

P96000024943

FLORIDA FILING & SEARCH SERVICES, INC.

P.O. BOX 10662 TALLAHASSEE, FL 32302

PH: (850) 668-4318 FX: (850) 668-3398

DATE: September 28, 2000

ACCOUNT NO: FCA000000015

AUTHORIZATION: ABBIE/PAUL HODGE

*Abbie Hodge*

**TYPE OF FILING:**

ARTICLES OF MERGER

**NAME:**

FLYTE COMM OF FLORIDA, INC.

AND

FLYTECOMM, INC.

**SPECIAL INSTRUCTIONS:**

PLEASE RETURN CERTIFIED COPY

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

00 OCT -3 PM 4:34

FILED

7000003408387-6

COULLETTE OCT 04 2000



FLORIDA DEPARTMENT OF STATE  
Katherine Harris  
Secretary of State

September 29, 2000

FLORIDA FILING & SEARCH SERVICES, INC.

TALLAHASSEE, FL

SUBJECT: FLYTE COMM OF FLORIDA, INC.  
Ref. Number: P96000024943

*Received  
Oct. 4 - 10:30 AM*

We have received your document for FLYTE COMM OF FLORIDA, INC. .  
However, the enclosed document has not been filed and is being returned to you  
for the following reason(s):

The above listed entity was administratively dissolved or its certificate of authority  
was revoked for failure to file the 2000 annual report/uniform business report.  
The entity must be reinstated before this document can be filed.

Please return your document, along with a copy of this letter, within 60 days or  
your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call  
(850) 487-6903.

Cheryl Coulliette  
Document Specialist

Letter Number: 200A00051167

*OK to Resubmit  
Please retain original file date*

ARTICLES OF MERGER  
Merger Sheet

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MERGING:

FLYTE COMM OF FLORIDA, INC., a Florida corporation, P96000024943

INTO

**FLYTECOMM, INC..** a Delaware corporation not qualified in Florida

File date: October 3, 2000

Corporate Specialist: Cheryl Coulliette

Account number: FCA000000015

Amount charged: 78.75

**ARTICLES OF MERGER**  
**OF**  
**FLYTE COMM OF FLORIDA, INC.**  
**a Florida corporation**  
**INTO**  
**FLYTECOMM, INC.**  
**a Delaware corporation**

**FILED**  
**00 OCT -3 PM 4:34**  
**SECRETARY OF STATE**  
**TALLAHASSEE, FLORIDA**

The undersigned corporations, FlyteComm, Inc., organized and existing under and by virtue of the General Corporation Law of the State of Delaware, and Flyte Comm of Florida, Inc., organized and existing under and by virtue of the Florida Business Corporations Act, do hereby certify that:

1. The name and state of incorporation of each of the constituent corporations of the merger is as follows:

Name	State of Incorporation
Flyte Comm of Florida, Inc.	Florida
FlyteComm, Inc.	Delaware

2. An Agreement and Plan of Merger dated as of September 15, 2000 (the "Agreement of Merger") between Flyte Comm of Florida, Inc., and FlyteComm, Inc. has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with subsection (c) of Section 252 of the General Corporation Law of the State of Delaware. A copy of the Agreement of Merger is attached hereto.

3. The name of the surviving corporation is FlyteComm, Inc.

4. The certificate of incorporation of FlyteComm, Inc., a Delaware corporation, the surviving corporation, shall be the Certificate of Incorporation of the surviving corporation.

5. The executed Agreement and Plan of Merger is on file at the principal place of business of the surviving corporation. The address of the principal place of business of the surviving corporation is 333 W. Santa Clara Street, Suite 610, San Jose, California 95113.

6. A copy of the Agreement and Plan of Merger will be furnished by the surviving corporation, on request and without cost, to any stockholder of any constituent corporation.

7. The authorized capital stock of FlyteComm, Inc. consists of (a) 10,000,000 shares of Common Stock, \$0.001 par value per share and (b) 3,000,000 shares of Preferred Stock, \$0.001 par value per share.

8. The Agreement and Plan of Merger was duly adopted by the shareholders of the constituent corporations on September 22, 2000.

9. Shareholder approval was obtained in accordance with section 607.1103 of the Florida Business Corporations Act (the "Florida Act").

10. The merger is being consummated in accordance with section 607.1101 of the Florida Act.

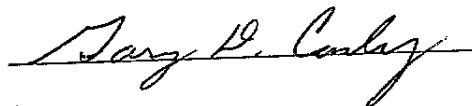
IN WITNESS WHEREOF, this Certificate of Merger is hereby executed on behalf of the surviving corporation, FlyteComm, Inc., and attested to by its officers thereunto duly authorized.

Dated as of September 25, 2000

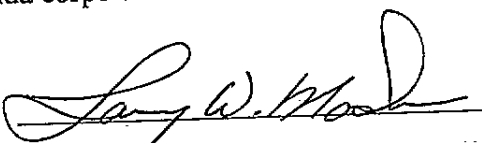
**FLYTECOMM, INC.,**  
a Delaware corporation

By:   
President

**ATTEST:**

By:   
Secretary

**FLYTE COMM OF FLORIDA, INC.,**  
a Florida corporation

By:   
President

**ATTEST:**

By:   
Secretary

## AGREEMENT AND PLAN OF MERGER

**THIS AGREEMENT AND PLAN OF MERGER** (hereinafter called the "Merger Agreement") is made as of September 15, 2000, by and between Flyte Comm of Florida, Inc., a Florida corporation ("FlyteComm Florida"), and FlyteComm, Inc., a Delaware corporation ("FlyteComm Delaware"). FlyteComm Florida and FlyteComm Delaware are sometimes referred to as the "Constituent Corporations."

The authorized capital stock of FlyteComm Florida consists of ten million (10,000,000) shares of Common Stock, \$.01 par value. The authorized capital stock of FlyteComm Delaware, consists of ten million (10,000,000) shares of Common Stock, \$.001 par value, and three million (3,000,000) shares of Preferred Stock, \$.001 par value.

The directors of the Constituent Corporations deem it advisable and to the advantage of the Constituent Corporations that FlyteComm Florida merge into FlyteComm Delaware upon the terms and conditions herein provided.

**NOW, THEREFORE**, the parties do hereby adopt the plan of reorganization encompassed by this Merger Agreement and do hereby agree that FlyteComm Florida shall merge into FlyteComm Delaware on the following terms, conditions and other provisions:

### 1. TERMS AND CONDITIONS.

**1.1 Merger.** FlyteComm Florida shall be merged with and into FlyteComm Delaware (the "Merger"), and FlyteComm Delaware shall be the surviving corporation (the "Surviving Corporation") effective upon the date that this Merger Agreement is filed with the Secretary of State of Delaware (the "Effective Date").

**1.2 Succession.** On the Effective Date, FlyteComm Delaware shall continue its corporate existence under the laws of the State of Delaware, and the separate existence and corporate organization of FlyteComm Florida, except insofar as it may be continued by operation of law, shall be terminated and cease.

**1.3 Transfer of Assets and Liabilities.** On the Effective Date, the rights, privileges, powers and franchises, both of a public as well as of a private nature, of each of the Constituent Corporations shall be vested in and possessed by the Surviving Corporation, subject to all of the disabilities, duties and restrictions of or upon each of the Constituent Corporations; and all and singular rights, privileges, powers and franchises of each of the Constituent Corporations, and all property, real, personal and mixed, of each of the Constituent Corporations, and all debts due to each of the Constituent Corporations on whatever account, and all things in action or belonging to each of the Constituent Corporations shall be transferred to and vested in the Surviving Corporation; and all property, rights, privileges, powers and franchises, and all and every other interest, shall be thereafter the property of the Surviving Corporation as they were of the Constituent Corporations, and the title to any real estate vested by deed or otherwise in either of the Constituent Corporations shall not revert or be in any way impaired by reason of the Merger; provided, however, that the liabilities of the Constituent Corporations and of their shareholders,

directors and officers shall not be affected and all rights of creditors and all liens upon any property of either of the Constituent Corporations shall be preserved unimpaired, and any claim existing or action or proceeding pending by or against either of the Constituent Corporations may be prosecuted to judgment as if the Merger had not taken place except as they may be modified with the consent of such creditors and all debts, liabilities and duties of or upon each of the Constituent Corporations shall attach to the Surviving Corporation, and may be enforced against it to the same extent as if such debts, liabilities and duties had been incurred or contracted by it.

**1.4 Common Stock of FlyteComm Florida and FlyteComm Delaware.** On the Effective Date, by virtue of the Merger and without any further action on the part of the Constituent Corporations or their shareholders, each share of Common Stock of FlyteComm Florida issued and outstanding immediately prior thereto shall be converted into two (2) fully paid and nonassessable shares of the Common Stock of FlyteComm Delaware and each share of Common Stock of FlyteComm Delaware issued and outstanding immediately prior thereto shall be cancelled and returned to the status of authorized but unissued shares.

**1.5 Stock Certificates.** On and after the Effective Date, all of the outstanding certificates which prior to that time represented shares of the Common Stock of FlyteComm Florida shall be deemed for all purposes to evidence ownership of and to represent the shares of FlyteComm Delaware into which the shares of FlyteComm Florida represented by such certificates have been converted as herein provided and shall be so registered on the books and records of the Surviving Corporation or its transfer agents. The registered owner of any such outstanding stock certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation or its transfer agent, have and be entitled to exercise any voting and other rights with respect to and to receive any dividend and other distributions upon the shares of FlyteComm Delaware evidenced by such outstanding certificate as above provided.

**1.6 Employee Benefit Plans.** On the Effective Date, the Surviving Corporation shall assume all obligations of FlyteComm Florida under any and all employee benefit plans in effect as of such date. On the Effective Date, the Surviving Corporation shall adopt and continue in effect all such employee benefit plans upon the same terms and conditions as were in effect immediately prior to the Merger and shall reserve that number of shares of FlyteComm Delaware Common Stock with respect to each such employee benefit plan as is proportional to the number of shares of FlyteComm Florida Common Stock (if any) so reserved on the Effective Date.

## **2. CHARTER DOCUMENTS, DIRECTORS AND OFFICERS.**

**2.1 Certificate of Incorporation and Bylaws.** The Certificate of Incorporation and Bylaws of FlyteComm Delaware in effect on the Effective Date shall continue to be the Certificate of Incorporation and Bylaws of the Surviving Corporation.

**2.2 Directors.** The directors of FlyteComm Delaware shall become the directors of the Surviving Corporation on and after the Effective Date to serve until the expiration of their terms and until their successors are elected and qualified.

**2.3 Officers.** The officers of FlyteComm Delaware immediately preceding the Effective Date shall become the officers of the Surviving Corporation on and after the Effective Date to serve at the pleasure of its Board of Directors.

### **3. MISCELLANEOUS.**

**3.1 Further Assurances.** From time to time, and when required by the Surviving Corporation or by its successors and assigns, there shall be executed and delivered on behalf of FlyteComm Florida such deeds and other instruments, and there shall be taken or caused to be taken by it such further and other action, as shall be appropriate or necessary in order to vest or perfect in or to conform of record or otherwise, in the Surviving Corporation the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of FlyteComm Florida and otherwise to carry out the purposes of this Merger Agreement, and the officers and directors of the Surviving Corporation are fully authorized in the name and on behalf of FlyteComm Florida or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.

**3.2 Amendment.** At any time before or after approval by the shareholders of FlyteComm Florida, this Merger Agreement may be amended in any manner (except that, after the approval of the Merger Agreement by the shareholders of FlyteComm Florida, the principal terms may not be amended without the further approval of the shareholders of FlyteComm Florida) as may be determined in the judgment of the respective Board of Directors of FlyteComm Delaware and FlyteComm Florida to be necessary, desirable, or expedient in order to clarify the intention of the parties hereto or to effect or facilitate the purpose and intent of this Merger Agreement.

**3.3 Conditions to Merger.** The obligations of the Constituent Corporations to effect the transactions contemplated hereby is subject to satisfaction of the following conditions (any or all of which may be waived by either of the Constituent Corporations in its sole discretion to the extent permitted by law):

(a) the Merger shall have been approved by the shareholders of FlyteComm Florida in accordance with applicable provisions of the General Corporation Law of the State of Florida; and

(b) FlyteComm Florida, as sole stockholder of FlyteComm Delaware, shall have approved the Merger in accordance with the General Corporation Law of the State of Delaware; and

(c) any and all consents, permits, authorizations, approvals, and orders deemed in the sole discretion of FlyteComm Florida to be material to consummation of the Merger shall have been obtained.

**3.4 Abandonment or Deferral.** At any time before the Effective Date, this Merger Agreement may be terminated and the Merger may be abandoned by the Board of Directors of either FlyteComm Florida or FlyteComm Delaware or both, notwithstanding the approval of this Merger Agreement by the shareholders of FlyteComm Florida or FlyteComm Delaware, or the consummation of the Merger may be deferred for a reasonable period of time if, in the opinion of the Boards of Directors of FlyteComm Florida and FlyteComm Delaware, such action would be



in the best interest of such corporations. In the event of termination of this Merger Agreement, this Merger Agreement shall become void and of no effect and there shall be no liability on the part of either Constituent Corporation or its Board of Directors or shareholders with respect thereto, except that FlyteComm Florida shall pay all expenses incurred in connection with the Merger or in respect of this Merger Agreement or relating thereto.

**3.5 Counterparts.** In order to facilitate the filing and recording of this Merger Agreement, the same may be executed in any number of counterparts, each of which shall be deemed to be an original.

IN WITNESS WHEREOF, this Merger Agreement, having first been duly approved by the Board of Directors of FlyteComm Florida and FlyteComm Delaware, is hereby executed on behalf of each said corporation and attested by their respective officers thereunto duly authorized.

FLYTE COMM OF FLORIDA, INC.,  
a Florida corporation

By: \_\_\_\_\_

President

*Larry Mosher*

ATTEST:

By: \_\_\_\_\_

Secretary

*Jeff Reis*

FLYTECOMM, INC.,  
a Delaware corporation

By: \_\_\_\_\_

President

*Gary D. Conley*

ATTEST:

By: \_\_\_\_\_

Secretary

*Gary D. Conley*