholders: Advantage Capital Florida Partners I, L.P.
100 N. Tampa Street, Suite 2410
Tampa, FL 33602

With a copy to: Elizabeth Francis
Trenam Kemker
101 East Kennedy Blvd., Suite 2700
Tampa, FL 33602

or to such other address as such party shall have specified by notice in writing to the other parties.

9. **Amendment.** The Corporation shall not authorize or issue additional shares of Series A Preferred Stock, reissue shares of Series A Preferred Stock redeemed or repurchased by the Corporation, alter or change the preferences, special rights or powers of the Series A Preferred Stock so as to adversely affect the Series A Preferred Stock, or create a separate class or series of preferred stock or other equity securities (including, without limitation, instruments convertible into or otherwise carrying rights to acquire equity securities) having priority (including, without limitation, any priority as to dividends or liquidation rights) over or on a parity with the Series A Preferred Stock, unless there is obtained the affirmative consent (furnished in writing or at a meeting duly called for that purpose) of the holders of a majority of the aggregate number of shares of Series A Preferred Stock then outstanding; or, alternatively, a waiver of the application thereof in any

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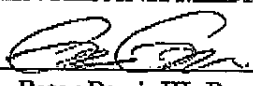
particular instance; provided, however, that no such change shall be effective as to any holder of Series A Preferred Stock which increases the Conversion Price (as defined in Section 5.c. above) or decreases the number of shares into which Series A Preferred Stock may be converted or the rights and preferences set forth in this Resolution without such holder first voting in favor of or consenting to such change.

10. **Stated Capital.** Of the consideration received by the Corporation in exchange for the issuance of each share of the Series A Preferred Stock, \$1.403 shall constitute the stated capital of the Corporation.

11. **Negative Covenants.** The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by this Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this section and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of the Series A Preferred Stock against impairment.


IN WITNESS WHEREOF, AUDIENCEBANK MEDIA, INC. has caused its corporate seal to be hereunto affixed and this Articles of Amendment to be executed by its President, on December 21, 2000.

AUDIENCEBANK MEDIA, INC.

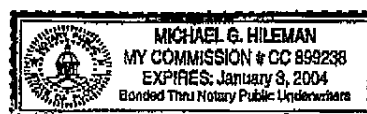
By: 
Peter Perri, III, President

STATE OF FLORIDA
COUNTY OF BROWARD

This instrument was acknowledged before me on behalf of AUDIENCEBANK MEDIA, INC. by Peter Perri, III, as its President.


NOTARY PUBLIC
My Commission Expires: 1/3/2004

FLDL P600-660-75-191-0



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