

P09000032045

Division of Corporations

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EXAMINER



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THIRD ARTICLES OF AMENDMENT
TO
AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF
SUMMIT BROADBAND INC.
a Florida corporation

Document Number P09000032045

1. The following amendment was adopted by the board of directors of the Corporation pursuant to a written action without a meeting executed as of September 12, 2011, without shareholder action and shareholder action was not required pursuant to Section 607.0602, Florida Statutes..

2. Pursuant to the provisions of Section 607.1006, Florida Statutes, this Florida Profit Corporation adopts the following amendment to its Amended and Restated Articles of Incorporation.

Article III is hereby amended to add the following Section 3.5:

"Section 3.5 Series B 18% Cumulative Non-Convertible Preferred Stock. There shall be 10,000 shares of Preferred Stock designated as Series B 18% Cumulative Non-Convertible Preferred Stock (the "Series B Stock"). The designations, powers, preferences and relative, participating, optional or other special rights, and the qualifications, limitations and restrictions thereof in respect of the Series B Stock are as follows:

(a) Dividends.

(i) During the period commencing with the date of original issuance of each share of Series B Stock, the holder of such shares of Series B Stock shall be entitled to receive, before any dividends shall be declared and paid upon or set aside for the Junior Stock (as defined in subsection (f) below), out of funds legally available for that purpose, dividends at an annual rate of eighteen percent (18%) of the original purchase price per share of the Series B Stock (the "Series B Original Issue Price"), payable when and as declared by the Board of Directors (the "Board") of the Corporation (any such dividend payment date being hereinafter referred to as a "Dividend Payment Date"). Dividends on shares of Series B Stock shall be cumulative (whether or not there shall be net profits or net assets of the Corporation legally available for the payment of such dividends), so that, if at any time Accrued Dividends (as defined in subsection (h) below) upon the Series B Stock shall not have been paid or declared and a sum sufficient for payment thereof set apart, no dividend shall be declared or paid or any other distribution ordered or made upon any Junior Stock (other than a dividend payable in such Junior Stock) or any sum or sums set aside for or applied to the purchase or redemption of any shares of any Junior Stock. The Series B Original Issue Price is \$1,000 per share.

(ii) All dividends declared upon the Series B Stock shall be paid pro rata based on the Accrued Dividends declared with respect thereto. The aggregate of all payments due under this Section 3.5(a) to any holder of shares of Series B Stock shall be made to such holder to the nearest dollar. In the event of a split-up, subdivision, a combination of shares of Series B Stock or similar event, then the dividend rate on the Series B Stock shall be subject to equitable adjustment to account for such event.

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(b) Voting Rights. Except as otherwise provided herein or as otherwise required by law, the Series B Stock shall have no voting rights. However, as long as any shares of Series B Stock are outstanding, the Corporation shall not, without the affirmative vote of the holders of a majority of the then outstanding shares of the Series B Stock, alter or change adversely, by amending its articles of incorporation, the powers, preferences or rights given to the Series B Stock.

(d) Conversion. The Series B Stock shall not be convertible into any other type or class of securities of the Corporation.

(e) Redemption.

(i) Mandatory Redemption. Shares of Series B Stock shall be redeemed (the "Mandatory Redemption") by the Corporation out of funds lawfully available therefor at a price equal to, all accrued and unpaid dividends, the Series B Original Issue Price and an early redemption premium of \$20 per share of Series B Stock redeemed (the "Mandatory Redemption Price"), commencing upon the effective date of a Doomed Sale Event (the "Mandatory Redemption Date"). The following events shall be deemed to trigger the Mandatory Redemption (each, a "Doomed Sale Event"):

(A) a merger, consolidation or share exchange in which

(1) the Corporation is a constituent party or

(2) a subsidiary of the Corporation is a constituent party,

except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted or exchanged for shares of capital stock that represent, immediately following such merger or consolidation at least a majority, by voting power, of the capital stock of (i) the surviving or resulting corporation or (ii) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation;

(B) a sale or other share transfer where stockholders of the Corporation immediately preceding such transaction own, following such transaction, less than a majority, by number and voting power, of the capital stock of the Corporation;

(C) the sale, transfer or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all of the assets of the Corporation and its subsidiaries taken as a whole, or the sale or disposition (whether by merger or otherwise) of one or more subsidiaries of the Corporation if substantially all of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, transfer, or other disposition is to a wholly owned subsidiary of the Corporation; or

(D) a Qualified IPO.

(ii) Optional Redemption at Election of the Corporation. The Corporation may redeem (the "Optional Redemption") all or part of the Series B Stock: (A) at the Corporation's option any time after September 30, 2012, but prior to January 31, 2017, by paying, out of funds lawfully available therefor, all accrued and unpaid dividends, the Series B Original Issue Price and an early redemption premium of \$20 per share of Series B Stock redeemed (the "Early Premium Redemption Price"), and (B) at the option of the holder of any Series B Stock or the Corporation any time after

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January 31, 2017, by paying, out of funds lawfully available therefor, all accrued and unpaid dividends and the Series B Original Issue Price (the "Early Redemption Price" and collectively with the Early Premium Redemption Price, "the "Optional Redemption Price"). The Optional Redemption shall be deemed automatically effective upon delivery of the Optional Redemption Notice set forth in subsection (iii) below to the holders of the then outstanding shares of Series B Stock.

(iii) Redemption Notice. The Corporation shall send written notice of the Mandatory Redemption (the "Mandatory Redemption Notice") to each holder of record of Series B Stock not less than 10 days prior to the Mandatory Redemption Date and, in the case of the Optional Redemption, shall send written notice of the exercise of the Optional Redemption by the Corporation (the "Optional Redemption Notice") to each holder of record of Series B Stock. Each Mandatory Redemption Notice and Optional Redemption Notice, as applicable, shall state:

(A) the number of shares of Series B Stock held by the holder that the Corporation shall redeem;

(B) in the case of the Mandatory Redemption, the Mandatory Redemption Date and the Mandatory Redemption Price;

(C) in the case of the Optional Redemption, the date of the closing of the Optional Redemption and the Optional Redemption Price; and

(D) that the holder is to surrender to the Corporation, in the manner and at the place designated, his, her or its original stock certificate or certificates representing the shares of Series B Stock to be redeemed.

(iv) Procedure; Surrender of Certificates; Payment. On the applicable redemption date, the Corporation shall redeem, on a pro rata basis in accordance with the number of shares of Series B Stock owned by each holder, in the case of the Mandatory Redemption, all outstanding shares of Series B Stock and, in the case of the Optional Redemption, an amount of outstanding shares of Series B Stock as set forth in the Optional Redemption Notice. If the Corporation does not have sufficient funds legally available to redeem on the applicable redemption date all shares of Series B Stock to be redeemed on the applicable redemption date, the Corporation shall redeem a pro rata portion of each holder's redeemable shares of such capital stock out of funds legally available therefor, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the legally available funds were sufficient to redeem all such shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor. On or before the applicable redemption date, each holder of shares of Series B Stock to be redeemed on the applicable redemption date, shall surrender the original stock certificate or certificates representing such shares (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation, in the manner and at the place designated in the Mandatory Redemption Notice or Optional Redemption Notice, as applicable, and thereupon the Optional Redemption Price or the Mandatory Redemption Price, as applicable, for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof. In the event less than all of the shares of Series B Stock represented by a certificate are redeemed, a new certificate representing the unredeemed shares of Series B Stock shall promptly be issued to such holder.

(v) Rights Subsequent to Redemption. If the Mandatory Redemption Notice or Optional Redemption Notice, as applicable, shall have been given, then notwithstanding that the

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certificates evidencing any of the shares of Series B Stock so called for redemption shall not have been surrendered, dividends with respect to such shares of Series B Stock shall cease to accrue after such applicable redemption date and all rights with respect to such shares shall forthwith after the applicable redemption date terminate, except only the right of the holders to receive the Optional Redemption Price or the Mandatory Redemption Price, as applicable, without interest upon surrender of their original stock certificate or certificates therefor.

(vi) Redeemed or Otherwise Acquired Shares. Any shares of Series B Stock that are redeemed or otherwise acquired by the Corporation or any of its subsidiaries shall be automatically and immediately cancelled and retired.

(vii) Notices. Any notice required or permitted by the provisions of this Section 3.5 to be given to a holder of shares of Series B Stock shall be mailed, postage prepaid, to the post office address last shown on the records of the Corporation, or given by electronic communication in compliance with the provisions of the Florida Business Corporation Act and shall be deemed sent upon such mailing or electronic transmission.

(f) Liquidation. In the event of any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary (a "Liquidation"), the holders of outstanding shares of Series A Preferred Stock and Series B Preferred Stock shall first be entitled, on a pari passu basis, to be paid out of the assets of the Corporation available for distribution to stockholders, before any payment shall be made to or set aside for the holders of any other class or series of Common Stock. In the event of a Liquidation, the Series A Preferred Stock and Series B Preferred Stock shall be paid an amount equal to the sum of \$1,000 per share, plus all accrued and unpaid dividends through the date of such Liquidation and any other dividends declared but unpaid thereon. If upon any Liquidation the assets lawfully available to be distributed to the holders of Series A Preferred Stock and Series B Preferred Stock under the preceding sentence are insufficient to permit payment to such stockholders of the full amount payable to them thereunder, then all of the assets of the Corporation lawfully available for distribution shall be distributed ratably in proportion to the preferential amount each holder of Series A Preferred Stock and Series B Preferred Stock is otherwise entitled to receive thereunder.

(g) Ranking. The Series A Preferred Stock and Series B Preferred Stock shall rank pari passu and senior to all Common Stock as to the distribution of assets on Liquidation (as provided in Section 3.5(f) hereof).

(h) Definitions. As used herein, the following terms shall have the following meanings:

(a) The term "Accrued Dividends" with respect to any share of Series B Stock shall mean (whether or not there shall have been net profits or net assets of the Corporation legally available for the payment of such dividends) that amount which shall be equal to dividends at the full rate fixed for the Series B Stock as provided herein for the period of time elapsed from the date of issuance of such share to the date as of which Accrued Dividends are to be computed, less any payments made in respect of such dividends.

(b) The term "Junior Stock" shall mean the Common Stock and any class or series of shares of capital stock of the Corporation junior in right of payment of dividends to the Series B Stock."

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(c) "Qualified IPO" shall mean the closing of a firmly underwritten public offering of shares of Common Stock of the Corporation that would result in at least \$25 million in gross proceeds to the Corporation.

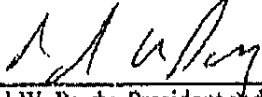
Except as specifically amended hereby, all provisions of the Amended and Restated Articles of Incorporation shall remain in full force and effect.

These Articles of Amendment shall be effective upon filing with the Florida Department of State.

Dated: September 15, 2011

SUMMIT BROADBAND INC., a Florida corporation

By:


Richard W. Pardy, President and CEO

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