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February 3, 2000

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**VIA FEDERAL EXPRESS**

Division of Corporations  
Florida Department of State  
409 E. Gaines Street  
Tallahassee, Florida 32399

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Re: Network Telephone Corporation

Dear Sir or Madam:

Enclosed for filing on behalf of the above-referenced corporation is an original and one copy of an Amendment to Amended and Restated Articles of Incorporation. Once this document has been filed, please return to us a certified copy of same. Enclosed is our firm's check in the amount \$43.75 to cover the filing fee and the certified copy.

Should you have any questions regarding any of this, please do not hesitate to give us a call.

Sincerely,

Jeanne Goodale,  
Legal Assistant to Daniel R. Lozier

/jg

Enclosures

cc: Ray D. Russenberger (with enclosure)  
Johnny Matthews (with enclosure)  
David McPherson (with enclosure)  
Madeline Sloane (with enclosure)

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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

AUTHORIZATION BY PHONE TO

CORRECT add vice pres, Chair

DATE 2/16/2000

DOC. EXAM McPherson

of the Board  
after  
Ray  
Russenberger  
name

**AMENDMENT TO AMENDED AND RESTATED ARTICLES OF INCORPORATION  
OF NETWORK TELEPHONE CORPORATION**

Pursuant to the provisions of Section 607.1006 of the Florida Business Corporation Act, Network Telephone Corporation, (the "Corporation"), adopts the following Articles of Amendment to its Amended and Restated Articles of Incorporation.

**FIRST:** The name of the Corporation is Network Telephone Corporation.

**SECOND:** Article III of the Amended and Restated Articles of Incorporation of the Corporation as amended by that certain filing with the Secretary of State dated July 30, 1999, is hereby amended by deleting it in its entirety, and inserting in lieu thereof the following Article III, which reads as follows:

**Article III. Share Structure.**

The amount of the total authorized capital stock of this Corporation shall be 34,959,321 shares, divided as follows: (i) 23,000,000 shares of Common Stock, par value \$0.01 per share (the "Common Stock"), and (ii) 11,959,321 shares of Preferred Stock, par value \$0.01 per share (the "Preferred Stock"), 7,500,001 shares of which shall be designated as "10% Series A Convertible Preferred Stock" (the "Series A Preferred Stock") and 4,459,320 shares of which shall be designated as "10% Series B Convertible Preferred Stock" (the "Series B Preferred Stock" and, collectively with the Series A Preferred Stock, the "Convertible Stock"), subject to the provisions of Paragraph 3(b) below.

(a) Common Stock. The Common Stock authorized for issuance by the Corporation shall be 23,000,000 shares, at a par value of \$0.01 per share. Each share shall be entitled to one vote.

(b) Preferred Stock. The Preferred Stock authorized by these Articles of Incorporation may be divided and issued from time to time in series. The Board of Directors is authorized to decrease the number of shares of any series, including the Convertible Stock, subsequent to the issuance of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

The powers, rights, preferences, restrictions, and other matters related to the Convertible Stock are as follows (section references below are to the corresponding sections of Paragraph (b) of this Article Third):

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TALLAHASSEE, FLORIDA

Section 1. Dividends.

(a) Priority of Dividends. No dividends shall be declared or set aside for the Corporation's Common Stock, par value \$0.01 per share (the "Common Stock") or any other class or series of stock not expressly senior to or equal in right with the Convertible Stock in respect to dividends (with the Common Stock, collectively, "Junior Stock"), unless prior thereto all accrued and unpaid dividends on the Convertible Stock shall be declared, set aside and paid on all the then outstanding shares of Convertible Stock. In the event that funds legally available for distribution on any Dividend Payment Date (as defined in Section 1(b)) are insufficient to fully pay the cash dividend due and payable on such Dividend Payment Date to all holders of outstanding Convertible Stock, then all funds legally available for distribution shall be paid in cash to holders of Convertible Stock in proportion to the full amount of dividends such holder would have received as it relates to the aggregate amount of dividends due to all holders of Convertible Stock if funds sufficient to pay such full amount had been available. Any remaining dividend amount owed to holders of the Convertible Preferred Stock shall be accrued in accordance with Section 1(b).

(b) Dividend Rate; Dividend Payment Dates. Each holder of the Convertible Stock shall be entitled to receive when, as and if declared by the Board of Directors, out of funds legally available therefor, cumulative cash dividends, in preference and priority to dividends on any Junior Stock, that shall accrue on the Liquidation Price (as defined in Section 2(a)) of each share of the Convertible Stock at the rate of ten percent (10%) per annum, from and including the Original Issue Date of such share (as defined in Section 4(f)(i)(B)) to and including the date on which the Liquidation Price of such share is paid in full to the holder of such share pursuant to Section 2. The accrued dividends will be adjusted for stock splits, stock dividends, recapitalizations, reclassifications and similar events (together referred to as "Recapitalization Events") which affect the number of outstanding shares of the Convertible Stock. Accrued dividends on the Convertible Stock shall be payable out of funds legally available therefor on December 1, 1999 and thereafter semi-annually on June 1 and December 1 of each year (each a "Dividend Payment Date"), to the holders of record of the Convertible Stock as of the close of business on the applicable record date. Dividends shall be fully cumulative and shall accrue on a daily basis based on a 365-day or 366-day year, as the case may be, without regard to the occurrence of a Dividend Payment Date and whether or not such dividends have been declared and whether or not there are any unrestricted funds of the Corporation legally available for the payment of dividends. The amount of dividends "accrued" with respect to any share of Convertible Stock as of the first Dividend Payment Date after the Original Issue Date, or as of any other date after the Original Issue Date that is not a Dividend Payment Date, shall be calculated on the basis of the actual number of days elapsed from and including the original Issue Date, in the case of the first Dividend Payment Date and any date of determination prior to the first Dividend Payment Date, or from and including the last preceding Dividend Payment Date, in the case of any other date of determination, to and including such date of determination which is to be made, in each case based on a year of 365 or 366 days, as the case may be (the "Dividend Period"). Whenever the Board of Directors of the Corporation declares any dividend pursuant to this Section 1, notice of the applicable record date and related Dividend Payment Date shall be given in accordance with Section 4(m).

(c) Compounding of Dividends; Addition to Liquidation Price. on each Dividend Payment Date, all dividends that have accrued on each share of Convertible Stock during the immediately preceding Dividend Period shall, to the extent not paid on such Dividend Payment Date for any reason (whether or not such unpaid dividends have been earned or declared or there are any unrestricted funds of the Corporation legally available for the payment of dividends), be added to the Liquidation Price of such share effective as of such Dividend Payment Date and shall remain a part thereof to and including the date on which the Liquidation Price of such share is paid in full to the holder of such share pursuant to Section 2. Accrued dividends (or dividends accrued thereon) which have been added to the Liquidation Price of any share of Convertible Stock may be subsequently declared and paid in cash, in whole or in part, on any Dividend Payment Date.

(d) Pro Rata Declaration and Payment of Dividends. All dividends paid with respect to shares of the Convertible Stock pursuant to this Section 1 shall be declared and paid Pro rata to all the holders of the shares of Convertible Stock and any other shares of Preferred Stock ranking on parity with the Convertible Stock outstanding as of the applicable record date. In addition to any other dividends the holders of Convertible Stock may be entitled to pursuant to this Section 1, holders of Convertible Stock shall be entitled to share in any dividend distributed to holders of Common Stock as if such holders' shares of Convertible Stock had been converted to Common Stock immediately prior to such dividend distribution.

## Section 2      Liquidation, Dissolution or Winding Up.

(a) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, any merger or consolidation of the Corporation with another entity or the sale of substantially all of its assets (each such event, a "Liquidation"), except as provided in Section 2(b) below, the holders of shares of Convertible Stock then outstanding shall be entitled, ratably in proportion to the shares of Convertible Stock held by such holders, to be paid out of the assets of the Corporation available for distribution to its stockholders before payment to the holders of Junior Stock by reason of their ownership thereof, an amount equal to (i) \$1.50 per share of Series A Preferred Stock or \$2.5228 per share of Series B Preferred Stock (subject to appropriate adjustment for any Recapitalization Events), plus (ii) an amount equal to all dividends accrued on such shares of Convertible Stock since the original Issue Date thereof which, pursuant to Section 1(c), have been added to and remain part of the Liquidation Price as of such time of determination, whether or not such unpaid dividends have been earned or declared or there are any unrestricted funds of the Corporation legally available for the payment of dividends (the "Liquidation Price").

(b) If upon any such Liquidation the remaining assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Convertible Stock and any other shares of Preferred Stock ranking on parity with the Convertible Stock upon liquidation the full amount to which they shall be entitled, then the entire assets of the Corporation shall be distributed among the holders of shares of Convertible Stock and any other shares of Preferred Stock ranking on parity with the Convertible Stock upon liquidation ratably in proportion to relative amounts that such holders would have received if they had received the full amount due to them upon liquidation.

(c) After the payment of all preferential amounts required to be paid to the holders of Convertible Stock, upon the Liquidation of the Corporation, the holders of Convertible Stock shall be entitled to share in the remaining assets and funds of the Corporation available for distribution to its stockholders with the holders of shares of Junior Stock then outstanding as if the Convertible Stock had been converted to Common Stock immediately prior to such Liquidation.

### Section 3 Voting Rights.

(a) Subject to Section 3(g) below, each outstanding share of Convertible Stock, prior to its conversion to Common Stock, shall be entitled to the number of votes equal to the number of votes to which the number of whole shares of Common Stock into which such share of Convertible Stock is convertible (as adjusted from time to time pursuant to Section 4 hereof) would be entitled at each meeting of the stockholders of the Corporation (and for purposes of written actions of stockholders in lieu of meetings) with respect to any and all matters presented to the stockholders of the Corporation for their action or consideration.

(b) The Corporation shall not amend, alter or repeal the preferences, special rights or other powers of the Series A Preferred Stock so as to affect adversely Series A Preferred Stock, without the written consent or affirmative vote of the holders of a majority of the then outstanding shares of Series A Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class. For this purpose, without limiting the generality of the foregoing, the authorization or issuance of any Preferred Stock having a preference or priority over the Series A Preferred Stock as to the right to receive dividends or amounts distributable upon Liquidation of the Corporation shall be deemed to affect adversely the Series A Preferred Stock.

(c) The Corporation shall not amend, alter or repeal the preferences, special rights or other powers of the Series B Preferred Stock so as to affect adversely Series B Preferred Stock, without the written consent or affirmative vote of the holders of a majority of the then outstanding shares of Series B Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class. For this purpose, without limiting the generality of the foregoing, the authorization or issuance of any Preferred Stock having a preference or priority over the Series B Preferred Stock as to the right to receive dividends or amounts distributable upon Liquidation of the Corporation shall be deemed to affect adversely the Series B Preferred Stock.

(d) In addition to the matters described in Sections 3(b) and 3(c) above, for so long as 2,923,389 shares of Series A Preferred Stock (subject to appropriate adjustment for any Recapitalization Event) remain outstanding, the Corporation shall not take, and shall not permit any subsidiary of the Corporation to take any of the following actions without the written consent or affirmative vote of stockholders representing at least a majority of the then outstanding shares of Convertible Stock voting as a single *class*:

(i) amend, alter, modify or repeal the articles of incorporation to increase or decrease the number of authorized shares of Preferred Stock;

(ii) merge or consolidate the Corporation or any of its subsidiaries with or into another entity, or enter into any other business combination, binding share exchange or similar transaction with any entity unless the shares of capital stock of the Corporation outstanding immediately prior to such event will be changed into or exchanged for securities of the surviving entity representing a majority of the outstanding voting securities of such entity;

(iii) sell, transfer, lease or dispose of all or substantially all of the assets of the Corporation or of any of its subsidiaries, in one transaction or a series of related transactions, or effect the liquidation, dissolution or winding-up of the Corporation or any of its subsidiaries;

(iv) the declaration and payment of dividends or other distributions upon, or the redemption, purchase, retirement or other acquisition for value of, any shares of the capital stock of the Corporation (other than shares of capital stock that rank pari passu with or senior to the Convertible Stock or repurchases of Common Stock held by employees upon termination of such employee's employment) or any shares of the capital stock of any subsidiary of the Corporation (other than the payment of dividends or distributions, or other payments in redemption, made by such subsidiary solely to the Corporation)

(v) the issuance, authorization or sale by the Corporation of any capital stock (or any options, warrants or similar participation rights to purchase such capital stock) other than Junior Stock excluding Common Stock (other than 2,705,273 shares of Common Stock (as adjusted for Recapitalization Events) to be issued pursuant to the Corporation's stock option plan), or the issuance or sale by any subsidiary of the Corporation of shares of its capital stock (or any options, warrants or similar participation rights) to any person or entity other than the Corporation; or

(vi) the increase or decrease in the number of directors on the Corporation's board of directors.

The Corporation shall not permit any of its subsidiaries to take any action which, if taken by the Corporation, would require the consent of the holders of a majority of the Convertible Stock in accordance with the preceding sentence.

#### Section 4 Conversion at the Option of a Holder.

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

(a) Right to Convert. Each share of Convertible Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, into such number of fully paid and nonassessable shares of Common Stock as determined by dividing the Conversion Value by the Conversion Price (subject to appropriate adjustment in accordance with this Section 4). No

additional consideration shall be paid by a holder of Series A Preferred Stock upon exercise of Conversion Rights.

(b) Conversion Value. The conversion value for each share of Series A Preferred Stock shall be the original purchase price of \$1.50 per share and the conversion value for each share of Series B Preferred Stock shall be the original purchase price of \$2.52 per share (each, the "Conversion Value").

(c) Conversion Price. The conversion price at which shares of Common Stock shall be deliverable upon conversion of Series A Preferred Stock or Series B Preferred Stock without the payment of additional consideration by the holder thereof shall initially be \$1.50 with respect to the Series A Preferred Stock and \$2.52 with respect to the Series B Preferred Stock (each, the "Conversion Price"). Such initial Conversion Price, and the corresponding rate at which shares of Convertible Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided in this Section 4.

(d) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Convertible 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.

(e) Mechanics of Conversion.

(i) In order for a holder of Convertible Stock to convert shares of Convertible Stock into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Convertible Stock, at the office of the transfer agent for the Convertible 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 Convertible Stock represented by such certificate or certificates. 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 transferring 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 Stock 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. As of the Conversion Date, the person entitled to receive certificates of Common Stock shall be regarded for all corporate purposes as the holder of the number of shares of Common Stock to which he or it is entitled upon the conversion.

(ii) The Corporation shall, at all times when the Convertible 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 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 Stock.

(iii) All shares of Convertible 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. Any shares of Convertible Stock so converted shall be retired and canceled and shall not be reissued, and the Corporation may from time to time take such appropriate action as may be necessary to reduce the authorized Convertible Stock accordingly.

(f) Adjustments to Conversion Price for Dilutive Issues.

(i) Special Definitions. For purposes of this Section 4(f), 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, excluding options to purchase up to an aggregate of 2,705,273 shares (the "Option Pool Amount") of Common Stock of the Company (subject to appropriate adjustment for any Recapitalization Event), issued to employees pursuant to stock option agreements adopted by the Board of Directors and approved by the Compensation Committee of the Board of Directors (such options herein referred to as "Employee Options").

(B) "Original Issue Date" shall mean the date on which a share of Series A Preferred Stock or Series B Preferred Stock, as applicable, 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 Section 4(f)(iii) below, deemed to be issued) by the Corporation after the Original Issue Date, other than shares of Common Stock issued or issuable:

- (1) upon the conversion of shares of Convertible Stock outstanding;
- (2) as a dividend or distribution on Convertible Stock;
- (3) by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock;
- (4) upon the exercise of Employee Options; or



(5) upon the issuance or exercise of the Finder's Warrant.

(E) "Finder's Warrant" shall mean a warrant for the purchase of 200,000 shares of Common Stock at an exercise price of \$1.50 per share issued to Morgan, Keegan & Company, Inc.

(ii) No Adjustment of Conversion Price. No adjustment in the number of shares of Common Stock into which the Convertible Stock is convertible shall be made, by adjustment in the applicable Conversion Price thereof: (A) unless the consideration per share (determined pursuant to Section 4(f)(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 issuance of such Additional Shares, or (B) if prior to such issuance, the Corporation receives written notice from the holders of at least a majority of the then outstanding shares of Convertible Stock agreeing that no such adjustment shall be made as the result of the issuance of such 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 such issuance 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 Section 4(f)(v)) 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 issuance, 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 applicable Conversion Price shall be made upon the subsequent issuance 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, or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the conversion price computed upon the original issuance thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

(C) No readjustment pursuant to clause (B) above shall have the effect of increasing the applicable Conversion Price to an amount which exceeds such Conversion Price on the original adjustment date; and

(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 applicable Conversion Price then in effect shall forthwith be readjusted to such Conversion Price as would have 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, but no further adjustment shall be made for the actual issuance of Common Stock upon the exercise or conversion of any such option or Convertible Security.

(E) Upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price computed upon the original Issue Date thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:

(1) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Company upon such exercise; or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Company upon such conversion or exchange; and

(2) in the case of Options for Convertible Securities, only the Convertible Securities, actually issued upon the exercise thereof were issued at of issue of such Options, and the consideration received Company for the Additional Shares of Common Stock deemed been then issued was the consideration actually received Company for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Company upon the issue of the Convertible Securities with respect to which such Options were actually exercised.

(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 Section 4(f)(iii), but excluding shares issued as a dividend or distribution as provided in Section 4(h) or upon a stock split or combination as provided in Section 4(g)), for a consideration per share (determined pursuant to Section 4(f)(v) hereof) less than the applicable Conversion Price in effect on the date of and immediately prior to such issuance, then and in each such case, such Conversion Price shall be reduced, concurrently with such issuance, to a Conversion Price equal to the price (calculated to the nearest tenth of a cent) determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (together with the number of shares of Common Stock then issuable upon conversion of the outstanding shares of Convertible Stock and the conversion or exercise of any Convertible Securities or options), plus the number of shares of Common Stock which the aggregate consideration received by the Corporation (as determined pursuant to Section 4(f)(v)) for the total number of shares of Common Stock so issued would purchase at the applicable Conversion Price in effect immediately prior to such issuance, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (together with the number of shares of Common Stock then issuable upon conversion of the outstanding shares of Convertible Stock and the conversion or exercise of any Convertible Securities or options) plus the number of shares so issued.

No adjustment of a Conversion Price, however, shall be made in an amount less than \$.01 per share, and any such lesser adjustment shall be carried forward and shall be made at the time and together with the next subsequent adjustment which together with any adjustments so carried forward shall amount to \$.01 per share or more. Any adjustments to a Conversion Price shall be rounded to the nearest \$.0001 per share.

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

(A) Cash and Property. Such consideration shall:

(1) 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 or accrued dividends;

(2) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issuance, as determined in good faith by the Board of Directors; and

(3) in the event Additional Shares of Common Stock are issued together with other shares of securities or other assets of the Corporation for

consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (1) and (2) above, as determined in good faith by the Board of Directors.

(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 Section 4(f)(iii), relating to Options and Convertible Securities, shall be determined by dividing:

(1) the total amount, if any, received or receivable by the Corporation as consideration for the issuance 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

(2) 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.

(g) Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Original Issue Date for the Series B Preferred Stock effect a subdivision of the outstanding Common Stock, the 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 for the Series B Preferred Stock combine the outstanding shares of Common Stock, the 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.

(h) Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time, or from time after the Original Issue Date for the Series B 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 additional shares of Common Stock, then and in each such event the Conversion Prices for the Convertible 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 each series of the Convertible Stock then in effect by a fraction:

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

(ii) the denominator of which shall be the total number of shares of 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 Common Stock issuable in payment of such dividend or distribution; provided, however, if 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 Conversion Prices for the Convertible Stock shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Prices for the Convertible Stock shall be adjusted pursuant to this paragraph as of the time of actual payment of such dividends or distributions.

(i) Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Original Issue Date for the Series B 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 Common Stock, then and in each such event provision shall be made so that the holders of the Convertible Stock shall receive upon conversion thereof in addition to the number of shares of Common Stock receivable thereupon, the amount of securities of the Corporation that they would have received had their Convertible Stock been converted into Common Stock on the date of such event and had 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 Convertible Stock.

(j) Adjustment for Reclassification, Exchange, or Substitution. If the Common Stock issuable upon the conversion of the Convertible 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 of 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 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 Common Stock into which such shares of Convertible Preferred Stock might have been converted immediately prior to such reorganization, reclassification, or change, all subject to further adjustment as provided herein.

(k) Adjustment for Merger or Reorganization. In case of any consolidation or merger of the Corporation with or into another corporation, each share of Convertible Stock shall thereafter 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 Common Stock of the Corporation deliverable upon conversion of such Convertible Stock would have been entitled upon such consolidation or merger; 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 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 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 Stock.

(l) No Impairment. The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Convertible Stock against impairment.

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

(i) that the Corporation declares a dividend (or any other distribution) on its Common Stock payable in Common Stock or other securities of the Corporation;

(ii) that the Corporation subdivides or combines its outstanding shares of Common Stock;

(iii) of any reclassification of the 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

(iv) of the Liquidation 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 Stock, and shall cause to be mailed to the holders of the Convertible Stock at their last addresses as shown on the records of the Corporation or such transfer agent, at least ten (10) days prior to the record date specified in (A) below or twenty (20) 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, or Liquidation 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, or Liquidation.

(n) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment 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 Stock affected by such adjustment 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 Stock, furnish or cause to be furnished to such holder a similar certificate setting forth (i) such adjustments and readjustments; (ii) the Conversion Price for each series of Convertible Preferred Stock 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 each series of Convertible Preferred Stock.

(o) Stock to be Reserved. The Corporation will at all times reserve and keep available out of its authorized Common Stock, solely for the purpose of issuance upon the conversion of Convertible Stock as herein provided, such number of shares of Common Stock as shall then be issuable upon the conversion of all outstanding shares of Convertible Stock. The Corporation covenants that all shares of Common Stock which shall be so issued shall be duly and validly issued and fully paid and nonassessable and free from all taxes, liens and charges with respect to the issue thereof, and, without limiting the generality of the foregoing, the Corporation covenants that it will from time to time take all such action as may be requisite to assure that the par value per share of the Common Stock is at all times equal to or less than the lowest Conversion Price in effect at the time. The Corporation will take all such action as may be necessary to assure that all such shares of Common Stock may be so issued without violation of any applicable law or regulation, or of any requirement of any national securities exchange upon which the Common Stock may be listed. The Corporation will not take any action which results in any adjustment of a Conversion Price if the total number of shares of Common Stock issued and issuable after such action upon conversion of the Convertible Stock would exceed the total number of shares of Common Stock then authorized by these Article of Incorporation.

(p) Issue Tax. The issuance of certificates for shares of Common Stock upon conversion of Convertible Stock shall be made without charge to the holders thereof for any issuance tax in respect thereof, provided that the Corporation shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the holder of the Convertible Stock which is being converted.

(q) Closing of Books. The Corporation will at no time close its transfer books against the transfer of any Convertible Stock or of any shares of Common Stock issued or issuable upon the conversion of any shares of Convertible Stock in any manner which interferes with the timely conversion of such Convertible Stock, except as may otherwise be required to comply with applicable securities laws.

#### Section 5 Conversion by election or at an Qualified Public Offering

(a) All of the Convertible Stock then outstanding shall automatically be converted into shares of Common Stock in accordance with Section 4 upon the earlier to occur of (i) the Closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, (the "Securities Act"), covering the initial offer and sale of Common Stock to the public in which the aggregate proceeds to the Corporation equals or exceeds \$50,000,000 at a per share offering price of at

least \$10 (as adjusted for stock splits and dividends, recapitalizations, and similar transactions) (a “Qualified Public Offering”), and (ii) the election of the holders of a majority of the outstanding shares of Convertible Stock.

(b) On the date fixed for conversion, all rights with respect to the Convertible Stock so converted will terminate. 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 date of such conversion and the surrender of the certificate or certificates for Convertible 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 Common Stock issuable on such conversion in accordance with the provisions hereof and cash as provided in Section 4(b) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion. Upon any such conversion, no adjustment to the Conversion Prices shall be made for any accrued and unpaid dividends on the Convertible Stock converted.

(c) All certificates evidencing shares of Convertible Stock which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the date such certificates are so required to be surrendered, be deemed to have been retired and canceled and the shares of Convertible Stock represented thereby converted into Common Stock for all purposes as of the date of conversion set forth in Section 5(a) above, notwithstanding the failure of the holder or holders thereof to surrender such certificates.

#### Section 6 Mandatory Redemption.

(a) The Corporation shall, upon the election of holders of a majority of the outstanding shares of Convertible Stock on or after the fifth anniversary of the Original Issue Date of Series A Preferred Stock redeem all of the outstanding shares of Convertible Stock out of funds legally available therefor. The redemption shall be made in three equal annual installments.

(b) The redemption price shall be paid by the Corporation in cash and shall be in an amount with respect to each share of Convertible Stock equal to (i) \$1.50 per share with respect to the Series A Preferred Stock and \$2.52 per share with respect to the Series B Preferred Stock (subject to adjustment for any Recapitalization Events), plus (ii) an amount equal to all dividends accrued on such share of Convertible Stock since the Original Issue Date thereof which, pursuant to Section 1(c), have been added to and remain part of the Liquidation Price as of such time of determination, whether or not such unpaid dividends have been earned or declared or there are any unrestricted funds of the Corporation legally available for the payment of dividends (the “Redemption Price”).

(c) The Corporation shall provide each holder of Convertible Stock with a written notice of redemption (addressed to the holder at its address as it appears on the stock transfer books of the Corporation), not earlier than sixty (60) nor later than twenty (20) days before the date fixed for redemption. The notice of redemption shall specify (i) the class or part



of the class of shares to be redeemed; (ii) the date fixed for redemption; (iii) the Redemption Price; (iv) the place the holders of Convertible Stock may obtain payment of the Redemption Price upon surrender of their certificates; and (v) the last date prior to the date of redemption that the right of conversion of the Convertible Stock may be exercised. If funds are available on the date fixed for redemption, then whether or not shares are surrendered for payment of the Redemption Price, the shares shall no longer be outstanding and the holders thereof shall cease to be shareholders of the Corporation with respect to the shares redeemed on and after the date fixed for redemption and shall be entitled to receive the Redemption Price without interest upon the surrender of the share certificate. If less than all the shares represented by a share certificate is to be redeemed, the Corporation shall issue a new share certificate for the shares not redeemed.

(d) If on the date fixed for redemption funds of the Corporation legally available therefore shall be insufficient to redeem all the shares of Convertible Stock required to be redeemed as provided herein, funds to the extent legally available shall be used for such purpose and the Corporation shall effect such redemption pro rata according to the number of shares of Convertible Stock held by each holder subject to he redemption (a "Partial Redemption"). The Corporation shall make additional Partial Redemptions beginning thirty (30) days after the Redemption Date and each thirty (30) days thereafter until all outstanding shares of Convertible Stock have been redeemed.

THIRD: The amendment was duly adopted by the directors of the Corporation on Jan 31, 2000, without shareholder action, which was not required for effectiveness pursuant to Section 607.0602 of the Florida Business Corporation Act.

IN WITNESS WHEREOF, I subscribe my name this 31st day of Jan, 2000.

ATTEST:

Johnny Matthews  
Johnny Matthews, Secretary  
STATE OF FLORIDA  
COUNTY OF ESCAMBIA

Ray D. Russenberger  
Ray D. Russenberger, President/Director,  
CHAIRMAN OF THE BOARD

The foregoing instrument was acknowledged before me this 31 day of JAN, 2000, by Ray. D. Russenberger, as President of the corporation, who is personally known to me or who has produced a driver's license as identification and has not taken an oath.

Susan W Forehand  
NOTARY PUBLIC  
Commission No. \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**CERTIFICATE**

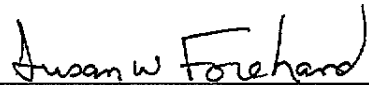
The undersigned secretary of Network Telephone Corporation does hereby certify that the foregoing Amendment to Amended and Restated Articles of Incorporation of Network Telephone Corporation was adopted unanimously by the Directors of said corporation and by a sufficient number of shareholder votes to constitute approval on the 31st day of January, 2000, by written consent in lieu of meeting.


IN WITNESS WHEREOF, I subscribe my name this 31st day of January, 2000.

  
\_\_\_\_\_  
**JOHNNY MATTHEWS, Secretary**

**STATE OF FLORIDA  
COUNTY OF ESCAMBIA**

The foregoing instrument was acknowledged before me this 31 day of JAN, 2000, by Johnny Matthews, as Secretary of the corporation, who is personally known to me or who has produced a driver's license as identification and has not taken an oath.

  
\_\_\_\_\_  
**NOTARY PUBLIC**  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

 Susan W Forehand  
My Commission CC707094  
Expires February 6, 2002