

S48770

ARTICLES OF MERGER
Merger Sheet

MERGING:

CONCENTRIC NETWORK CORPORATION, a Fl corp., #S48770

INTO

CONCENTRIC NETWORK CORPORATION, a Delaware corporation not
qualified in Florida.

File date: July 30, 1997

Corporate Specialist: Susan Payne

JUL -30'97 (WED) 14:26

RUBIN BAUM & LEVIN

TEL 30 374 7593

P. 001

S48770

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FROM: RUBIN BAUM LEVIN CONSTANT FRIEDMAN & BILZIN
075350000132

ACCT#:

CONTACT: KENDALL SPARKMAN

PHONE: (305) 374-7580

FAX #:

(305) 350-2446

NAME: CONCENTRIC NETWORK CORPORATION

AUDIT NUMBER.....H97000012454

DOC TYPE.....MERGER OR SHARE EXCHANGE

CERT. OF STATUS..0

PAGES..... 9

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DEL.METHOD.. FAX

EST.CHARGE.. \$122.50

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*Certificate of Merger filed in
Delaware on effective date,*

July 30, 1997.

[Signature]

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RUBIN BAUM & LEVIN



FLORIDA DEPARTMENT OF STATE
Sandra B. Mortham
Secretary of State

July 31, 1997

CONCENTRIC NETWORK CORPORATION
10590 N. TANTAU AVE.
CUPERTINO, CA 95014

SUBJECT: CONCENTRIC NETWORK CORPORATION
REF: S48770

We received your electronically transmitted document. However, the document has not been filed. Please make the following corrections and refax the complete document, including the electronic filing cover sheet.

The merger should also include Articles of Merger which should be prepared in compliance with 607.1105, Florida Statutes.

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) 487-6901.

Susan Payne
Senior Section Administrator

FAX Aud. #: H97000012454
Letter Number: 897A00039038

Division of Corporations - P.O. BOX 6327 - Tallahassee, Florida 32314

Fax Audit No. H97- 000012454

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ARTICLES OF MERGER

CONCENTRIC NETWORK CORPORATION, a Delaware corporation (the "Surviving Corporation"), and CONCENTRIC NETWORK CORPORATION, a Florida corporation (the "Non-surviving Corporation"), hereby state and certify as follows, for the purposes of effecting an agreement and plan of merger between them, pursuant to the requirements of Section 607.1105 of the Florida Business Corporation Act:

1. Attached as Exhibit A is the Agreement and Plan of Merger between the Non-surviving Corporation and the Surviving Corporation, which is hereby incorporated by such reference as if fully herein set forth (the "Plan of Merger").

2. The merger of the Non-surviving Corporation with and into the Surviving Corporation shall become effective on July 30, 1997 (the "Effective Date").

3. The Plan of Merger was adopted by the shareholders of the Non-surviving Corporation and of the Surviving Corporation on June 30, 1997.

4. Pursuant to the Plan of Merger, as of the Effective Date the separate existence of the Non-surviving Corporation shall cease and the Certificate of Incorporation of the Surviving Corporation as in effect immediately prior to the Effective Date shall continue in full force and effect as the Certificate of Incorporation of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

This instrument prepared by:

Michael G. Taylor, Esquire
Florida Bar No. 0083194
RUBIN BAUM LEVIN CONSTANT FRIEDMAN & BILZIN
2500 First Union Financial Center
200 South Biscayne Boulevard
Miami, Florida 33131

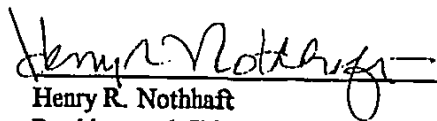
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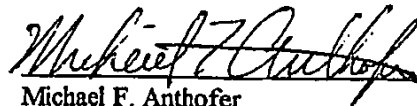
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SIGNATURES

Executed in Cupertino, California, on July 30 1997.



Henry R. Nothhaft
President and Chief Executive Officer



Michael F. Anthofer
Senior Vice President and Chief Financial Officer

RRC:ODMA\PCDOC\SQL\21643678

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EXHIBIT "A"

AGREEMENT AND PLAN OF MERGER
OF CONCENTRIC NETWORK CORPORATION
A DELAWARE CORPORATION,
AND
CONCENTRIC NETWORK CORPORATION
A FLORIDA CORPORATION

THIS AGREEMENT AND PLAN OF MERGER dated as of July ²⁹~~30~~, 1997 (the "Agreement") is between Concentric Network Corporation, a Delaware corporation ("CNC Delaware"), and Concentric Network Corporation, a Florida corporation ("CNC Florida"). CNC Delaware and CNC Florida are sometimes referred to herein as the "Constituent Corporations."

RECITALS

A. CNC Delaware is a corporation duly organized and existing under the laws of the State of Delaware and has 41,000,000 shares, \$0.01 par value, of authorized capital stock of which 24,000,000 shares are designated "Common Stock", 1,000,000 are designated "Series A Preferred Stock", 915,156 are designated "Series B Preferred Stock", 933,334 are designated "Series C Preferred Stock", and 4,533,334 are designated "Series D Preferred Stock", and 9,618,176 shares are undesignated Preferred Stock. As of July ³⁰~~31~~, 1997, 1,000 shares of Common Stock were issued and outstanding, all of which are held by CNC Florida, and no shares of Preferred Stock were issued and outstanding.

B. CNC Florida is a corporation duly organized and existing under the laws of the State of Florida and has 615,000,000 shares, \$0.01 par value, of authorized capital stock of which 360,000,000 shares are designated "Common Stock", 15,000,000 shares are designated "Series A Preferred Stock", 13,727,328 are designated "Series B Preferred Stock", 14,000,000 shares are designated "Series C Preferred Stock", and 68,000,000 shares are designated "Series D Preferred Stock", and 144,272,672 shares are undesignated Preferred Stock. As of July ³⁰~~31~~, 1997, 30,412,743 shares of Common Stock, 13,703,542 shares of Series A Preferred Stock, 6,504,520 shares of Series B Preferred Stock, 13,923,638 shares of Series C Preferred Stock and 43,998,714 shares of Series D Preferred Stock, were issued and outstanding.

C. The Board of Directors of CNC Florida has determined that, for the purpose of effecting the reincorporation of CNC Florida in the State of Delaware, it is advisable and in the best interests of CNC Florida and its shareholders that CNC Florida merge with and into CNC Delaware upon the terms and conditions herein provided.

D. The respective Boards of Directors and shareholders of CNC Delaware and CNC Florida have approved this Agreement and have directed that this Agreement be executed by the undersigned officers.

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, CNC Delaware and CNC Florida hereby agree, subject to the terms and conditions hereinafter set forth, as follows:

I

MERGER

1.1 *Merger.* In accordance with the provisions of this Agreement, the Delaware General Corporation Law and the Florida Business Corporation Act, CNC Florida shall be merged with and into CNC Delaware (the "Merger"), the separate existence of CNC Florida shall cease and CNC Delaware shall survive the Merger and shall continue to be governed by the laws of the State of Delaware, and CNC Delaware shall be, and is herein sometimes referred to as, the "Surviving Corporation," and the name of the Surviving Corporation shall be Concentric Network Corporation.

1.2 *Filing and Effectiveness.* The Merger shall become effective when the following actions shall have been completed:

(a) This Agreement and the Merger shall have been adopted and approved by the shareholders of each Constituent Corporation in accordance with the requirements of the Delaware General Corporation Law and the Florida Business Corporation Act;

(b) All of the conditions precedent to the consummation of the Merger specified in this Agreement shall have been satisfied or duly waived by the party entitled to satisfaction thereof; and

(c) An executed Certificate of Merger or an executed, acknowledged and certified counterpart of this Agreement meeting the requirements of the Delaware General Corporation Law shall have been filed with the Secretary of State of the State of Delaware.

The date and time when the Merger shall become effective, as aforesaid, is herein called the "Effective Date of the Merger."

1.3 *Effect of the Merger.* Upon the Effective Date of the Merger, the separate existence of CNC Florida shall cease and CNC Delaware, as the Surviving Corporation, (i) shall continue to possess all of its assets, rights, powers and property as constituted immediately prior to the Effective Date of the Merger, (ii) shall be subject to all actions previously taken by its and CNC Florida's Boards of Directors, (iii) shall succeed, without other transfer, to all of the assets, rights, powers and property of CNC Florida in the manner as more fully set forth in Section 259 of the Delaware General Corporation Law, (iv) shall continue to be subject to all of its debts, liabilities and obligations as constituted immediately prior to the Effective Date of the Merger, and (v) shall succeed, without other transfer, to all of the debts, liabilities and obligations of CNC Florida in the same manner as if CNC Delaware had itself incurred them, all as more fully provided under the applicable provisions of the Delaware General Corporation Law and the Florida Business Corporation Act.

II

CHARTER DOCUMENTS, DIRECTORS AND OFFICERS

2.1 *Certificate of Incorporation.* Upon the effectiveness of the Merger, the Certificate of Incorporation of CNC Delaware as in effect immediately prior to the effective Date of the Merger shall continue in full force and effect as the Certificate of Incorporation of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.2 *Bylaws.* The Bylaws of CNC Delaware as in effect immediately prior to the Effective Date of the Merger shall continue in full force and effect as the Bylaws of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.3 *Directors and Officers.* The directors and officers of CNC Delaware immediately prior to the Effective Date of the Merger shall be the directors and officers of the Surviving Corporation until their respective successors shall have been duly elected and qualified or until as otherwise provided by law, or the Certificate of Incorporation of the Surviving Corporation or the Bylaws of the Surviving Corporation.

III

MANNER OF CONVERSION OF SECURITIES

3.1 *CNC Florida Common Stock.* Upon the Effective Date of the Merger, each fifteen shares of CNC Florida Common Stock, \$0.01 par value, outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be changed and converted into and exchanged for one fully paid and nonassessable share of Common Stock, \$0.001 par value, respectively, of the Surviving Corporation.

3.2 *CNC Florida Preferred Stock.* Upon the Effective Date of the Merger, each fifteen shares of CNC Florida Series A Preferred Stock, \$0.01 par value, Series B Preferred Stock, \$0.01 par value, Series C Preferred Stock \$0.01 par value and Series D Preferred Stock \$0.01 par value, issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be changed and converted into and exchanged for one fully paid and nonassessable share of Series A Preferred Stock, \$0.001 par value, Series B Preferred Stock, \$0.001 par value Series C Preferred Stock, \$0.001 par value or Series D Preferred Stock, \$0.001 par value, respectively, of the Surviving Corporation.

3.3 *CNC Florida Options, Warrants and Convertible Securities.* Upon the Effective Date of the Merger, the Surviving Corporation shall assume and continue the obligations of CNC Florida under option plans of CNC Florida and all other employee benefit plans of CNC Florida, including outstanding stock options of CNC Florida. Each outstanding and unexercised option, warrant or other right to purchase or security convertible into CNC Florida Common Stock or Preferred Stock shall become an

option, warrant, right to purchase or a security convertible into the Surviving Corporation's Common Stock or Preferred Stock, respectively, on the basis of one share of the Surviving Corporation's Common Stock or Preferred Stock for each fifteen shares of CNC Florida Common Stock or Preferred Stock, respectively, issuable pursuant to any such option, warrant, right to purchase or convertible security, on the same terms and conditions and at an exercise price per share equal to fifteen times the exercise price applicable to such CNC Florida option, warrant, right to purchase or a security convertible at the Effective Date of the Merger.

A number of shares of the Surviving Corporation's Common Stock or Preferred Stock, as the case may be, shall be reserved for issuance upon the exercise of options, warrants, stock purchase rights or convertible securities equal to the number of shares of CNC Florida Common Stock and Preferred Stock so reserved immediately prior to the Effective Date of the Merger.

3.4 *Fractional Shares.* No fractional shares shall be issued by the Surviving Corporation upon the conversion of any share of Common Stock, Preferred Stock or any stock option, warrant, stock purchase right or convertible security of CNC Florida into Common Stock, Preferred Stock or any stock option, warrant, stock purchase right or convertible security, respectively, of the Surviving Corporation. If the conversion would result in the issuance of a fractional share of Common Stock, Preferred Stock or any stock option, warrant, stock purchase right or convertible security, the Surviving Corporation shall, in lieu of issuing the fractional share, pay the holder otherwise entitled to such fraction a sum in cash equal to the fair market value of such fraction on the date of conversion (as determined in good faith by the Board of Directors of the Corporation).

3.5 *CNC Delaware Common Stock.* Upon the Effective Date of the Merger, each share of Common Stock, \$.001 par value, of CNC Delaware issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by CNC Delaware, the holder of such shares or any other person, be canceled and returned to the status of authorized but unissued shares.

3.6 *Exchange of Certificates.* After the Effective Date of the Merger, each holder of an outstanding certificate representing shares of CNC Florida Common Stock or Preferred Stock may, at such shareholder's option, surrender the same for cancellation to the transfer agent and registrar for the Common Stock of the Surviving Corporation, as exchange agent (the "Exchange Agent"), and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of the appropriate class and series of the Surviving Corporation's capital stock into which the surrendered shares were converted as herein provided. Until so surrendered, each outstanding certificate theretofore representing shares of CNC Florida capital stock shall be deemed for all purposes to represent the number of whole shares of the appropriate class and series of the Surviving Corporation's capital stock into which such shares of CNC Florida capital stock were converted in the Merger.

The registered owner on the books and records of the Surviving Corporation or the Exchange Agent of any shares of stock represented by such outstanding certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation or the Exchange Agent, have and be entitled to exercise any voting and other rights with respect to and

to receive dividends and other distributions upon the shares of capital stock of the Surviving Corporation represented by such outstanding certificate as provided above.

Each certificate representing capital stock of the Surviving Corporation so issued in the Merger shall bear the same legends, if any, with respect to the restrictions on transferability as the certificates of CNC Florida so converted and given in exchange therefor, unless otherwise determined by the Board of Directors of the Surviving Corporation in compliance with applicable laws.

If any certificate for shares of CNC Delaware stock is to be issued in a name other than that in which the certificate surrendered in exchange therefor is registered, it shall be a condition of issuance thereof that the certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer, that such transfer otherwise be proper and that the person requesting such transfer pay to CNC Delaware or the Exchange Agent any transfer or other taxes payable by reason of the issuance of such new certificate in a name other than that of the registered holder of the certificate surrendered or establish to the satisfaction of CNC Delaware that such tax has been paid or is not payable.

IV

GENERAL

4.1 *Covenants of CNC Delaware.* CNC Delaware covenants and agrees that it will, on or before the Effective Date of the Merger:

(a) Qualify to do business as a foreign corporation in the State of California and in connection therewith irrevocably appoint an agent for service of process as required under the provisions of Section 2105 of the California Corporations Code;

(b) File any and all documents with the appropriate Florida tax authorities necessary for the assumption by CNC Delaware of all of the franchise tax liabilities of CNC Florida; and

(c) Take such other actions as may be required by the Florida Business Corporation Act.

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

4.3 *Abandonment.* At any time before the filing of this Agreement with the Secretary of State of the State of Delaware, this Agreement may be terminated and the Merger may be abandoned for any reason whatsoever by the Board of Directors of either CNC Florida or CNC Delaware, or both, notwithstanding the approval of this Agreement by the shareholders of CNC Florida or by the sole stockholder of CNC Delaware, or by both.

4.4 *Amendment.* The Boards of Directors of the Constituent Corporations may amend this Agreement at any time prior to the filing of this Agreement (or certificate in lieu thereof) with the Secretaries of State of the States of Florida and Delaware, provided that an amendment made subsequent to the adoption of this Agreement by the shareholders of either Constituent Corporation shall not: (1) alter or change the amount or kind of shares, securities, cash, property and/or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of such Constituent Corporation, (2) alter or change any term of the Certificate of Incorporation of the Surviving Corporation to be effected by the Merger, or (3) alter or change any of the terms and conditions of this Agreement if such alteration or change would adversely affect the holders of any class of shares or series thereof of such Constituent Corporation.

4.5 *Registered Office.* The registered office of the Surviving Corporation in the State of Delaware is located at 15 East North Street, Dover, Delaware 19901, County of Kent and Incorporation Services Ltd. is the registered agent of the Surviving Corporation at such address.

4.6 *Agreement.* Executed copies of this Agreement will be on file at the principal place of business of the Surviving Corporation at 10590 N. Tantau Avenue, Cupertino, California 95014 and copies thereof will be furnished to any shareholder of either Constituent Corporation, upon request and without cost.

4.7 *Governing Law.* This Agreement shall in all respects be construed, interpreted and enforced in accordance with and governed by the laws of the State of Delaware and, so far as applicable, the merger provisions of the Florida Business Corporation Act.

4.8 *Counterparts.* In order to facilitate the filing and recording of this Agreement, the same may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

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IN WITNESS WHEREOF, this Agreement and Plan of Merger, having first been approved by resolutions of the Boards of Directors of CNC Delaware and CNC Florida, is hereby executed on behalf of each of such two corporations and attested by their respective officers thereunto duly authorized.

CONCENTRIC NETWORK CORPORATION
a Delaware corporation

By: Henry R. Nothhaft
Henry R. Nothhaft
President and Chief Executive Officer

ATTEST:

Michael F. Anthofer
Michael F. Anthofer
Senior Vice President and Chief Financial Officer

CONCENTRIC NETWORK CORPORATION
a Florida corporation

By: Henry R. Nothhaft
Henry R. Nothhaft
President and Chief Executive Officer

ATTEST:

Michael F. Anthofer
Michael F. Anthofer
Senior Vice President and Chief Financial Officer

RRC:ODMA/PCDOCS/SQL2/1643678

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(850) 922-4000

FAX #:

FROM: RUBIN BAUM LEVIN CONSTANT FRIEDMAN & BILZIN
075350000132

ACCT#:

CONTACT: KENDALL SPARKMAN
PHONE: (305) 374-7580
(305) 350-2446

FAX #:

NAME: CONCENTRIC NETWORK CORPORATION
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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

SECOND AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF CONCENTRIC NETWORK CORPORATION

The undersigned, Henry R. Nothhaft, being the President and Chief Executive Officer of Concentric Network Corporation, a Florida corporation (the "Corporation"), hereby states as follows on behalf of the Corporation:

1. The name of the corporation is Concentric Network Corporation (the "Corporation"). The original Articles of Incorporation were filed with the Secretary of State of Florida on April 30, 1991. The original Articles of Incorporation were amended and restated on April 7, 1995, and five amendments were filed thereafter, on October 2, 1995, December 7, 1995, December 12, 1995, December 18, 1995, and August 5, 1996.

2. These Second Amended and Restated Articles of Incorporation (the "Second Restatement") were approved by the Directors of the Corporation at a Special Meeting of the Board of Directors held on June 6, 1997, and submitted for shareholder approval.

3. The Second Restatement was approved by the requisite vote of the shareholders of the Corporation at an annual meeting of shareholders held June 30, 1997. The number of affirmative votes cast in favor of the Second Restatement was sufficient for approval by the holders of the Class A Common Stock, Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock voting together as one combined class.

4. The holders of Class A Common Stock were entitled to vote as a separate class on the Second Restatement. The number of affirmative votes cast by the holders of the Class A Common Stock at an annual meeting of shareholders held June 30, 1997, in favor of the Second Restatement was sufficient for approval by the holders of Class A Common Stock voting as a separate class of Common Stock.

The holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock were entitled to vote as a combined class of Preferred Stock on the Second Restatement. The number of affirmative votes cast by the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock at an annual meeting of shareholders held June 30, 1997, in favor of the Second Restatement was sufficient for approval by the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock voting together as a combined class of Preferred Stock.

5. The holders of Series A Preferred Stock were entitled to vote as a separate class on the Second Restatement. The number of affirmative votes cast by the holders of the Series A Preferred Stock at an annual meeting of shareholders held June 30, 1997, in favor of the Second Restatement was sufficient for approval by the holders of Series A Preferred Stock voting as a separate class.

This instrument prepared by:

Michael G. Taylor, Esquire
Florida Bar No. 0083194
Rubin Baum Levin Constant Friedman & Bilsin
2500 First Union Financial Center
200 South Biscayne Boulevard
Miami, Florida 33131
Telephone: (305) 374-7580

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6. The holders of Series B Preferred Stock were entitled to vote as a separate class on the Second Restatement. The number of affirmative votes cast by the holders of the Series B Preferred Stock at an annual meeting of shareholders held June 30, 1997, in favor of the Second Restatement was sufficient for approval by the holders of Series B Preferred Stock voting as a separate class.

7. The holders of Series C Preferred Stock were entitled to vote as a separate class on the Second Restatement. The number of affirmative votes cast by the holders of the Series C Preferred Stock at an annual meeting of shareholders held June 30, 1997, in favor of the Second Restatement was sufficient for approval by the holders of Series C Preferred Stock voting as a separate class.

8. The holders of Series D Preferred Stock were entitled to vote as a separate class on the Second Restatement. The number of affirmative votes cast by the holders of the Series D Preferred Stock at an annual meeting of shareholders held June 30, 1997, in favor of the Second Restatement was sufficient for approval by the holders of Series D Preferred Stock voting as a separate class.

9. Upon, and as of the effective date of this Second Restatement, each share of Class A Common Stock issued or issuable upon the conversion, exercise or exchange of any outstanding security shall be redesignated Common Stock, and each certificate representing such shares of such Class A Common Stock shall be deemed to represent shares of Common Stock without further exchange or other action.

10. The Amended and Restated Articles of Incorporation of the Corporation, as amended through the Fifth Amendment, dated August 5, 1996, are hereby amended and restated to read in their entirety as follows:

ARTICLE ONE

The name of the Corporation is Concentric Network Corporation (the "Corporation").

ARTICLE TWO

The principal office of the Corporation is located at 10590 North Tantau Avenue, Cupertino, California 95014.

ARTICLE THREE

The street address of the registered office of the Corporation is located at 1201 Hays Street, Suite 105, Tallahassee, Florida 32301. The name of the registered agent of the Corporation at that address is the Prentice-Hall Corporation System, Inc.

Fax Audit No. H97-000012450

ARTICLE FOUR

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Business Corporation Act of the State of Florida.

ARTICLE FIVE

1. Authorized Capital. The total number of shares of all classes of capital stock which the Corporation has authority to issue is 615,000,000 shares, par value \$.01 per share, consisting of (i) 360,000,000 shares of Common Stock, par value \$.01 per share (the "Common Stock") and (ii) 255,000,000 shares of Preferred Stock, par value \$.01 per share (the "Preferred Stock"). The Board of Directors of the Corporation by vote of a majority of its members, is authorized in accordance with and subject to limitations prescribed by law and the provisions of these Second Amended and Restated Articles of Incorporation (the "Second Restatement"), to provide by resolution for the issuance of additional shares of Preferred Stock in series, to establish from time to time the number of shares to be included in each such series and to fix the designations, powers, preferences and rights of the shares of each such series and the qualifications, limitation or restrictions thereof.

For any series of Preferred Stock having issued and outstanding shares, the Board of Directors is further authorized to increase or decrease (but not below the number of shares of such series then outstanding) the number of shares of such series that were originally fixed by the Board of Directors, but such increase or decrease shall be subject to the limitations and restrictions stated in the resolution of the Board of Directors originally fixing the number of shares of such series, if any. If the number of shares of any series is so decreased, then the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series.

2. Terms of the Common Stock.

2.1 Dividends. Subject to the rights of the Preferred Stock described in Section 3.2 of this Article Five, (i) dividends may be paid on the Common Stock as and when declared by the Board of Directors of the Corporation out of the assets or funds of the Corporation legally available therefor.

2.2 Ratable Treatment. The Corporation shall not pay a dividend, make a distribution (as defined in Section 3.10), or effect a stock split, combination, reclassification or recapitalization, in each case, with respect to its outstanding shares of Common Stock, unless all of its outstanding shares of Common Stock participate on the same basis (except in the case of a reclassification or recapitalization, with respect to voting rights) in such dividend, distribution, split, combination, reorganization, reclassification or recapitalization.

2.3 Voting Rights. Each holder of Common Stock shall be entitled to one vote for each share of Common Stock held. Except as required by law, or as otherwise set forth in this Article Five or as provided by the Board of Directors in its designation of any series of Preferred Stock pursuant to Section 3.1 of this Article Five, the holders of shares of Preferred Stock and Common Stock shall vote

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together as a single class and not as separate classes. The holders of the Common Stock and Series C Preferred Stock shall vote as a class to elect the members of the Board of Directors (the "Common Directors"), other than (x) the Series A Directors (as defined below), (y) the Series B Director (as defined below) and (z) the Series D Directors (as defined below).

2.4 Liquidation Rights. Subject to the rights of the holders of the Preferred Stock described in Section 3.5 of this Article Five and any other prior and/or superior rights of such holders as provided by law, upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, the holders of Common Stock shall be entitled to receive an amount equal to the Aggregate Preference Amount (as defined in Section 3.5) payable out of any remaining funds and other assets of the Corporation to be distributed. Such funds and other assets shall be distributed to holders of the Common Stock on a ratable basis. After the payment to the holders of Common Stock of an amount equal to the Aggregate Preference Amount, the remaining assets of the Corporation available for distribution to shareholders shall be distributed ratably to the holders of Common Stock (treating for purposes of this calculation all shares of convertible Preferred Stock as having been converted into Common Stock).

2.5 Fractional Shares. A fractional share of Common Stock shall be entitled to an equivalent fractional percentage of all of the rights and privileges associated with a whole share of such Common Stock. Any reference to a share of Common Stock in the Second Restatement shall be a reference to a whole or fractional share, as applicable, of Common Stock.

3. Terms of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock.

3.1 Designation and Number. There are hereby designated four series of Preferred Stock to be known as "Series A Preferred Stock," "Series B Preferred Stock," "Series C Preferred Stock" and "Series D Preferred Stock." The number of shares constituting the Series A Preferred Stock shall be 15,000,000. The number of shares constituting the Series B Preferred Stock shall be 13,727,328. The number of shares constituting the Series C Preferred Stock shall be 14,000,000. The number of shares constituting the Series D Preferred Stock shall be 68,000,000.

3.2 Dividends.

(a) The Corporation shall not declare or pay any dividend or make any other distribution to the holders of the Common Stock unless the holders of the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock and the Series D Preferred Stock participate with the holders of the Common Stock in any such dividend or distribution, and a dividend or distribution is prior thereto or simultaneously therewith declared or paid, as the case may be, to the holders of the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock and the Series D Preferred Stock as set forth in the immediately succeeding sentence. In the case of a dividend or distribution to the holders of the Common Stock, the holder of each share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock shall receive the same dividend or distribution that such holder would be entitled to receive if all of the Series A Preferred

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Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock held by such holder were exchanged for Common Stock at the applicable Conversion Ratio (as defined below).

(b) The Corporation shall not declare or pay any dividend or make any other distribution to the holders of the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock or the Series D Preferred Stock, respectively, unless the holders of each of the other Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock and the Series D Preferred Stock, as the case may be, participate with the holders of such Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, as the case may be, in any such dividend or distribution, and a dividend or distribution is prior thereto or simultaneously therewith declared or paid, as the case may be, to the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, as the case may be, as set forth in the immediately succeeding sentence. In the case of a dividend or distribution to the holders of the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock or the Series D Preferred Stock, as the case may be (the "Dividend"), the holder of each share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock shall receive the same dividend or distribution that such holder would be entitled to receive if (i) the Dividend were deemed to have been made to holders of Common Stock, and (ii) all of the outstanding Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock were converted into Common Stock at the applicable Conversion Ratio.

3.3 Voting Rights.

(a) In addition to any voting rights provided by law, the holder of each share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock shall be entitled to vote on all matters and shall be entitled to the number of votes equal to the number of votes a holder of the shares of Common Stock, whole or fractional, into which such share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock is convertible pursuant to Section 3.6 of this Article Five is entitled to, at the record date for the determination of the shareholders entitled to vote on such matters or, if no such record date is established, at the date such vote is taken or any written consent of shareholder is solicited; provided, that the holders of Series A Preferred Stock shall not be entitled to vote on any matters relating to the election of the Common Directors, the Series B Director or the Series D Directors, the holders of Series B Preferred Stock shall not be entitled to vote on any matters relating to the election of the Common Directors, the Series A Directors or the Series D Directors, the Series C Preferred Stock shall not be entitled to vote on any matters relating to the election of the Series A Directors, Series B Director or the Series D Directors, and the Series D Preferred Stock shall not be entitled to vote on any matters relating to the election of the Series A Directors, Series B Director or Common Directors. The holders of Series A Preferred Stock shall be entitled to vote as a class to elect the Series A Directors (as defined below) in accordance with Section 3.3(b) hereof; the holders of Series B Preferred Stock shall be entitled to vote as a class to elect the Series B Director (as defined below) in accordance with Section 3.3(b) hereof; and the holders of the Series D Preferred Stock shall be entitled to vote as a class to elect the Series D Directors (as defined below) in accordance with Section 3.3(b) hereof.

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(b) Series A Directors, Series B Director and Series D Directors.

(i) The holders of Series A Preferred Stock shall be entitled to vote as a class to elect two persons to the Corporation's Board of Directors. Each person elected to be a director by the holders of Series A Preferred Stock pursuant to this Section 3.3(b)(i) shall be referred to as a "Series A Director."

(ii) The holders of Series B Preferred Stock shall be entitled to vote as a class to elect one person to the Corporation's Board of Directors. The person elected to be a director by the holders of Series B Preferred Stock pursuant to this Section 3.3(b)(ii) shall be referred to as the "Series B Director."

(iii) So long as at least 31,900,000 shares of Series D Preferred Stock are outstanding, the holders of Series D Preferred Stock shall be entitled to vote as a class to elect four persons to the Corporation's Board of Directors. In the event that less than 31,900,000 shares of Series D Preferred Stock are outstanding, the holders of the Series D Preferred Stock shall be entitled to vote as a class to elect three persons to the Corporation's Board of Directors. In the event the Corporation's Board of Directors is increased to 15 or more persons and at least 31,900,000 shares of Series D Preferred Stock are outstanding, the holders of Series D Preferred Stock shall be entitled to vote as a class to elect five persons to the Corporation's Board of Directors. Each person elected to be a director by the holders of Series D Preferred Stock pursuant to this Section 3.3(b)(iii) shall be referred to as a "Series D Director."

(iv) At any meeting (or in a written consent in lieu thereof) held for the purpose of electing directors, the presence in person or by proxy (or the written consent) of the holders of a majority of the shares of Series A Preferred Stock, Series B Preferred Stock or Series D Preferred Stock then outstanding shall constitute a quorum for the election of the Series A Directors, the Series B Director or the Series D Directors, respectively. Series A Directors may be removed only by vote or written consent of the holders of the Series A Preferred Stock. The Series B Director may be removed only by the vote or written consent of the holders of the Series B Preferred Stock. The Series D Directors may only be removed by the vote or written consent of the holders of the Series D Preferred Stock.

3.4 Reacquired Shares. Any shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock converted, purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof. None of such shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock shall be reissued by the Corporation.

3.5 Liquidation, Dissolution or Winding Up.

(a) Upon the voluntary or involuntary dissolution, liquidation or winding up (each, a "Liquidation") of the Corporation, the holders of the shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock shall be entitled to

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receive and to be paid out of the assets of the Corporation available for distribution to its shareholders, before any payment or distribution shall be made on any Junior Stock (as defined in Section 3.10), the applicable Preferred Distribution Preference Per Share (as defined below) with respect to each outstanding share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock.

(b) If upon any such Liquidation, whether voluntary or involuntary, the assets to be distributed to the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock shall be insufficient to permit payment of the full amount of the Preferred Distribution Preference Per Share with respect to each share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock, then the entire assets of the Corporation to be distributed among the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock shall be distributed among such holders pro rata in proportion to the full amounts to which they would respectively be entitled.

(c) After the payment to the holders of shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock of the full amount of the liquidating distribution to which they are entitled under this Section 3.5 and to any other holders of shares of Preferred Stock in accordance with the terms provided by the resolution pursuant to which such Preferred Stock is issued (collectively, the "Aggregate Preference Amount"), an amount equal to the Aggregate Preference Amount shall be distributed ratably to the holders of the Common Stock out of the assets of the Corporation. After the payment to the holders of Common Stock of an amount equal to the Aggregate Preference Amount, the remaining assets of the Corporation available for distribution to shareholders shall be distributed ratably to the holders of Common Stock (treating for purposes of this calculation all shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock as having been converted into Common Stock) and to any other holders of shares of Preferred Stock in accordance with the terms provided by the resolution pursuant to which such Preferred Stock is issued.

(d) Neither the consolidation, merger or other business combination of the Corporation with or into any other Person or Persons nor the sale of all or substantially all the assets of the Corporation shall be deemed to be a Liquidation for purposes of this Section 3.5 of this Article Five.

(e) "Preferred Distribution Preference Per Share" shall mean, (i) with respect to each share of Series A Preferred Stock, \$.7355 (subject to adjustment for any stock splits or recombinations of the Series A Preferred Stock), (ii) with respect to each share of Series B Preferred Stock, \$.7331 per share (subject to adjustment for any stock splits or recombinations of the Series B Preferred Stock), (iii) with respect to each share of Series C Preferred Stock, \$1.82 per share (subject to adjustment for any stock splits or recombinations of the Series C Preferred Stock) and (iv) with respect to each share of Series D Preferred Stock, \$1.36 per share (subject to adjustment for any stock splits or recombinations of the Series D Preferred Stock).

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3.6 Conversion.

(a) Each share of Series A Preferred Stock, each share of Series B Preferred Stock, each share of Series C Preferred Stock and each share of Series D Preferred Stock issued or issuable with respect to the exercise or conversion of any Series A Equivalents, Series B Equivalents, Series C Equivalents or Series D Equivalents (as defined in Section 3.9) shall automatically be converted into the applicable number of shares of Common Stock at the then-effective applicable Conversion Ratio (as defined in Section 3.10) immediately prior to a Qualified Public Offering. In addition, at the option of the holder of any Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, such holder shall have the right, at any time and from time to time prior to a Qualified Public Offering, by written notice to the Corporation, to convert any share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock owned by such holder into the applicable number of shares of Common Stock at the then-effective applicable Conversion Ratio. A "Qualified Public Offering" shall mean the sale of shares of the Company's Common Stock in a bona fide, firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least \$15,000,000 of gross proceeds to the Corporation before deducting underwriting discounts and commissions and offering expenses, and reflecting a Corporation Valuation (as defined below) of at least \$50,000,000 (or such lesser amount as the holders of a majority of the outstanding Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock, each voting as separate classes, otherwise agree). The term "Corporation Valuation" means, with respect to any public offering of Common Stock, the amount obtained by multiplying the total number of shares of Common Stock outstanding immediately prior to such public offering (treating for purposes of this calculation all Common Stock Equivalents (as defined in Section 3.10) as having been converted, exchanged or exercised) multiplied by the per share offering price for such public offering.

(b) The Corporation shall at all times reserve and keep available for issuance upon the conversion of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock, free from any preemptive rights, such number of its authorized but unissued shares of Common Stock as will from time to time be necessary to permit the conversion of all outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock into shares of Common Stock, and shall take all action required to increase the authorized number of shares of Common Stock if necessary to permit the conversion of all outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock. For purposes of this paragraph (b) of this Section 3.6 of this Article Five, all Series A Equivalents, Series B Equivalents, Series C Equivalents and Series D Equivalents (as defined in Section 3.9) shall be deemed, at any given time, to be fully exercised, converted or exchanged for shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, respectively.

(c) The Conversion Ratio (as defined in Section 3.10) applicable to the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock, respectively, will be subject to adjustment from time to time as follows:

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(i) In case the Corporation shall at any time or from time to time after the Filing Date (as defined in Section 3.10) (A) pay any dividend, or make any distribution on the outstanding shares of Common Stock in shares of Common Stock, (B) subdivide the outstanding shares of Common Stock, (C) combine the outstanding shares of Common Stock into a smaller number of shares or (D) issue by reclassification of the shares of Common Stock any shares of capital stock of the Corporation, then, and in each such case, the applicable Conversion Ratio in effect immediately prior to such event or the record date therefor, whichever is earlier, shall be adjusted so that the holder of any shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock thereafter convertible into Common Stock pursuant to this Section 3.6 of this Article Five shall be entitled to receive the number and type of shares of Common Stock or other securities of the Corporation which such holder would have owned or have been entitled to receive after the happening of any of the events described above, had such shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock been converted into Common Stock immediately prior to the happening of such event or the record date therefor, whichever is earlier. An adjustment made pursuant to this clause (i) shall become effective (x) in the case of any such dividend or distribution, immediately after the close of business on the record date for the determination of holders of shares of Common Stock entitled to receive such dividend or distribution, or (y) in the case of such subdivision, reclassification or combination, at the close of business on the day upon which such corporate action becomes effective.

(ii) Except with respect to the Excluded Securities (as defined below) applicable in the case of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, respectively, in case the Corporation shall issue any shares of Common Stock or Common Stock Equivalents (as defined in Section 3.10) after the Filing Date, at a price per share (or having a conversion or exercise price per share) less than the then-applicable Preferred Distribution Preference Per Share, then in each such case, the applicable Conversion Ratio shall be adjusted by multiplying (A) the applicable Conversion Ratio in effect on the day immediately prior to the date of issuance of such shares (or Common Stock Equivalents) by (B) a fraction, the numerator of which shall be the sum of (1) the number of shares of Common Stock outstanding on such date prior to such issuance and (2) the number of additional shares of Common Stock issued (or issuable upon conversion, exchange or exercise of such Common Stock Equivalents), and the denominator of which shall be the sum of (x) the number of shares of Common Stock outstanding on such date prior to such issuance and (y) the number of shares of Common Stock purchasable at the then-applicable Preferred Distribution Preference Per Share upon payment of the aggregate consideration receivable by the Corporation for the total number of shares of Common Stock (or such Common Stock Equivalents) so issued. An adjustment made pursuant to this clause (ii) shall be made on the next Business Day following the date on which any such issuance is made and shall be effective retroactively to the close of business on the date of such issuance. For purposes of this clause (ii), the aggregate consideration receivable by the Corporation in connection with the issuance of shares of Common Stock or of Common Stock Equivalents shall be deemed to be equal to the sum of the aggregate offering price (before deduction of underwriting discounts or commissions and expenses payable to third parties, if any) of all such Common Stock and/or Common Stock Equivalents plus the minimum aggregate amount, if any, payable upon conversion, exchange or exercise of any such Common Stock Equivalents. The issuance or reissuance of any shares of Common Stock (whether treasury shares or newly issued shares) pursuant to a dividend or distribution

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on, or subdivision, combination or reclassification of, the outstanding shares of Common Stock requiring an adjustment in the Conversion Ratio pursuant to clause (i) of this paragraph (c) of this Section 3.6 of this Article Five shall not be deemed to constitute an issuance of Common Stock or Common Stock Equivalents by the Corporation to which this clause (ii) applies. Upon the expiration of any unconverted, unexchanged or unexercised Common Stock Equivalents for which an adjustment has been made pursuant to this clause (ii), the adjustments shall forthwith be reversed to effect such Conversion Ratio as would have been in effect at the time of such expiration or such termination had such Common Stock Equivalents, to the extent outstanding immediately prior to such expiration or termination, never been issued. "Excluded Securities" shall mean all shares of (w) Common Stock or Common Stock Equivalents issued and outstanding on Filing Date, (x) Common Stock issued upon the conversion or exercise of any such Common Stock Equivalent, (y) Common Stock or Common Stock Equivalents issued pursuant to the Corporation's 1993 Incentive Stock Option Plan, as amended, the 1995 Stock Incentive Plan For Employees and Consultants, as amended, and the non-plan options as in effect through the Filing Date, (z) up to a total of 16,500,000 shares of Common Stock to be issued pursuant to the Corporation's Amended and Restated 1996 Stock Plan or any other stock plan adopted by the Corporation's Board of Directors, and (aa) Common Stock or Common Stock Equivalents issued in connection with any bona fide loans or lease financings approved by the Corporation's Board of Directors.

(iii) For purposes of this paragraph (c) of this Section 3.6 of this Article Five, the number of shares of Common Stock at any time outstanding shall mean the aggregate of all shares of Common Stock then outstanding (other than any shares of Common Stock then owned or held by or for the account of the Corporation), treating for purposes of this calculation all Common Stock Equivalents as having been converted, exchanged or exercised.

(iv) If the Corporation shall take a record of the holders of its Common Stock for the purpose of entitling them to receive a dividend or other distribution and shall thereafter, and before such dividend or distribution is paid or delivered to shareholders entitled thereto, legally abandon its plan to pay or deliver such dividend or distribution, then no adjustment in the Conversion Ratio then in effect shall be made by reason of the taking of such record, and any such adjustment previously made as a result of the taking of such record shall be reversed.

(d) The issuance of certificates for shares of Common Stock upon conversion of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred 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 Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock which is being converted.

(e) The Corporation will at no time close its transfer books against the transfer of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock or of any shares of Common Stock issued or issuable upon the conversion of any shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred

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Stock, in any manner which interferes with the timely conversion of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, except as may otherwise be required to comply with applicable securities laws.

(f) As used in this Section 3.6, the term "Common Stock" shall mean and include the Corporation's authorized Common Stock, par value \$.01 per share, as constituted on the Filing Date (as defined below), and shall also include any capital stock of any class of the Corporation thereafter authorized which shall neither be limited to a fixed sum or percentage in respect of the rights of the holders thereof to participate in dividends nor be entitled to a preference in the distribution of assets upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation; provided that the shares of Common Stock receivable upon conversion of shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock shall include only shares designated as Common Stock of the Corporation on the Filing Date, or in case of any reorganization or reclassification of the outstanding shares thereof, the stock, securities or assets to be issued in exchange for such Common Stock pursuant thereto.

(g) In the case of a Sale of the Corporation (as defined in Section 3.10 below) or a proposed reorganization of the Corporation or a proposed reclassification or recapitalization of the capital stock of the Corporation (except as a transaction for which provision for adjustment is otherwise made in this Section 3.6), each share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock shall thereafter be convertible into the number 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 Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock would have been entitled upon such Sale of the Corporation, reorganization, reclassification or recapitalization; and, in any such case, appropriate adjustment (as determined by the Board of Directors) shall be made in the application of the provisions herein set forth with respect to the rights and interest thereafter of the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock, to the end that the provisions set forth herein (including provisions with respect to changes in and other adjustments of the applicable Conversion Ratio) 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 Series A Preferred Stock, Series B Preferred Stock, the Series C Preferred Stock or Series D Preferred Stock. The Corporation shall not effect any such Sale of the Corporation unless prior to or simultaneously with the consummation thereof the successor corporation or purchaser, as the case may be, shall assume by written instrument the obligation to deliver to the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock such shares of stock, securities or assets as, in accordance with the foregoing provisions, each such holder is entitled to receive.

(h) The Corporation will not, by amendment of its Second Restatement or through any reorganization, recapitalization, 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 3.6 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

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Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock against impairment.

3.7 Reports as to Adjustment. Upon any adjustment of the Conversion Ratio then in effect pursuant to the provisions of Section 3.6 of this Article Five, then, and in each such case, the Corporation shall promptly deliver to the Transfer Agent(s) of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Common Stock and to each of the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock, a certificate signed by the President or a Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the Corporation setting forth in reasonable detail the event requiring the adjustment, the method by which such adjustment was calculated and the Conversion Ratio then in effect following such adjustment. Where appropriate, such notice to holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock may be given in advance.

3.8 Certain Covenants. Any registered holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock may proceed to protect and enforce its rights and the rights of any other holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, as the case may be, with any and all remedies available at law or in equity.

3.9 Protective Provisions. So long as shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock (or securities convertible into, or exchangeable or exercisable for, shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, as the case may be, which are called "Series A Equivalents," "Series B Equivalents," "Series C Equivalents" and "Series D Equivalents," respectively) are outstanding, the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then-outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, as the case may be (treating for purposes of this calculation all Series A Equivalents, Series B Equivalents, Series C Equivalents and Series D Equivalents as having been converted, exchanged or exercised), voting as a single class:

(a) alter or change the rights, preferences or privileges of the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, as the case may be, or except as provided in subsection (c) of this Section 3.9, otherwise amend this Second Restatement (in any case whether by merger, consolidation or otherwise) so as to affect adversely the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, respectively; or

(b) increase the authorized number of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock as the case may be; or

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(c) create or designate, or authorize the issuance of any new class or series of stock (including, without limitation, the issuance of any additional shares of Preferred Stock by the Board of Directors pursuant to Section 1 of this Article Five) (i) ranking senior to or having a preference over, or being on a parity with, Series A Preferred Stock with respect to dividends or upon liquidation, (ii) ranking senior or having a preference over the Series C Preferred Stock, (iii) ranking senior to or having a preference over, or being on a parity with, the Series D Preferred Stock or (iv) convertible into any such class or series of stock, provided that the Corporation may create or designate or authorize the issuance of a new class or series of stock (a) ranking senior to or having preference over, or being on a parity with, the Series B Preferred Stock or (b) being on a parity with the Series C Preferred Stock in each case with respect solely to dividends or upon liquidation, without obtaining the approval of the holders of any of the Series B Preferred Stock or the Series C Preferred Stock, as the case may be.

3.10 **Definitions.** In addition to any other terms defined herein, for purposes of this Article Five, the following terms shall have the meanings indicated:

"Business Day" shall mean any day other than a Saturday, Sunday, or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

"Commission" shall mean the Securities and Exchange Commission, and any successor agency.

"Common Stock Equivalent" shall mean securities convertible into, or exchangeable or exercisable for, shares of Common Stock or for other securities which are otherwise convertible into, or exchangeable or exercisable for shares of Common Stock.

"Conversion Ratio," determined as of any date, shall equal the number of shares of Common Stock into which one share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, as the case may be, is convertible pursuant to Section 3.6 of this Article Five. The Conversion Ratio as of the date of filing of this Second Restatement shall be: 1.0195093 as to the Series A Preferred Stock; 1.0161261 as to the Series B Preferred Stock; 1.3471597 as to the Series C Preferred Stock; and 1.0467031 as to the Series D Preferred Stock; subject to adjustment in each case as provided in paragraph (c) of Section 3.6 of this Article Five.

The term "distribution" shall include the transfer of cash or property to the holders of a class of capital stock of the Corporation, without consideration, whether by way of dividend or otherwise, or the purchase or redemption of shares of the Corporation, for cash or property, including such transfer, purchase or redemption by a subsidiary of the Corporation. The time of any distribution by way of dividends shall be the date of declaration thereof, and the time of any distribution by purchase or redemption of shares shall be the date on which cash or property is transferred by the Corporation, whether or not pursuant to a contract of an earlier date; provided that, where a debt security is issued

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in exchange for shares, the time of the distribution is the date when the Corporation acquires the shares for such exchange.

"Filing Date" shall mean the date of filing of this Second Restatement.

"Junior Stock" shall mean any capital stock of the Corporation ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Preferred Stock.

"Person" shall mean any individual, firm, corporation, partnership or other entity, and shall include any successor (by merger or otherwise) of such entity.

"Sale of the Corporation" shall mean consolidation or merger of the Corporation with or into any other corporation or corporations (other than a consolidation or merger in which the Corporation is the continuing corporation), or a sale, conveyance or disposition of all or substantially all of the assets of the Corporation or the effectuation by the Corporation of a transaction or series of related transactions in which more than fifty (50%) percent of the voting power of the Corporation is disposed of.

ARTICLE SIX

The Corporation is to have perpetual existence. The business and affairs of the Corporation shall be managed by the Board of Directors of the Corporation.

ARTICLE SEVEN

Elections of directors need not be by written ballot unless a shareholder demands election by written ballot at the meeting and before voting begins.

ARTICLE EIGHT

The number of directors that constitute the whole Board of Directors of the Corporation shall be designated in the Bylaws of the Corporation. Vacancies occurring on the Board of Directors for any reason may be filled by vote of a majority of the remaining members of the Board of Directors, although less than a quorum, at any meeting of the Board of Directors or by unanimous written consent of such remaining directors. A person so elected by the Board of Directors to fill a vacancy shall hold office until the next succeeding annual meeting of shareholders of the Corporation and until his or her successor shall have been duly elected and qualified.

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ARTICLE NINE

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, alter, amend or repeal the Bylaws of the Corporation.

ARTICLE TEN

The Corporation shall indemnify and advance expenses to, and may purchase and maintain insurance on behalf of, its officers and directors or any former officer or director, to the fullest extent permitted by law.

ARTICLE ELEVEN

Meetings of shareholders may be held within or without the State of Florida, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside of the State of Florida at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

As stated herein, this Second Restatement has been duly authorized by the votes of the requisite shareholders and the Board of Directors and shall supersede the original articles and all amendments thereto.

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IN WITNESS WHEREOF, this Second Restatement was signed by the President and Chief Executive Officer of the Corporation this 29th day of July, 1997.

CONCENTRIC NETWORK CORPORATION

By: Henry R. Nothhaft

Henry R. Nothhaft,
President and Chief Executive Officer

Attested by:

Peter J. Bergeron
Peter J. Bergeron, Secretary

SECOND AMENDED AND RESTATED ARTICLES OF INCORPORATION