



THE UNITED STATES  
CORPORATION  
COMPANY

P96000025453

ACCOUNT NO. : 072100000032

REFERENCE : 948906 4306424

AUTHORIZATION :

COST LIMIT : \$ 87.50

FILED  
98 SEP -2 PM 1:18  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

ORDER DATE : September 2, 1998

ORDER TIME : 10:13 AM

ORDER NO. : 948906-005

CUSTOMER NO: 4306424

CUSTOMER: Ms. Sandy York  
Steel Hector & Davis  
41st Floor, Ste. 4000  
200 S. Biscayne Boulevard  
Miami, FL 33131-2398

900002631349--5

DOMESTIC AMENDMENT FILING

NAME: TOPP TELECOM, INC.

EFFECTIVE DATE:

XX ARTICLES OF AMENDMENT  
       RESTATED ARTICLES OF INCORPORATION

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

XX CERTIFIED COPY  
       PLAIN STAMPED COPY  
       CERTIFICATE OF GOOD STANDING

CONTACT PERSON: Brenda Phillips

EXAMINER'S INITIALS:

RECEIVED  
98 SEP -2 AM 11:26  
DIVISION OF CORPORATION

9-9-98



FLORIDA DEPARTMENT OF STATE  
Sandra B. Mortham  
Secretary of State

September 2, 1998

CSC  
BRENDA PHILLIPS  
TALLAHASSEE, FL

SUBJECT: TOPP TELECOM, INC.  
Ref. Number: P96000025453

**RESUBMIT**

Please give original  
submission date as file date.

We have received your document for TOPP TELECOM, INC. and your check(s) totaling \$. However, the enclosed document has not been filed and is being returned for the following correction(s):

The date of adoption of each amendment must be included in the document.

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) 487-6908.

Teresa Brown  
Corporate Specialist

Letter Number: 798A00045259

RECEIVED  
98 SEP -8 PM 3:29  
DIVISION OF CORPORATION

ARTICLES OF AMENDMENT  
TO  
ARTICLES OF INCORPORATION  
OF  
TOPP TELECOM, INC.

FILED  
98 SEP -2 PM 1:18  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

I.

The name of the corporation is Topp Telecom, Inc. (the "Corporation").

II.

Article III of the Articles of Incorporation is hereby amended to read in its entirety as follows:

ARTICLE III  
AUTHORIZED SHARES

The total number of shares of all classes of stock which the Corporation shall have authority to issue is 10,019,031, consisting of (i) 5,000,000 shares of Voting Common Stock, \$.01 par value per share ("Voting Common Stock"), (ii) 5,000,000 shares of Nonvoting Common Stock, \$.01 par value per share ("Nonvoting Common Stock" and together with the Voting Common Stock, "Common Stock"), (iii) 1,043 shares of Class A Convertible Preferred Stock, \$.01 par value per share ("A Convertible Preferred Stock"), and (iv) 17,988 shares of Class B Convertible Preferred Stock, \$.01 par value per share ("B Convertible Preferred Stock," and together with the A Convertible Preferred Stock, the "Convertible Preferred Stock").

Unless otherwise provided hereinafter, shares of capital stock of the Corporation that have been issued and which are subsequently acquired by the Corporation shall constitute issued but not outstanding shares of the same class and series, until canceled or disposed of (whether by resale or otherwise) by the Corporation, and upon cancellation, the canceled shares shall constitute authorized and unissued shares of the same class and shall be undesignated as to series.

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation.

A. COMMON STOCK.

1. General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights of the holders of the Convertible Preferred Stock.

2. Voting. The holders of the Voting Common Stock are entitled to one vote for each share held at all meetings of stockholders (and written actions in lieu of meetings).

3. Nonvoting. The holders of Nonvoting Common Stock and Voting Common Stock shall have identical rights with respect to (i) distributions from the Corporation; (ii) the liquidation of the Corporation; (iii) all other matters affecting the Corporation, except that the holders of the Nonvoting Common Stock shall not be entitled to vote on matters affecting the Corporation (except as otherwise required by the Florida Business Corporation Act).

4. Dividends. Dividends may be declared and paid on the Common Stock from funds lawfully available therefor as and when determined by the Board of Directors and subject to the participation rights of any then outstanding Convertible Preferred Stock.

5. Liquidation. Upon the dissolution or liquidation of the Corporation, whether voluntary or involuntary, holders of Common Stock will be entitled to receive all assets of the Corporation available for distribution to its stockholders, subject to the preferential rights of any then outstanding Convertible Preferred Stock.

B. CONVERTIBLE PREFERRED STOCK.

The Convertible Preferred Stock shall have the following rights, preferences, powers, privileges and restrictions, qualifications and limitations.

1. Dividends.

(a) Except to the extent in any instance approval is provided in writing by the holders of a majority of the outstanding shares of Convertible Preferred Stock, the Corporation shall not declare or pay any dividends, or purchase, redeem, retire, or otherwise acquire for value any shares of its capital stock (or rights, options or warrants to purchase such shares) now or hereafter outstanding, return any capital to its stockholders as such, or make any distributions of assets to its stockholders as such.

(b) For purposes of this Section 1, unless the context requires otherwise, "distribution" shall mean the transfer of cash or property to the holders of equity securities of the Corporation without fair consideration, whether by way of dividend or otherwise, payable other

than in Common Stock, or the purchase or redemption of shares of the Corporation (other than redemptions in liquidation or dissolution of the Corporation) for cash or property, including any such transfer, purchase or redemption by a subsidiary of this Corporation.

2. Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales.

(a) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Convertible Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, after and subject to the payment in full of all amounts required to be distributed to the holders of any other class or series of stock of the Corporation ranking on liquidation prior and in preference to the Convertible Preferred Stock (collectively referred to as "Senior Preferred Stock"), but before any payment shall be made to the holders of Common Stock or any other class or series of stock ranking on liquidation junior to the Convertible Preferred Stock (such Common Stock and other stock being collectively referred to as "Junior Stock") by reason of their ownership thereof, an amount equal to \$ 105.0916925 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares), plus any dividends declared but unpaid on such shares. Any such payment shall be rounded to the nearest cent. If upon any such liquidation, dissolution or winding up of the Corporation the remaining assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Convertible Preferred Stock the full amount to which they shall be entitled, the holders of shares of Convertible Preferred Stock and any class or series of stock ranking on liquidation on a parity with the Convertible Preferred Stock shall share ratably in any distribution of the remaining assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(b) After the payment of all amounts required to be paid to the holders of Senior Preferred Stock, Convertible Preferred Stock and any other class or series of stock of the Corporation ranking on liquidation on a parity with the Convertible Preferred Stock, upon the dissolution, liquidation or winding up of the Corporation, the holders of such stock shall be entitled to no further distribution of the assets, and the remaining assets and funds of the Corporation available for distribution to its stockholders shall be distributed among the holders of shares of Junior Stock and any other class or series of stock entitled to participate in liquidation distributions with the holders of Common Stock, pro rata based on the number of shares of Common Stock held by each (assuming conversion into Common Stock of all such shares).

(c) In the event (in each case) of any merger or consolidation of the Corporation into or with another corporation (except one in which the holders of capital stock of the Corporation immediately prior to such merger or consolidation continue to hold at least 51%

by voting power of the capital stock of the surviving corporation), or the sale of all or substantially all the assets of the Corporation, such merger, consolidation or asset sale shall be deemed to be a liquidation of the Corporation, and all consideration payable to the stockholders of the Corporation (in the case of a merger or consolidation), or all consideration payable to the Corporation, together with all other available assets of the Corporation (in the case of an asset sale), shall be distributed to the holders of capital stock of the Corporation in accordance with Subsections 2(a) and 2(b) above, provided, however, that the holders of the Convertible Preferred Stock shall have the right with respect to the Convertible Preferred Stock to elect the benefits of the provisions of Subsection 4(j) in lieu of receiving payment pursuant to this Section 2. The value of such property, rights or other securities shall be the fair market value of such property, rights or other securities as determined in good faith by the Board of Directors of the Corporation. In the event of any dispute between the holders of the Convertible Preferred Stock and the Corporation regarding the determination of the fair market value of such non-cash distributions, at the election of the holders of a majority of the outstanding shares of Convertible Preferred Stock, the Corporation shall engage a consulting or investment banking firm selected by the Board of Directors and approved by the holders of a majority of the Convertible Preferred Stock to prepare an independent appraisal of the fair market value of such property to be distributed. Each of the Corporation and the holders of a majority of the outstanding Convertible Preferred Stock shall provide such approved appraiser with a written estimate of the fair market value of such property. The expenses of any appraisal by such a consulting or investment banking firm shall be borne by the Corporation.

### 3. Voting.

(a) Except as provided in Subsection 3(b) below, the holders of outstanding shares of Convertible Preferred Stock shall not be entitled to vote the shares of Convertible Preferred Stock held by such holder at the meetings of the stockholders of the Corporation (and written actions of stockholders in lieu of meetings).

(b) Notwithstanding any other provision of these Articles of Incorporation and in addition to any other rights provided by law, so long as at least one share of Convertible Preferred Stock shall be outstanding, the Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of not less than a majority of the then outstanding shares of Convertible Preferred Stock (each share of Convertible Preferred Stock to be entitled to one vote in each instance) take any corporate action or amend or repeal any provision of, or add any provision to, the Corporation's Articles of Incorporation or By-laws, if such action would change any of the preferences, rights, privileges, limitations or powers of, or the restrictions provided for the benefit of, Convertible Preferred Stock or adversely affect the rights of the holders of the Convertible Preferred Stock. Without limiting the generality of the preceding sentence, the Corporation will not amend its Articles of Incorporation or take any other corporate action without approval by the holders of at least a majority of the then outstanding shares of the Convertible Preferred Stock, if such amendment or corporate action would:

(i) Authorize or issue, or obligate the Corporation to authorize or issue, any new or existing class or classes or series of capital stock having any preference or priority as to liquidation preferences, dividends or assets superior to or on a parity with any such preference or priority of the Convertible Preferred Stock, or authorize or issue shares of stock of any class or any bonds, debentures, notes or other obligations convertible into or exchangeable for, or having rights to purchase, any shares of stock of the Corporation having any preference or priority as to dividends or assets superior to or on a parity with any such preference or priority of the Convertible Preferred Stock;

(ii) Reclassify any Common Stock into shares having any preference or priority as to dividends or assets superior to or on a parity with any such preference or priority of the Convertible Preferred Stock;

(iii) Reduce the amount payable to the holders of Convertible Preferred Stock upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation;

(iv) Adversely affect the liquidation preferences, dividend rights, voting rights or redemption rights of the holders of the Convertible Preferred Stock;

(v) Cancel or modify the Conversion Rights (as defined herein) of the Convertible Preferred Stock provided for in Section 4 herein;

(vi) Provide for the recapitalization, consolidation, dissolution, reorganization or merger of the Corporation; or

(vii) Institute any proceedings to adjudicate the Corporation bankrupt or insolvent, including without limitation, the filing of any petition pursuant to 11 U.S.C. §§101 *et seq.* or approve the institution of bankruptcy or insolvency proceedings against the Corporation or provide for the filing of a petition or answer or consent seeking or consenting to its reorganization or relief under any applicable federal or state law relating to bankruptcy, or approve the appointment of, or taking possession by, a receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Corporation or any substantial part of its property, or provide for the making of an assignment for the benefit of creditors, or an admission in writing of the Corporation's inability to pay its debts generally as they become due.

(c) Special Director Election Right for Default. The holders of Convertible Preferred Stock shall have the following rights with respect to the election of directors of the Corporation upon the occurrence of an Event of Noncompliance as described in this Section 3(c):

(i) Definition of Event of Noncompliance. An "Event of Noncompliance" will be deemed to have occurred if the Corporation fails to comply with Subsection 3(b)(vii).

(ii) Consequences of Certain Events of Noncompliance. If any Event of Noncompliance has occurred and is continuing for such 30-day period, the number of directors constituting the Corporation's Board of Directors will, at the request and approval of the holders of a majority of the Convertible Preferred Stock then outstanding, be increased by such number as will result in the holders of Convertible Preferred Stock having the right, hereunder or under any contractual arrangement, to elect an aggregate number of directors that will constitute a minimum majority of the Board of Directors, and the holders of a majority of the outstanding shares of Convertible Preferred Stock will have the special right, voting separately as a single class (with each share being entitled to one vote) and to the exclusion of all other classes of the Corporation's capital stock, to elect individuals to fill such newly created directorships, to remove any individuals elected to such directorships, and to fill any vacancies in such directorships. The special right of the holders of Convertible Preferred Stock to elect a majority of the members of the Board of Directors may be exercised at the special meeting called pursuant to this subparagraph (ii), at any annual or special meeting of stockholders and, to the extent and in the manner permitted by applicable law, pursuant to a written consent in lieu of a stockholders' meeting. Such special right will continue until such time as there is no longer any Event of Noncompliance in existence, at which time such special right will terminate subject to revesting upon the occurrence and continuation of any Event of Noncompliance which gives rise to such special right hereunder.

At any time when such special right has vested in the holders of Convertible Preferred Stock, a proper officer of the Corporation shall, upon the written request of the holders of at least 10% of the Convertible Preferred Stock then outstanding, addressed to the Secretary or Assistance Secretary of the Corporation, call a special meeting of the holders of Convertible Preferred Stock for the purpose of electing directors pursuant to this Section. Such meeting shall be held at the earliest legally permissible date at the principal office of the Corporation, or at such other place designed by the holders of at least a majority of the shares of Convertible Preferred Stock then outstanding. If such meeting has not been called by a proper officer of the Corporation within 10 days after delivery of such written request upon the Secretary or Assistant Secretary of the Corporation or within 20 days after mailing it to the Secretary or Assistance Secretary of the Corporation at its principal office, then the holders of at least 10% of the Convertible Preferred Stock then outstanding may designate in writing one of their number to call such meeting at the expense of the Corporation, and such meeting may be called by such person so designated upon the notice required for annual meetings of stockholders and shall be held at the Corporation's principal office, or at such other place designated by the holders of at least 10% of the Convertible Preferred Stock then outstanding. Any holder of Convertible Preferred Stock so designated shall be given access to the stock record books of the Corporation for the purpose of causing a meeting of stockholders to be called pursuant to this Section.



At any meeting or at any adjournment thereof at which the holders of Convertible Preferred Stock have the special right to elect directors, the presence, in person or by proxy, of the holders of a majority of the Convertible Preferred Stock then outstanding shall be required to constitute a quorum for the election or removal of any director by the holders of the Convertible Preferred Stock exercising such special right. The vote of a majority of such quorum present in person or by proxy at any meeting shall be required to elect or remove any such director.

Any director so elected by the holders of Convertible Preferred Stock shall continue to serve as a director until the expiration of the lesser of (a) a period of six months following the date on which there is no longer any Event of Noncompliance in existence or (b) the remaining period of the full term for which such director has been elected. After the expiration of such six-month period or when the full term for which such director has been elected ceases (provided that the special right to elect directors has terminated), as the case may be, the number of directors constituting the Board of Directors of the Corporation, shall decrease to such number as constituted the whole Board of Directors of the Corporation immediately prior to the occurrence of the Event or Events of Noncompliance giving rise to this special right of the holders of Convertible Preferred Stock to elect directors. If any Event of Noncompliance exists, each holder of Convertible Preferred Stock shall also have any other rights which such holder is entitled to under any contract or agreement at any time and any other rights which such holder may have pursuant to applicable law.

4. Optional Conversion. The holders of the Convertible Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert. (i) Each share of A Convertible Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Voting Common Stock as is determined by dividing \$105.0916925 by the Conversion Price (as defined below) in effect at the time of conversion; and (ii) Each share of B Convertible Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Nonvoting Common Stock as is determined by dividing \$105.0916925 by the Conversion Price (as defined below) in effect at the time of conversion. The "Conversion Price" shall initially be \$ 105.0916925. Such initial Conversion Price, and the rate at which shares of Convertible Preferred Stock may be converted into shares of Voting Common Stock or Nonvoting Common Stock, as the case may be, shall be subject to adjustment as provided below. Upon conversion of the Convertible Preferred Stock, the Conversion Price therefor shall be rounded to the nearest cent.

In the event of a liquidation of the Corporation, the Conversion Rights shall terminate at the close of business on the seventh full day preceding the date fixed for the payment of any amounts distributable on liquidation to the holders of Convertible Preferred Stock.

(b) Partial Conversion. In the event some but not all of the shares of Convertible Preferred Stock represented by a certificate(s) surrendered by a holder are converted, the Corporation shall execute and deliver to or on the order of the holder, at the expense of the Corporation, a new certificate representing the number of shares of Convertible Preferred Stock which were not converted.

(c) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Convertible Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then effective Conversion Price.

(d) Mechanics of Conversion.

(i) In order for a holder of Convertible Preferred Stock to convert shares of Convertible Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Convertible Preferred Stock, at the office of the transfer agent for the Convertible Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares of the Convertible Preferred Stock represented by such certificate or certificates. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his or its attorney duly authorized in writing. The date of receipt of such certificates and notice by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) shall be the conversion date ("Conversion Date"). The Corporation shall, as soon as practicable after the Conversion Date, issue and deliver at such office to such holder of Convertible Preferred Stock, or to his or its nominees, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled, together with cash in lieu of any fraction of a share.

(ii) The Corporation shall at all times when the Convertible Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of the Convertible Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Convertible Preferred Stock. Before taking any action which would cause an adjustment reducing the Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Convertible Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Conversion Price.

(iii) Upon any such conversion, no adjustment to the Conversion Price shall be made for any declared but unpaid dividends on the Convertible Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion.

(iv) All shares of Convertible Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares shall immediately cease and terminate on the Conversion Date, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor and payment of any dividends declared but unpaid thereon. Any holder of Convertible Preferred Stock surrendered for conversion shall, as of the Conversion Date, for all purposes be deemed to have become a holder of record of the number of shares of Common Stock issuable as a result of such conversion, irrespective of whether certificates representing such shares of Common Stock have been issued to such holder. Any shares of Convertible Preferred Stock so converted shall be retired and canceled and shall not be reissued, and the Corporation (without the need for stockholder action) may from time to time take such appropriate action as may be necessary to reduce the authorized Convertible Preferred Stock accordingly.

(v) The Corporation shall pay any and all issue and other taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Convertible Preferred Stock pursuant to this Section 4. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Convertible Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

(e) Adjustments to Conversion Price for Diluting Issues:

(i) Special Definitions. For purposes of this Subsection 4(e), the following definitions shall apply:

(A) "Option" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(B) "Original Issue Date" shall mean the date on which a share of Convertible Preferred Stock was first issued.

(C) "Convertible Securities" shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock.

(D) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Subsection 4(e)(iii) below, deemed to be issued) by the Corporation after the Original Issue Date, other than:

- (I) shares of Common Stock issued or issuable upon conversion of shares of Convertible Preferred Stock outstanding on the Original Issue Date or shares of Common Stock or Convertible Preferred Stock issuable under that certain Stock Option Agreement ("Stock Option Agreement") or that certain Warrant dated September 1, 1998, issued by the Corporation to CellStar;
- (II) shares of Common Stock issued or issuable as a dividend or distribution on Convertible Preferred Stock; or
- (III) shares of Common Stock issued upon exercise of those certain options outstanding on the date hereof, as more specifically described in the schedule to the Stock Option Agreement.

(ii) No Adjustment of Conversion Price. No adjustment in the number of shares of Common Stock into which the Convertible Preferred Stock is convertible shall be made, by adjustment in the applicable Conversion Price thereof: (a) unless the consideration per share (determined pursuant to Subsection 4(e)(v)) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the applicable Conversion Price in effect on the date of, and immediately prior to, the issue of such Additional Shares, or (b) if prior to such issuance, the Corporation receives written notice from the holders of a majority of the then outstanding shares of Convertible Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance of Additional Shares of Common Stock.

(iii) Issue of Securities Deemed Issue of Additional Shares of Common Stock.

If the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to

be Additional Shares of Common Stock issued as of the time of issue of such Options or Convertible Securities or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share (determined pursuant to Subsection 4(e)(v) hereof) payable in respect of such Additional Shares of Common Stock would be less than the applicable Conversion Price in effect on the date of and immediately prior to such issue, or such record date, as the case may be, and provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(A) No further adjustment in the Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(B) If such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the consideration payable to the Corporation, upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase becoming effective, be recomputed to reflect such increase insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

(C) Upon the expiration or termination of any unexercised Option or Convertible Security, the Conversion Price shall not be readjusted, but the Additional Shares of Common Stock deemed issued as the result of the original issue of such Option or Convertible Security shall not be deemed issued for the purposes of any subsequent adjustment of the Conversion Price;

(D) In the event of any change in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any Option or Convertible Security, including, but not limited to, a change resulting from the anti-dilution provisions thereof, the Conversion Price then in effect shall forthwith be readjusted to such Conversion Price as would have been obtained had the adjustment which was made upon the issuance of such Option or Convertible Security not exercised or converted prior to such change been made upon the basis of such change; and

(E) No readjustment pursuant to clause (B) or (D) above shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (i) the Conversion Price on the day prior to the original adjustment date, or (ii) the Conversion Price resulting from all other issuances of Additional Shares of Common Stock between the original adjustment date and such readjustment date other than the Additional Shares of Common Stock as to which such readjustment relates.

In the event the Corporation, after the Original Issue Date, amends the terms of any Options or Convertible Securities (whether such Options or Convertible Securities were outstanding on the Original Issue Date or were issued after the Original Issue Date), then such Options or Convertible Securities prior to such amendment shall be deemed expired and such Options or Convertible Securities, as so amended, shall be deemed to have been issued after the Original Issue Date and the provisions of this Subsection 4(e)(iii) shall apply.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock.

In the event the Corporation shall at any time after the Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection 4(e)(iii), but excluding shares issued as a stock split or combination as provided in Subsection 4(f) or upon a dividend or distribution as provided in Subsection 4(g)), without consideration or for a consideration per share of less than the applicable Conversion Price for conversion into Voting Common Stock or Nonvoting Common Stock in effect on the date of and immediately prior to such issue, then and in such event, the Conversion Price for the conversion of A Convertible Preferred Stock into shares of Voting Common Stock and for the conversion of B Convertible Preferred Stock into Nonvoting Common Stock shall each be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying the applicable Conversion Price by a fraction, (A) the numerator of which shall be (1) the number of shares of Common Stock outstanding immediately prior to such issue plus (2) the number of shares of Common Stock which the aggregate consideration received or to be received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Conversion Price; and (B) the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued; provided that, (i) when calculating the reduction in the Conversion Price for the conversion of the A Convertible Preferred Stock into Voting Common Stock, the reference to "Common Stock" in the above calculation shall include only the Voting Common Stock, including all Shares of Voting Common Stock issuable upon exercise or conversion of Options or Convertible Securities outstanding immediately prior to such issue and when calculating the reduction in the Conversion Price for the conversion of the B Convertible Preferred Stock into Nonvoting Common Stock, the reference to "Common Stock" in the above calculation shall include only the Nonvoting Common Stock, including all Shares of Nonvoting Common Stock issuable upon exercise or conversion of Options or Convertible Securities outstanding immediately prior to such issue, and (ii) the number of shares of Common Stock deemed issuable upon exercise or conversion of such outstanding Options and Convertible Securities shall not give effect to any adjustments to the conversion price or conversion rate of such Options or Convertible Securities resulting from the issuance of Additional Shares of Common Stock that is the subject of this calculation.

Notwithstanding the foregoing, the Conversion Price shall not be so reduced at such time if the amount of such reduction would be an amount less than \$.01, but any such amount shall be carried forward and reduction with respect thereto made at the time of and together with any subsequent reduction which, together with such amount and any other amount or amounts so carried forward, shall aggregate \$.01 or more.

(v) Determination of Consideration. For purposes of this Subsection 4(e), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(A) Cash and Property: Such consideration shall:

(I) insofar as it consists of cash, be computed at the aggregate of cash received by the Corporation, excluding amounts paid or payable for accrued interest;

(II) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors. In the event of any dispute between the holders of the Convertible Preferred Stock and the Corporation regarding the determination of the fair market value of such non-cash distribution, such dispute shall be resolved in accordance with the provisions of Subsection 2(c); and

(III) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed at the fair market value thereof as provided in clauses (I) and (II) above. In the event of any dispute between the holder of the Convertible Preferred Stock and the Corporation regarding either the determination of the fair market value of such non-cash distribution or the allocation of such consideration, such dispute shall be resolved in accordance with the provisions of Subsection 2(c).

(B) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Subsection 4(e)(iii), relating to Options and Convertible Securities, shall be determined by dividing

(x) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the

exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(y) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(f) Adjustment for Stock Splits and Combinations. (i) If the Corporation shall at any time or from time to time after the Original Issue Date effect a subdivision of any outstanding Voting Common Stock, the applicable Conversion Price then in effect immediately before that subdivision shall be proportionately decreased. If the Corporation shall at any time or from time to time after the Original Issue Date combine any outstanding shares of Voting Common Stock, the applicable Conversion Price then in effect immediately before the combination shall be proportionately increased. Any adjustment under this paragraph shall become effective at the close of business on the date the subdivision or combination becomes effective.

(ii) If the Corporation shall at any time or from time to time after the Original Issue Date effect a subdivision of any outstanding Nonvoting Common Stock, the applicable Conversion Price then in effect immediately before that subdivision shall be proportionately decreased. If the Corporation shall at any time or from time to time after the Original Issue Date combine any outstanding shares of Nonvoting Common Stock, the applicable Conversion Price then in effect immediately before the combination shall be proportionately increased. Any adjustment under this paragraph shall become effective at the close of business on the date the subdivision or combination becomes effective.

(g) Adjustment for Certain Dividends and Distributions. (i) In the event the Corporation at any time, or from time to time after the Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Voting Common Stock, then and in each such event the applicable Conversion Price for the A Convertible Preferred Stock then in effect shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the applicable Conversion Price for the A Convertible Preferred Stock then in effect by a fraction:

(1) the numerator of which shall be the total number of shares of Voting Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(2) the denominator of which shall be the total number of shares of Voting Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of



shares of Voting Common Stock issuable in payment of such dividend or distribution;

(ii) In the event the Corporation at any time, or from time to time after the Original Issue Date shall make or issue, or fix a record date for the determination of holders of Nonvoting Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Nonvoting Common Stock, then and in each such event the applicable Conversion Price for the B Convertible Preferred Stock then in effect shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the applicable Conversion Price for the B Convertible Preferred Stock then in effect by a fraction:

(1) the numerator of which shall be the total number of shares of Nonvoting Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(2) the denominator of which shall be the total number of shares of Nonvoting Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Nonvoting Common Stock issuable in payment of such dividend or distribution;

provided, however, if in the case of (i) or (ii) above, such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the applicable Conversion Price for the A Convertible Preferred Stock or the B Convertible Preferred Stock, as the case may be, shall be recomputed accordingly as of the close of business on such record date and thereafter the applicable Conversion Price for the A Convertible Preferred Stock or the B Convertible Preferred Stock, as the case may be, shall be adjusted pursuant to (i) or (ii) above, as the case may be, as of the time of actual payment of such dividends or distributions; and provided further, however, that no such adjustment shall be made if the holders of A Convertible Preferred Stock or B Convertible Preferred Stock, as the case may be, simultaneously receive a dividend or other distribution of shares of Voting Common Stock or Nonvoting Common Stock in a number equal to the number of shares of Voting Common Stock or Nonvoting Common Stock as they would have received if all outstanding shares of A Convertible Preferred Stock or B Convertible Preferred Stock, as the case may be, had been converted into Voting Common Stock or Nonvoting Common Stock on the date of such event.

(h) Adjustments for Other Dividends and Distributions. (i) In the event the Corporation at any time or from time to time after the Original Issue Date for the A Convertible Preferred Stock shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation other than shares of Voting Common Stock, then and in each such event provision shall be made so that the holders of the A Convertible Preferred Stock shall receive upon

conversion thereof in addition to the number of shares of Voting Common Stock receivable thereupon, the amount of securities of the Corporation that they would have received had the A Convertible Preferred Stock been converted into Voting Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them as aforesaid during such period, giving application to all adjustments called for during such period under this paragraph with respect to the rights of the holders of the A Convertible Preferred Stock; and provided further, however, that no such adjustment shall be made if the holders of A Convertible Preferred Stock simultaneously receive a dividend or other distribution of such securities in an amount equal to the amount of such securities as they would have received if all outstanding shares of A Convertible Preferred Stock had been converted into Voting Common Stock on the date of such event.

(ii) In the event the Corporation at any time or from time to time after the Original Issue Date for the B Convertible Preferred Stock shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation other than shares of Nonvoting Common Stock, then and in each such event provision shall be made so that the holders of the B Convertible Preferred Stock shall receive upon conversion thereof in addition to the number of shares of Nonvoting Common Stock receivable thereupon, the amount of securities of the Corporation that they would have received had the B Convertible Preferred Stock been converted into Nonvoting Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them as aforesaid during such period, giving application to all adjustments called for during such period under this paragraph with respect to the rights of the holders of the B Convertible Preferred Stock; and provided further, however, that no such adjustment shall be made if the holders of B Convertible Preferred Stock simultaneously receive a dividend or other distribution of such securities in an amount equal to the amount of such securities as they would have received if all outstanding shares of B Convertible Preferred Stock had been converted into Nonvoting Common Stock on the date of such event.

(i) Adjustment for Reclassification, Exchange, or Substitution. (i) If the Voting Common Stock issuable upon the conversion of the A Convertible Preferred Stock shall be changed into the same or a different number of shares of any class or classes of stock, whether by capital reorganization, reclassification, or otherwise (other than a subdivision or combination of shares or stock dividend provided for above, or a reorganization, merger, consolidation, or sale of assets provided for below), then and in each such event the holder of each such share of A Convertible Preferred Stock shall have the right thereafter to convert such share into the kind and amount of shares of stock and other securities and property receivable upon such reorganization, reclassification, or other change, by holders of the number of shares of Voting Common Stock into which such shares of A Convertible Preferred Stock might have been converted immediately prior to such reorganization, reclassification, or change, all subject to further adjustment as provided herein.

(ii) If the Nonvoting Common Stock issuable upon the conversion of the B Convertible Preferred Stock shall be changed into the same or a different number of shares of any class or classes of stock, whether by capital reorganization, reclassification, or otherwise (other than a subdivision or combination of shares or stock dividend provided for above, or a reorganization, merger, consolidation, or sale of assets provided for below), then and in each such event the holder of each such share of B Convertible Preferred Stock shall have the right thereafter to convert such share into the kind and amount of shares of stock and other securities and property receivable upon such reorganization, reclassification, or other change, by holders of the number of shares of Nonvoting Common Stock into which such shares of B Convertible Preferred Stock might have been converted immediately prior to such reorganization, reclassification, or change, all subject to further adjustment as provided herein.

(j) Adjustment for Merger or Reorganization, etc. In case of any consolidation or merger of the Corporation with or into another corporation or the sale of all or substantially all of the assets of the Corporation to another corporation (other than a consolidation, merger or sale which is covered by Subsection 2(c)), each share of A Convertible Preferred Stock or B Convertible Preferred Stock shall thereafter be convertible (or shall be converted into a security which shall be convertible) into the kind and amount of shares of stock or other securities or property to which a holder of the number of shares of Voting Common Stock and Nonvoting Common Stock of the Corporation, as the case may be, deliverable upon conversion of such Convertible Preferred Stock would have been entitled upon such consolidation, merger or sale; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors) shall be made in the application of the provisions in this Section 4 set forth with respect to the rights and interest thereafter of the holders of the Convertible Preferred Stock, to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the applicable Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any shares of stock or other property thereafter deliverable upon the conversion of the Convertible Preferred Stock.

(k) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Convertible Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Convertible Preferred Stock, furnish or cause to be furnished to such holder a similar certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price then in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which then would be received upon the conversion of Convertible Preferred Stock.

(l) Notice of Record Date. In the event:

- (i) that the Corporation declares a dividend (or any other distribution) on any Common Stock payable in Common Stock or other securities of the Corporation;
- (ii) that the Corporation subdivides or combines any outstanding shares of Common Stock;
- (iii) of any reclassification of any Common Stock of the Corporation (other than a subdivision or combination of its outstanding shares of Common Stock or a stock dividend or stock distribution thereon), or of any consolidation or merger of the Corporation into or with another corporation, or of the sale of all or substantially all of the assets of the Corporation; or
- (iv) of the involuntary or voluntary dissolution, liquidation or winding up of the Corporation;

then the Corporation shall cause to be filed at its principal office or at the office of the transfer agent of the Convertible Preferred Stock, and shall cause to be mailed to the holders of the Convertible Preferred Stock at their last addresses as shown on the records of the Corporation or such transfer agent, at least ten business days prior to the date specified in (A) below or twenty business days before the date specified in (B) below, a notice stating

- (A) the record date of such dividend, distribution, subdivision or combination, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution, subdivision or combination are to be determined, or
- (B) the date on which such reclassification, consolidation, merger, sale, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, dissolution or winding up.

#### 5. Mandatory Conversion.

(a) Upon the closing of the sale of shares of Common Stock, at a price of at least \$105.0916925 per share (subject to appropriate adjustment for stock splits, stock dividends, combinations and other similar recapitalizations affecting such shares), in a public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, that has been effected with the consent of CellStar Telecom, Inc. ("CellStar"), which consent shall be provided by CellStar in good faith (subject to acting in the best interests of the shareholders of

CellStar Corporation) (the "Mandatory Conversion Date"), (i) all outstanding shares of A Convertible Preferred Stock and all outstanding shares of B Convertible Preferred Stock shall automatically be converted without any further action by the holders of the A Convertible Preferred Stock and the B Convertible Preferred Stock into shares of Voting Common Stock, at the then effective conversion rate; provided, that, (x) all outstanding shares of Voting Common Stock is the class of Common Stock being registered and (y) the holders of Nonvoting Common Stock shall automatically be converted without any further action by the holders of the Nonvoting Common Stock into shares of Voting Common Stock, at the rate of one share of Nonvoting Common Stock for one share of Voting Common Stock, and (ii) the number of authorized shares of Convertible Preferred Stock shall be automatically reduced by the number of shares of Convertible Preferred Stock that had been designated as A Convertible Preferred Stock and B Convertible Preferred Stock, and all provisions included under the caption "Convertible Preferred Stock", and all references to the A Convertible Preferred Stock and B Convertible Preferred Stock, shall be deleted and shall be of no further force or effect.

(b) All holders of record of shares of A Convertible Preferred Stock and B Convertible Preferred Stock shall be given written notice of the Mandatory Conversion Date and the place designated for mandatory conversion of all such shares of A Convertible Preferred Stock and B Convertible Preferred Stock pursuant to this Section 5. Such notice need not be given in advance of the occurrence of the Mandatory Conversion Date. Such notice shall be sent by first class or registered mail, postage prepaid, to each record holder of A Convertible Preferred Stock and B Convertible Preferred Stock at such holder's address last shown on the records of the transfer agent for the A Convertible Preferred Stock and B Convertible Preferred Stock (or the records of the Corporation, if it serves as its own transfer agent). Upon receipt of such notice, each holder of shares of A Convertible Preferred Stock and B Convertible Preferred Stock shall surrender his or its certificate or certificates for all such shares to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of Voting Common Stock to which such holder is entitled pursuant to this Section 5. On the Mandatory Conversion Date, all rights with respect to the A Convertible Preferred Stock and B Convertible Preferred Stock so converted, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock) will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates for the number of shares of Voting Common Stock into which such A Convertible Preferred Stock and B Convertible Preferred Stock has been converted, and payment of any declared but unpaid dividends thereon. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his or its attorney duly authorized in writing. As soon as practicable after the Mandatory Conversion Date and the surrender of the certificate or certificates for A Convertible Preferred Stock and B Convertible Preferred Stock, the Corporation shall cause to be issued and delivered to such holder, or on his or its written order, a certificate or certificates for the number of full shares of Voting Common Stock issuable on such conversion in accordance with the provisions hereof and cash as provided in Subsection 4(c) in respect of any fraction of a share of Voting Common

Stock otherwise issuable upon such conversion.

(c) All certificates evidencing shares of A Convertible Preferred Stock and B Convertible Preferred Stock which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the Mandatory Conversion Date, be deemed to have been retired and cancelled and the shares of A Convertible Preferred Stock and B Convertible Preferred Stock represented thereby converted into Voting Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date. The Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized A Convertible Preferred Stock and B Convertible Preferred Stock accordingly.

6. No Dilution or Impairment. The Corporation will not, by amendment of its Articles 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 the Corporation, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the holders of the Convertible Preferred Stock against dilution or other impairment.

### III.

Article IV of the Articles of Incorporation is hereby amended by changing the reference therein from "50 percent" to "10 percent."

### IV.

Article VI of the Articles of Incorporation is hereby amended to add at the end thereof a paragraph to read as follows:

When voting on whether the Corporation will take any action in respect of any matter described in Section 3(b)(vii) of Article III and otherwise with regard to any act, or failure to act, in connection with any matter referred to in Section 3(b)(vii) of Article III, each director shall owe its primary fiduciary duty or other obligation to the Corporation (including, without limitation, the Corporation's creditors) and not to the stockholders except as may be required by the Florida Business Corporation Act or by case law.

This Amendment was adopted pursuant to Section 607.1003 of the Florida Business Corporation Act by a joint written consent of the board of directors and by the holders of the Voting Common Stock of the Corporation on Sept 1, 1998. The number of votes cast for the amendment by the holders of Voting Common Stock of the Corporation was sufficient for approval by the holders of Voting Common Stock of the Corporation.

[Signatures follow immediately on next page]

IN WITNESS WHEREOF, Topp Telecom, Inc. has caused these Articles of Amendment to be executed as of the first day of September, 1998.

TOPP TELECOM, INC.

By: 

Name: Frederick J. Pollak

Title: President