

P9600000 8787

TO: Secretary of State

RE: ESnet, Inc.

Enclosed are Articles of Incorporation.

This entity can be reached at the following:

13308 Lake Mary Jane Road  
Orlando, FL 32832  
(407) 282-2668

RECEIVED  
JAN 25 1996  
STATE OF FLORIDA  
SECRETARY OF STATE

Eric B. Smith  
13308 Lake Mary Jane Rd.  
Orlando  
FL 32832

200001658112  
-01/25/96--01070--007  
\*\*\*\*122.50 \*\*\*\*122.50

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1/29

ARTICLES OF INCORPORATION  
OF  
ESnet, Inc.

68-111135-1  
JAN 19 1996  
CLERK OF COURT  
JAN 19 1996  
CLERK OF COURT

The undersigned subscriber to these Articles of Incorporation, a natural person competent to contract, hereby forms a corporation under the laws of the State of Florida.

**ARTICLE I. NAME**

The name of this corporation shall be:

ESnet, Inc.

The principal place of business of this corporation shall be:

13308 Lake Mary Jane Road, Orlando, FL 32832

**ARTICLE II. NATURE OF BUSINESS**

This corporation may engage or transact in any or all lawful activities or business permitted under the laws of the United States, the state of Florida or any other state, country, territory or nation.

**ARTICLE III. CAPITAL STOCK**

The maximum number of shares of stock that this corporation is authorized to have outstanding at any one time is 500 shares of common stock having \$1 par value per share.

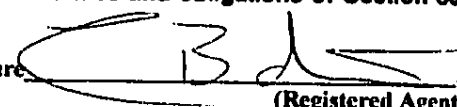
**ARTICLE IV. ADDRESS**

The street address of the registered office of the corporation shall be 13308 Lake Mary Jane Road, Orlando, FL 32832 and the name of the registered agent of the corporation at that address shall be:

Eric B. Smith

Having been named to accept service of process for the above stated corporation and address, I hereby agree to act in this capacity, and I further agree to comply with the provisions of all statutes relative to the proper and complete performance of my duties, and I accept the duties and obligations of Section 607.325 Florida Statutes.

Signature



(Registered Agent)

Date

1/19/96

**ARTICLE V. TERM OF EXISTENCE**

This corporation is to exist perpetually.

**ARTICLE VI. OFFICERS AND DIRECTORS**

This corporation shall have three officers and directors, initially. The names and street addresses of the initial officers and directors who shall hold office for the first year of the corporation, or until their successor is elected or appointed are:

Eric Bruce Smith            13308 Lake Mary Jane Road  
Director                      Orlando, FL 32832

Edward D. Sherman        15885 Beach Drive  
Director                      Spring Lake, MI 49456

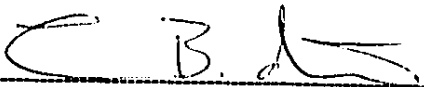
David Gregory McMillan   1722 Stafford Dr.  
Director                      Orlando, FL 32809

**ARTICLE VII. INCORPORATOR**

The name and street address of the incorporator to these Articles of Incorporation is:

Eric B. Smith  
13308 Lake Mary Jane Road  
Orlando, FL 32832

The undersigned, for the purpose of forming a corporation under the laws of the State of Florida does make, file and record these Articles of Incorporation, and does certify that the facts herein stated are true; and I have accordingly set my hand.

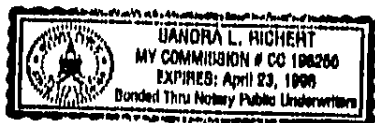
  
Eric B. Smith

1/19/1996  
Date

STATE OF FLORIDA

COUNTY OF Orange

THE FOREGOING instrument was acknowledged and sworn to me this 19th day of January, 1996 by Eric B. Smith of ESnet, Inc.



Sandra L. Richert

Notary Public

My commission expires: April 23, 1996

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12/12/96

P96000008787

FLORIDA DIVISION OF CORPORATIONS  
PUBLIC ACCESS SYSTEM  
ELECTRONIC FILING COVER SHEET

8:44 AM

((H96000017418 0)))

TO: DIVISION OF CORPORATIONS  
FROM: HOLLAND & KNIGHT  
CONTACT: KATHY S HEBERER  
PHONE: (407)425-8500

FAX #: (904)922-4000  
ACCT#: 079350000340  
FAX #: (407)244-5288

NAME: ESNET, L.L.C.  
AUDIT NUMBER.....H96000017418  
DOC TYPE.....MERGER OR SHARE EXCHANGE  
CERT. OF STATUS..0  
CERT. COPIES.....1  
PAGES..... 9  
DEL.METHOD.. FAX  
EST.CHARGE.. \$122.50

NOTE: PLEASE PRINT THIS PAGE AND USE IT AS A COVER SHEET. TYPE THE FAX  
AUDIT NUMBER ON THE TOP AND BOTTOM OF ALL PAGES OF THE DOCUMENT

\*\* ENTER 'M' FOR MENU. \*\*

ENTER SELECTION AND <CR>:

Alt-A menu, Alt-H help | CSERVICE | Capture Off

| Prn Off | 01:05:23

Corp # for Esnet, Inc. is P96000008787

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96 DEC 12 AM 10:18  
DIVISION OF CORPORATIONS

FILED  
96 DEC 12 AM 10:12  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA  
SH 12/3  
File Per Dave

FROM HOLLAND & KNIGHT ORLANDO 407-244-5288 (THU) 12. 12' 96 15:51/ST. 15:50/NO. 3760160974 P 2

## HOLLAND & KNIGHT

200 South Orange Avenue, Suite 2800  
P.O. Box 1526 (ZIP 32802-1526)  
Orlando, Florida 32801  
407-425-8500  
FAX 407-244-5288

A FORTWORTH BRANCH OFFICE IS LOCATED AT 1000 FORT WORTH AVENUE

Atlanta	St. Petersburg
Fort Lauderdale	Tallahassee
Jacksonville	Tampa
Lakeland	Washington, D.C.
Miami	West Palm Beach

December 11, 1996

LOUIS T. M. CONTI  
407-244-8118

Internet Address:  
lcont1@hknw.com

Mr. David Mann  
Florida Department of State  
Division of Corporations  
P.O. Box 6327  
Tallahassee, FL 32314

Re: ESnet, LLC

Dear David:

Enclosed herewith please find the following documents for filing with the Secretary of State of the State of Florida: a certified copy of a Certificate of Merger issued by the Office of the Secretary of State for the State of Delaware dated December 10, 1996 attesting to the merger of ESnet, Inc., a Florida corporation, with and into ESnet, LLC, a Delaware limited liability company. This is the matter I discussed with you last week.

Thank you for your assistance.

Best wishes to you and your family for the holidays and in the new year.

Very truly yours,

HOLLAND & KNIGHT

  
Louis T. M. Conti

LTMC/blh  
Enclosure  
ORL-179470.1/818

**ARTICLES OF MERGER  
Merger Sheet**

.....  
**MERGING:**

**ESNET, INC., a Florida corporation, P96000008787**

**INTO**

**ESNET, L.L.C., a Delaware limited liability company**

**File date: December 12, 1996**

**Corporate Specialist: Steven Harris**

STATE OF DELAWARE

Office of the Secretary of State PAGE 1

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"ESNET, INC.", A FLORIDA CORPORATION,  
WITH AND INTO "ESNET, L.L.C." UNDER THE NAME OF "ESNET,  
L.L.C.", A LIMITED LIABILITY COMPANY ORGANIZED AND EXISTING  
UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED  
IN THIS OFFICE THE NINTH DAY OF DECEMBER, A.D. 1996, AT 9  
O'CLOCK A.M.



FILED  
96 DEC 12 AM 10:13  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA



*Edward J. Freel*  
Edward J. Freel, Secretary of State

2652948 8100M

960360863

AUTHENTICATION: 8230631

DATE: 12-10-96



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CERTIFICATE OF MERGER  
OF

ESnet, INC.

WITH AND INTO

ESnet, L.L.C.

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

95 DEC 12 AM 10:13

FILED

Pursuant to Section 18-209 of the  
Delaware Limited Liability Company Act

ESnet, L.L.C., a Delaware limited liability company,  
heraby certifies to the following facts relating to the merger  
of ESnet, Inc., a Florida corporation, with and into ESnet,  
L.L.C. (the "Merger").

**First:** The name and jurisdiction of formation or  
organization of each of the constituent entities to the merger  
are:

**Name**

**State**

ESnet, Inc.  
ESnet, L.L.C.

Florida  
Delaware

**Second:** An Agreement of Merger dated as of  
August 13, 1996 (the "Merger Agreement"), has been approved and  
executed by each constituent entity to the merger.

**Third:** The name of the surviving entity is ESnet,  
L.L.C.

**Fourth:** The Merger Agreement is on file at the  
following place of business of ESnet, L.L.C.:

ESnet, L.L.C.  
Chadde Ford Business Park  
Brandywine Building 2  
Suite 103  
Chadde Ford, PA 19317

**Fifth:** A copy of the Merger Agreement will be  
furnished by ESnet, L.L.C., upon request and without cost, to  
any member of ESnet, L.L.C. or to any person holding an  
interest in ESnet, Inc.

This instrument prepared by:  
Louis T.M. Conti Fla. Bar No. 344608  
Holland & Knight Post Office Box 1526  
Orlando, Florida 32802 407 / 435.9500

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IN WITNESS WHEREOF, Ennet, L.L.C. has caused this  
Certificate of Merger to be duly executed in its name by an  
authorized person this 11th day of August, 1996.

Ennet, L.L.C.

By [Signature]

Name: Eric B. Smith

Title: MANAGER

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EXECUTION COPY

**AGREEMENT OF MERGER**

**BETWEEN**

**ESnet, INC.**  
A Florida corporation

**AND**

**ESnet, L.L.C.**  
A Delaware limited liability company

FILED  
96 DEC 12 AM 10:13  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

AGREEMENT OF MERGER, made this 13th day of August, 1996 (the "Agreement"), between ESnet, Inc., a Florida corporation (the "Corporation"), and ESnet, L.L.C., a Delaware limited liability company (the "LLC").

**WITNESSETH:**

WHEREAS, the LLC desires to acquire the property and other assets, and to assume all of the liabilities and obligations of the Corporation by means of a merger (the "Merger") of the Corporation with and into the LLC;

WHEREAS, Section 18-209 of the Delaware Limited Liability Company Act, 6 Del. C. § 18-101, et seq. (the "Act"), authorizes the merger of a foreign corporation with and into a Delaware limited liability company;

WHEREAS, the LLC and the Corporation now desire to consummate the Merger, following which the LLC shall be the surviving business entity;

WHEREAS, each of (i) the Management Committee of the LLC (the "Management Committee"), (ii) Eric B. Smith, Edward D. Sherman and David G. McMillan, in their respective capacities as the members ("Members") of the LLC, (iii) the Board of Directors of the Corporation, and (iv) Eric B. Smith, Edward D. Sherman and David G. McMillan, in their respective capacities as shareholders ("Shareholders") of the Corporation, have approved this Agreement and the consummation of the Merger;

NOW, THEREFORE, in consideration of the premises and the mutual agreements and covenants herein contained and other good and valuable consideration, the

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receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

**Article I: The Merger**

**Section 1.01 - The Merger**

(a) Pursuant to the terms of this Agreement, the Corporation shall merge with and into the LLC. The Merger will take effect upon the filing of a Certificate of Merger (the "Merger Certificate") with respect to the Merger in the Office of the Secretary of State of the State of Delaware (the "Effective Time").

(b) At the Effective Time, the Corporation shall be merged with and into the LLC, whereupon the separate existence and corporate organization of the Corporation shall cease, and the LLC shall be the surviving entity of the Merger in accordance with Section 18-209 of the Act.

(c) The LLC as the surviving entity shall continue its existence as a limited liability company under the laws of the State of Delaware.

(d) Each of the officers of the LLC shall be an "authorized person" within the meaning of the Act for purposes of executing the Merger Certificate.

**Section 1.02 - Exchange of Interests**

At the Effective Time all of the issued and outstanding shares of capital stock of the Corporation shall be exchanged for and converted into membership interests in the LLC, represented by shares of the capital stock of the LLC ("Shares"), such that the percentage interest of each of the Members in the LLC (and the number of Shares in the LLC owned by each of the Members) at the Effective Time shall be identical to the percentage interest of each of such Members in the LLC (and the number of Shares in the LLC owned by each of such Members) immediately prior to the Effective Time.

**Article II: The Surviving LLC**

**Section 2.01 - The Surviving Entity**

The name of the surviving entity will be ESnet, L.L.C.

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**Section 2.02 - LLC Agreement**

The Limited Liability Company Agreement of *ESnet, L.L.C.* and the Certificate of Formation of *ESnet, L.L.C.* in effect immediately prior to the Effective Time shall be the Limited Liability Company Agreement and Certificate of Formation of the surviving entity unless and until amended in accordance with such Limited Liability Company Agreement and applicable law.

**Article III: Transfer of Assets and Liabilities**

**Section 3.01 - Transfer and Conveyance**

At the Effective Time, without further transfer, except to the extent otherwise required by law, the LLC shall succeed to and possess all of the rights, privileges and powers of the Corporation, all of the assets and property of whatever kind and character of the Corporation, all debts due to the Corporation, and all other things and causes of action belonging to the Corporation shall vest in the LLC without further act or deed.

**Section 3.02 - Assumption**

At the Effective Time, the LLC as the surviving entity, shall be liable for all of the liabilities and obligations of the Corporation in accordance with Section 18-209 of the Act.

**Article IV: Termination**

**Section 4.01 - Termination**

This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time at the option of the Management Committee on behalf of the LLC.

**Section 4.02 - Effect of Termination**

If this Agreement is terminated pursuant to Section 4.01, this Agreement shall become void and of no effect with no liability on the part of either party hereto.

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**Article V: Representations, Warranties, Covenants and Authorization of the Corporation**

**Section 5.01 - Representations and Warranties of the Corporation**

- (a) The Corporation's financial statements as of July 31, 1996 (the "Financial Statements") presented to the LLC fairly present the financial condition of the Corporation in conformity with generally accepted accounting principles consistently applied.
- (b) Except to the extent reflected or reserved against in the Financial Statements, the Corporation did not have at the date reflected therein any liabilities or obligations (secured, unsecured, contingent or otherwise) of a nature customarily reflected in a balance sheet prepared in accordance with generally accepted accounting principles.
- (c) There has been no material adverse change in the business, properties or financial condition of the Corporation since July 31, 1996.
- (d) There is no litigation, proceeding or investigation pending or, to the knowledge of the Corporation, threatened against the Corporation which if successful might result in a material adverse change in the business, properties, or financial condition of the Corporation or which questions the validity or legality of this Agreement or of any action taken or to be taken by the Corporation in connection with this Agreement.
- (e) The Corporation is not a party to any material contract not in the ordinary course of business which is to be performed in whole or in part at or after the date of this Agreement.
- (f) The Corporation has good and valid title to all property included in the Financial Statements, other than property disposed of in the ordinary course of business after June 30, 1996. Except as heretofore disclosed in writing by the Corporation to the LLC, the properties of the Corporation are not subject to any mortgage, encumbrance, or lien of any kind except minor encumbrances which do not materially interfere with the use of the property in the conduct of the business of the Corporation.
- (g) The consummation of the Merger will not constitute or result in a breach or default under any provision of any indenture, mortgage, lease, or agreement, or any order, judgment, decree, law or regulation to which any property of the Corporation is subject or by which the Corporation is bound, except for breaches or defaults which in the aggregate would not have a materially adverse effect on the properties, business operations, or financial condition of the Corporation.

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**Section 5.02 - Covenants of the Corporation**

If at any time the LLC shall consider or be advised that any further assignment, conveyance or assurance is necessary or advisable to vest, perfect or confirm of record in the LLC the title to any property or right of the Corporation, or otherwise to carry out the provisions hereof, the proper representatives of the Corporation as of the Effective Time shall execute and deliver any and all proper deeds, assignments, and assurances and do all things necessary or proper to vest, perfect or convey title to such property or right in the LLC, and otherwise to carry out the provisions hereof.

**Section 5.03 - Authorization of the Corporation**

Upon or after the Effective Time, such persons as shall be authorized by the Management Committee shall be authorized to execute, acknowledge, verify, deliver, file and record, for and in the name of the Corporation, any and all documents and instruments and shall do and perform any and all acts required by applicable law which the Management Committee deems necessary or advisable, in order to effectuate the Merger and carry out the transactions contemplated hereby.

**Article VI: Miscellaneous**

**Section 6.01 - Amendments: No Waivers**

(a) Any provision of this Agreement may, subject to applicable law, be amended or waived prior to the Effective Time if, and only if, such amendment or waiver is in writing and signed by all of the Shareholders on behalf of the Corporation, and by all of the Members, or the Chairman, on behalf of the LLC.

(b) No failure or delay by any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

**Section 6.02 - Integration**

This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, written or oral, between and among the parties with respect to the subject matter hereof.

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**Section 6.03 - Successors and Assigns**

The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, provided that no party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of the other party hereto.

**Section 6.04 - GOVERNING LAW**

**THIS AGREEMENT HAS BEEN EXECUTED AND DELIVERED IN THE STATE OF DELAWARE AND SHALL IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF DELAWARE WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.**


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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

ESnet, INC.

By:   
Name: ERIC B. SMITH  
Title: PRESIDENT


ESnet, L.L.C.

By:   
Name: DAN R. LINSONMAN  
Title: CHAIRMAN

Approved as of the date first above written:

  
Eric B. Smith, as  
Shareholder and Member

  
Edward D. Sherman, as  
Shareholder and Member

  
David G. McMillan, as  
Shareholder and Member

225730