

CAPTION SHEET

CASE MANAGEMENT SYSTEM

- 1. REPORT DATE: 00/00/00 :
- 2. BUREAU: FUS :
- 3. SECTION(S): :
- 5. APPROVED BY: : 4. PUBLIC MEETING DATE:
- DIRECTOR: :
- SUPERVISOR: :
- 6. PERSON IN CHARGE: : 7. DATE FILED: 12/16/05
- 8. DOCKET NO: A-311399 : 9. EFFECTIVE DATE: 00/00/00

PARTY/COMPLAINANT:

RESPONDENT/APPLICANT: CLEARLINX NETWORK CORPORATION

COMP/APP COUNTY:

UTILITY CODE: 311399

ALLEGATION OR SUBJECT

APPLICATION OF CLEARLINX NETWORK CORPORATION FOR APPROVAL TO OFFER, RENDER, FURNISH OR SUPPLY TELECOMMUNICATIONS SERVICES AS A COMPETITIVE ACCESS PROVIDER TO THE PUBLIC IN THE COMMONWEALTH OF PENNSYLVANIA.

DOCUMENT
FOLDER

DOCKETED
DEC 22 2005



**PIPER RUDNICK
GRAY CARY**

DLA Piper Rudnick Gray Cary US LLP
The Marbury Building
6225 Smith Avenue
Baltimore, Maryland 21209-3600
T 410.580.3000
F 410.580.3001
W www.dlapiper.com

ORIGINAL

BRIAN M. QUINN
brian.quinn@dlapiper.com
T 410.580.4238

December 16, 2005

VIA UPS DELIVERY

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
400 North Street
Commonwealth Keystone Building
Second Floor - Room N201
Harrisburg, Pennsylvania 17120

RECEIVED

DEC 16 2005

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: *ClearLinx Network Corporation - Application for Approval of Authority to
Provide Telecommunications Services to the Public in the Commonwealth of
Pennsylvania*

A - 311399

Dear Secretary McNulty:

On behalf of ClearLinx Network Corporation ("ClearLinx"), enclosed for filing with the Commission are a verified original and three (3) copies of the application for approval of authority to provide telecommunications services to the public in the Commonwealth of Pennsylvania (the "Application"). ClearLinx requests certification as a Competitive Access Provider and includes its proposed tariff schedule in Exhibit 2 to the Application. In addition, enclosed please find a check in the amount of \$250 for the required filing fee.

ClearLinx respectfully requests that the Commission retain the financial statements, provided in the enclosed, sealed envelope as Exhibit 3, as proprietary, confidential, and not for review by anyone other than the Commission and its Staff in their certification review process.

**DOCUMENT
FOLDER**



**PIPER RUDNICK
GRAYCARY**

James J. McNulty
December 16, 2005
Page 2

We have enclosed an additional copy of the Application and request that it be date-stamped and returned to my attention in the enclosed, self-addressed, postage pre-paid envelope. Please contact Carville Collins or myself at the number above if you have any questions concerning this filing.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Brian M. Quinn'.

Brian M. Quinn

/bmq
Enclosures

cc: Terry Ray, ClearLinx Network Corporation
Office of Consumer Advocate
Office of Small Business Advocate

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

ORIGINAL

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of ClearLinx Network Corporation)
For approval to offer, render, furnish or supply)
telecommunication services as a Facilities-)
based Competitive Access Provider to the)
Public in the Commonwealth of Pennsylvania)

Application No. A-311399

Carville B. Collins
Brian M. Quinn
DLA Piper Rudnick Gray Cary US LLP
6225 Smith Avenue
Baltimore, Maryland 21209-3600
(410) 580-3000
(410) 580-3001 (facsimile)
carville.collins@dlapiper.com
brian.quinn@dlapiper.com

Counsel for ClearLinx Network
Corporation

DOCKETED
DEC 22 2005

Dated: December 16, 2005

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Application of:

A-311399

ClearLinx Network Corporation

for approval to offer, render, furnish or supply telecommunications services to the public in the Commonwealth of Pennsylvania.

1. IDENTITY OF THE APPLICANT: The name, address, telephone number, and fax number of the Applicant.

**ClearLinx Network Corporation
1901 S. Meyers Road, Suite 190
Oakbrook Terrace, Illinois 60181
(630) 932-2900
(630) 932-2907 (facsimile)**

Please identify any predecessors of the Applicant and provide other names under which the Applicant has operated within the preceding five years, including name, address, and telephone number.

Not Applicable

2. ATTORNEY: The name, address, telephone number, and fax number of the Applicant's attorney.

**Carville B. Collins
Brian M. Quinn
DLA Piper Rudnick Gray Cary US LLP
6225 Smith Avenue
Baltimore, Maryland 21209-3600
(410) 580-3000
(410) 580-3001 (facsimile)
carville.collins@dlapiper.com
brian.quinn@dlapiper.com**

with copy to:

**George Vinyard
Sachnoff & Weaver, Ltd.
10 S. Wacker Drive, 40th Floor
Chicago, Illinois 60606-7507
(312) 207-6406
(312) 207-6400 (facsimile)
gvinyar@sachnoff.com**

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**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

3. CONTACTS:

A) APPLICATION: The name, title, address, telephone number, and fax number of the person to whom questions about this application should be addressed.

**Carville B. Collins
Brian M. Quinn
DLA Piper Rudnick Gray Cary US LLP
6225 Smith Avenue
Baltimore, Maryland 21209-3600
(410) 580-3000
(410) 580-3001 (facsimile)
carville.collins@dlapiper.com
brian.quinn@dlapiper.com**

B) PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY (PEMA): The name, title, address, telephone number and FAX number of the person with whom contact should be made by PEMA (Pennsylvania Emergency Management Agency).

**Terry Ray
ClearLinx Network Corporation
1901 S. Meyers Road, Suite 190
Oakbrook Terrace, Illinois 60181
(630) 932-2900
(630) 932-2907 (facsimile)**

C) RESOLVING COMPLAINTS: Name, address, telephone number, and FAX number of the person and an alternate person responsible for addressing customer complaints. These persons will ordinarily be the initial point(s) of contact for resolving complaints and queries filed with the Public Utility Commission or other agencies.

**Terry Ray
ClearLinx Network Corporation
1901 S. Meyers Road, Suite 190
Oakbrook Terrace, Illinois 60181
(630) 932-2900
(630) 932-2907 (facsimile)**

4. FICTITIOUS NAME:

The Applicant will not be using a fictitious name.

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**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

- The Applicant will be using a fictitious name. Attach to the Application a copy of the Applicant's filing with the Commonwealth's Department of State pursuant to 54 Pa. C.S. §311, Form PA-953.

5. BUSINESS ENTITY AND DEPARTMENT OF STATE FILINGS:

- The Applicant is a sole proprietor.
- The Applicant is a:
- General partnership
 - Domestic limited partnership (15 Pa. C.S. §8511)
 - *Foreign limited partnership (15 Pa. C.S. §8582)
 - Domestic registered limited liability partnership (15 Pa. C.S. §8201)
 - *Foreign registered limited liability general partnership (15 Pa. C.S. §8211)

*Provide name and address of Corporate Registered Office Provider or Registered Office within PA.

Attach to the application the name and address of partners. If any partner is not an individual, identify the business nature of the partner entity and identify its partners or officers.

Attach to the application proof of compliance with appropriate Department of State filing requirements as indicated above.

5. (Continued)

- The Applicant is a:
- Domestic corporation (15 Pa. C.S. §1306)
 - *Foreign corporation (15 Pa. C.S. §4124)
 - Domestic limited liability company (15 Pa. C.S. §8913)
 - *Foreign limited liability company (15 Pa. C.S. §8981)

*Provide name and address of Corporate Registered Office Provider or Registered Office within PA.

The Applicant's Corporate Registered Office Provider:

**Corporation Service Company
2704 Commerce Drive
Harrisburg, Pennsylvania 17110**

Attach proof of compliance with appropriate Department of State filing requirements as indicated above. Additionally, provide a copy of the Applicant's Articles of Incorporation or a Certificate of Organization.

See Applicant's business entity and Department of State filings attached hereto as Exhibit 1.

The Applicant is incorporated in the State of Delaware

Give name and address of officers:

**Ross W. Manire, CEO and President
Eric Lekacz, Vice President, Business Development
Terry Ray, Secretary and CFO
George Vinyard, Assistant Secretary
Tormod Larsen, Vice President and Chief Technology Officer**

**ClearLinx Network Corporation
1901 S. Meyers Rd., Suite 190
Oakbrook Terrace, Illinois 60181**

6. AFFILIATES AND PREDECESSORS WITHIN PENNSYLVANIA:

- The Applicant has no affiliates doing business in Pennsylvania or predecessors which have done business in Pennsylvania.
- The Applicant has affiliates doing business in Pennsylvania or predecessors which have done business in Pennsylvania. Name and address of the affiliates. State whether they are jurisdictional public utilities. Give docket numbers for the authority of such affiliates.

If the Applicant or an affiliate has predecessors who have done business within Pennsylvania, give name and address of the predecessors and state whether they were jurisdictional public utilities. Give the docket numbers for the authority of such predecessors.

7. AFFILIATES AND PREDECESSORS RENDERING PUBLIC UTILITY SERVICE OUTSIDE PENNSYLVANIA:

- The Applicant has no affiliates rendering or predecessors which rendered public utility service outside Pennsylvania.

Note: the Applicant itself is currently a certified telecommunications provider in Michigan, California and Massachusetts.

- The Applicant has affiliates rendering or predecessors which rendered public utility service outside Pennsylvania. Name and address of the affiliates and predecessors (please identify affiliates versus predecessors).

8. **APPLICANT'S PRESENT OPERATIONS:** (Select and complete the appropriate statement)

- The applicant is not presently doing business in Pennsylvania as a public utility.
- The applicant is presently doing business in Pennsylvania as a:
- Interexchange Toll Reseller, InterLATA and/or IntraLATA, (e.g., MTS, 1+, 800, WATS, Travel and Debit Cards)
 - Interexchange Toll Facilities-based carrier, InterLATA and/or IntraLATA, (e.g., MTS, 1+, 800, WATS, Travel and Debit Cards)
 - Competitive Access Provider (dedicated point-to-point or multipoint service; voice or data)
 - Competitive Local Exchange Carrier:
 - Facilities-Based
 - UNE-P
 - Data Only
 - Reseller
 - Incumbent Local Exchange Carrier.
 - Other (Identify).

9. **APPLICANT'S PROPOSED OPERATIONS:** The Applicant proposes to operate as:

- Interexchange Toll Reseller, InterLATA and/or IntraLATA, (e.g., MTS, 1+, 800, WATS, Travel and Debit Cards)
- Interexchange Toll Facilities-based carrier, InterLATA and/or IntraLATA, (e.g., MTS, 1+, 800, WATS, Travel and Debit Cards)
- Competitive Access Provider (dedicated point-to-point or multipoint service; voice or data)
- Competitive Local Exchange Carrier:
 - Facilities-based
 - UNE-P
 - Data Only
 - Reseller
- Incumbent Local Exchange Carrier
- Other (Identify).

10. **PROPOSED SERVICES:** Describe in detail the services which the Applicant proposes to offer. If proposing to provide more than one category in Item #9, clearly and separately delineate the services within each proposed operation. If proposing to operate as a facilities-based Competitive Local Exchange Carrier, provide a brief description of the Company's facilities.

Applicant provides non-switched and non-discriminatory point-to-point intra- and interexchange telecommunications signal transport service "on-demand" to its similarly-situated Wireless Services Provider ("WSP") customers on substantially similar terms, subject to the availability of facilities and capacity. Service is available on a first-come, first-served basis.

The primary suite of telecommunications services that the Company plans to offer initially comprises non-switched dedicated point-to-point circuits carried on fiber optic facilities. These point-to-point circuits will carry Radio Frequency ("RF") traffic of WSPs between the Company's newly-deployed shared distributed antenna system networks and WSPs' existing facilities or through collocation facilities leased to WSPs by the Company. These fiber-fed shared distributed antenna system networks will extend wireless networks, improving quality, coverage and capacity, with community-friendly solutions. These services will address the increasing demand from WSPs for a solution to long-standing service coverage

problems, and will provide network enhancements that add capacity to accommodate localized needs and/or high speed data applications.

Applicant designs and constructs its facilities only upon receiving a request for the same from a customer or potential customer. Applicant does not design, construct or deploy its facilities on a speculative basis.

The Applicant will deploy its fiber optic cables in and on existing conduits, ducts, poles, and rights of way of other telecommunications carriers, utilities and municipalities wherever possible. Applicant does not provide content and, subject to applicable law, Applicant does not restrict the flow of content between content service providers and content customers. Applicant does not exercise or attempt to exercise control or influence over the content of lawful communications tendered for transportation service by its customers.

Applicant does not provide "retail" telecommunications service to end-use customers, and does not provide local exchange service (residential or business dial tone). Applicant does not process "0-" emergency calls or emergency operator service and does not provide access to the same (although its WSP customers may provide such services or access to their customers via Applicant's facilities).

11. **SERVICE AREA:** Describe the geographic service area in which the Applicant proposes to offer services. Clearly and separately delineate the service territory for each category listed in Item #9. For Competitive Local Exchange Carrier operations, you must name and serve the Incumbent Local Exchange Carriers in whose territory you request authority.

Statewide

12. **MARKET:** Describe the customer base to which the Applicant proposes to market its services. Clearly and separately delineate a market for each category listed in Item #9.

CAP: Wireless Service Providers

13. **PROPOSED TARIFF(S):** Each category of proposed operations must have a separate and distinct proposed tariff setting forth the rates, rules and regulations of the Applicant. Every proposed tariff shall state on its cover page the nature of the proposed operations described therein, i.e., IXC Reseller, CLEC, CAP, or IXC Facilities-based. A copy of all proposed tariffs must be appended to each original and duplicate original and copy of Form 377.

See Applicant's CAP tariff attached hereto as Exhibit 2

14. FINANCIAL: *Attach the following to the Application:*

A general description of the Applicant's capitalization and, if applicable, its corporate stock structure;

Current balance sheet, Income Statement, and Cash Flow Statement of Applicant or Affiliated Company, if relying on affiliate for financial security;

A tentative operating balance sheet and a projected income statement for the first year of operation within the Commonwealth of Pennsylvania; provide the name, title, address, telephone number and fax number of the Applicant's custodian for its accounting records and supporting documentation; and indicate where the Applicant's accounting records and supporting documentation are, or will be, maintained.

If available, include bond rating, letters of credit, credit reports, insurance coverage and reports, and major contracts.

CONFIDENTIAL – FILED UNDER SEAL

The Applicant's financial information attached hereto is confidential and proprietary. Accordingly, the Applicant files its financial information under seal and requests that it be held confidential and not be shared with anyone outside the Commission or the Commission's staff.

Accounting records to be maintained by custodian:

**Terry Ray
ClearLinx Network Corporation
1901 S. Meyers Road, Suite 190
Oakbrook Terrace, Illinois 60181
(630) 932-2900
(630) 932-2907 (facsimile)**

See Applicant's financial information attached hereto as Exhibit 3.

15. START DATE: The Applicant proposes to begin offering services on or about **February 1, 2006.**

16. FURTHER DEVELOPMENTS: Attach to the Application a statement of further developments, planned or contemplated, to which the present Application is preliminary

or with which it forms a part, together with a reference to any related proceeding before the Commission.

No further developments.

17. **NOTICE:** Pursuant to 52 Pa. Code §5.14, you are required to serve a copy of the signed and verified Application, with attachments, on the below-listed parties, and file proof of such service with this Commission:

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923

Office of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101

A certificate of service must be attached to the Application as proof of service that the Application has been served on the above-listed parties. A copy of any Competitive Local Exchange Carrier Application must also be served on any and/or all Incumbent Local Exchange Carrier(s) in the geographical area where the Applicant proposes to offer services.

18. **FEDERAL TELECOMMUNICATIONS ACT OF 1996:** State whether the Applicant claims a particular status pursuant to the Federal Telecommunications Act of 1996. Provide supporting facts.

The Applicant is a Telecommunications Carrier, as that term is defined in the Federal Telecommunications Act of 1996. As such, the Applicant is entitled to, *inter alia*, the protections in sections 253 and 332 of that Act. See paragraph 10 above for supporting factual information.

19. **COMPLIANCE:** State specifically whether the Applicant, an affiliate, a predecessor of either, or a person identified in this Application has been convicted of a crime involving fraud or similar activity. Identify all proceedings, limited to proceedings dealing with business operations in the last five (5) years, whether before an administrative body or in a judicial forum, in which the Applicant, an affiliate, a predecessor of either, or a person identified herein has been a defendant or a respondent. Provide a statement as to the resolution or present status of any such proceedings.

Neither the Applicant, an affiliate, a predecessor of either, nor a person identified in this Application has been convicted of a crime involving fraud or similar activity.

- 20. **FALSIFICATION:** The Applicant understands that the making of false statement(s) herein may be grounds for denying the Application or, if later discovered, for revoking any authority granted pursuant to the Application. This Application is subject to 18 Pa. C.S. §§4903 and 4904, relating to perjury and falsification in official matters.
- 21. **CESSATION:** The Applicant understands that if it plans to cease doing business within the Commonwealth of Pennsylvania, it is under a duty to request authority from the Commission for permission prior to ceasing business.

Applicant:

ClearLinx Network Corporation

By:



Carville B. Collins
Brian M. Quinn
DLA Piper Rudnick Gray Cary US
LLP
6225 Smith Avenue
Baltimore, Maryland 21209-3600
(410) 580-3000
(410) 580-3001 (facsimile)
carville.collins@dlapiper.com
brian.quinn@dlapiper.com

Counsel for CleaLinx Network
Corporation

Date: December 16, 2005

AFFIDAVIT

State of Illinois :

: SS.

County of DuPage :

Ross Manire, Affiant, being duly [sworn/affirmed] according to law, deposes and says that:

Affiant is the Chief Executive Officer of ClearLinx Network Corporation ;

That Affiant is authorized to and does make this affidavit for said corporation;

That ClearLinx Network Corporation, the Applicant herein, acknowledges that it may have an obligation to serve or to continue to serve the public by virtue of the Applicant commencing the rendering of service pursuant to this Application consistent with the Public Utility Code of the Commonwealth of Pennsylvania, Title 66 of the Pennsylvania Consolidated Statutes; with the Federal Telecommunications Act of 1996, signed February 6, 1996, or with other applicable statutes or regulations;

That ClearLinx Network Corporation, the Applicant herein, asserts that Affiant possesses the requisite technical, managerial, and financial fitness to render public utility service within the Commonwealth of Pennsylvania and that the Applicant will abide by all applicable federal and state laws and regulations and by the decisions of the Pennsylvania Public Utility Commission.

Ross Manire
Signature of Affiant

Sworn and subscribed before me this 14th (day of November, 2005 .

Month

Year

Terrence M Ray
Signature of official administering oath

My Commission expires 9-14-2008 .



EXHIBIT 1

BUSINESS ENTITY AND DEPARTMENT OF STATE FILINGS

**PENNSYLVANIA DEPARTMENT OF STATE
CORPORATION BUREAU**

**Application for Certificate of Authority
(15 Pa.C.S.)**

Entity Number

- Foreign Business Corporation (§ 4124)
- Foreign Nonprofit Corporation (§ 6124)

Name

Address

City

Corporation Service Company

W

Document will be returned to the name and address you enter to the left.



Fee: \$250

Filed in the Department of State on _____

Secretary of the Commonwealth

In compliance with the requirements of the applicable provisions of 15 Pa.C.S. (relating to corporations and unincorporated associations), the undersigned, hereby states that:

1. The name of the corporation is:
ClearLinx Network Corporation

2. Complete only when the corporation must adopt a corporate designator for use in Pennsylvania.
The name which the corporation adopts for use in this Commonwealth is:

3. If the name set forth in paragraph 1 or 2 is not available for use in this Commonwealth, complete the following:
The fictitious name which the corporation adopts for use in transacting business in this Commonwealth is:

The corporation shall do business in Pennsylvania only under such fictitious name pursuant to the attached resolution of the board of directors under the applicable provisions of 15 Pa.C.S. (relating to corporations and unincorporated associations) and the attached form DSCB:54-311 (Application for Registration of Fictitious Name).

4. The name of the jurisdiction under the laws of which the corporation is incorporated is: Delaware

5. The address of its principal office under the laws of the jurisdiction in which it is incorporated is:

2711 Centerville Road, Suite 400, Wilmington	DE	19808
Number and street	City	State
		Zip

Commonwealth of Pennsylvania
Certificate of Authority 4 Page(s)



02:11:01 10/13/05

DSCB:15-4124/6124-2

6. The (a) address of this corporation's proposed registered office in this Commonwealth or (b) name of its commercial registered office provider and the county of venue is:

(a) Number and street	City	State	Zip	County
(b) Name of Commercial Registered Office Provider				County
c/o: Corporation Service Company				Dauphin

7. Check one of the following:

Business Corporation: The corporation is a corporation incorporated for a purpose or purposes involving pecuniary profit, incidental or otherwise.

Nonprofit Corporation: The corporation is a corporation incorporated for a purpose or purposes not involving pecuniary profit, incidental or otherwise.

IN TESTIMONY WHEREOF, the undersigned corporation has caused this Application for Certificate of Authority to be signed by a duly authorized officer thereof this 10th day of October, 2005.

ClearLinux Network Corporation

 Name of Corporation

[Signature]

 Signature

CEO/President

 Title

**LIST OF OFFICERS AND DIRECTORS FOR
CLEARLIX NETWORK CORPORATION****Director:**

Name	Address
Ross Manire	1901 S. Meyers Road, Suite 190, Oakbrook Terrace, IL 60181
David Schaller	1901 S. Meyers Road, Suite 190, Oakbrook Terrace, IL 60181
Kevin Jacques	1901 S. Meyers Road, Suite 190, Oakbrook Terrace, IL 60181
Matthew C. Newton	1901 S. Meyers Road, Suite 190, Oakbrook Terrace, IL 60181
David C. Hull, Jr.	1901 S. Meyers Road, Suite 190, Oakbrook Terrace, IL 60181

Officers:

Name	Position	Address
Ross Manire	Chief Executive Office, President, Treasurer and Assistant Secretary	1901 S. Meyers Road, Suite 190 Oakbrook Terrace, IL 60181
Eric Lekacz	Vice President, Business Development	1901 S. Meyers Road, Suite 190 Oakbrook Terrace, IL 60181
Terry Ray	Vice President, Chief Financial Officer, Secretary and Treasurer	1901 S. Meyers Road, Suite 190 Oakbrook Terrace, IL 60181
George Vinyard	Assistant Secretary	10 S. Wacker Drive, 40 th Floor Chicago, IL 60606

Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS ON FILE OF "CLEARLINK NETWORK CORPORATION" AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

CERTIFICATE OF INCORPORATION, FILED THE FIRST DAY OF OCTOBER, A.D. 2002, AT 12 O'CLOCK P.M.

RESTATED CERTIFICATE, FILED THE TWENTY-SEVENTH DAY OF AUGUST, A.D. 2004, AT 10:28 O'CLOCK A.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE AFORESAID CORPORATION.



3574949 8100H

050941097

Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 4306092

DATE: 11-18-05

CERTIFICATE OF INCORPORATION
OF
CLEARLIX NETWORK CORPORATION

I, the undersigned natural person acting as an incorporator of a corporation (hereinafter called the "*Corporation*") under the General Corporation Law of the State of Delaware ("*DGCL*"), do hereby adopt the following Certificate of Incorporation for the Corporation:

FIRST: The name of the Corporation is ClearLix Network Corporation

SECOND: The registered office of the Corporation in the State of Delaware is located at Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of the registered agent of the Corporation at such address is The Corporation Trust Company.

THIRD: The purpose for which the Corporation is organized is to engage in any and all lawful acts and activity for which corporations may be organized under the DGCL. The Corporation will have perpetual existence.

FOURTH: The Corporation shall have two classes of stock, Common Stock, \$0.01 par value per share, and Preferred Stock, \$0.01 par value per share. The total number of shares that the Corporation shall have authority to issue is 1,000 shares of Common Stock and 1,000 shares of Preferred Stock. Subject to the limitations prescribed by law and the provisions of this Certificate of Incorporation, the board of directors of the Corporation is authorized to issue the Preferred Stock from time to time in one or more series, each of such series to have such voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights, and such qualifications, limitations or restrictions thereof, as shall be determined by the board of directors in a resolution or resolutions providing for the issue of such Preferred Stock. Subject to the powers, preferences and rights of any Preferred Stock, including any series thereof, having any preference or priority over, or rights superior to, the Common Stock and except as otherwise provided by law, the holders of the Common Stock shall have and possess all powers and voting and other rights pertaining to the stock of this Corporation and each share of Common Stock shall be entitled to one vote.

FIFTH: The name of the incorporator of the Corporation is R. Barton Harris, and the mailing address of such incorporator is 4000 Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202-2790.

SIXTH: Directors of the Corporation need not be elected by written ballot unless the by-laws of the Corporation otherwise provide.

SEVENTH: The directors of the Corporation shall have the power to adopt, amend, and repeal the by-laws of the Corporation.

EIGHTH: The Corporation shall indemnify any person who was, is, or is threatened to be made a party to a proceeding (as hereinafter defined) by reason of the fact that he or she (a) is or was a director or officer of the Corporation or (b) while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise, to the fullest extent permitted under the DGCL, as the same exists or may hereafter be amended. Such right shall be a contract right and as such shall run to the benefit of any director or officer who is elected and accepts the position of director or officer of the Corporation or elects to continue to serve as a director or officer of the Corporation while this Article Eighth is in effect. Any repeal or amendment of this Article Eighth shall be prospective only and shall not limit the rights of any such director or officer or the obligations of the Corporation with respect to any claim arising from or related to the services of such director or officer in any of the foregoing capacities prior to any such repeal or amendment of this Article Eighth. Such right shall include the right to be paid by the Corporation expenses incurred in defending any such proceeding in advance of its final disposition to the maximum extent permitted under the DGCL, as the same exists or may hereafter be amended. If a claim for indemnification or advancement of expenses hereunder is not paid in full by the Corporation within 60 days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim, and if successful in whole or in part, the claimant shall also be entitled to be paid the expenses of prosecuting such claim. It shall be a defense to any such action that such indemnification or advancement of costs of defense are not permitted under the DGCL, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its board of directors or any committee thereof, independent legal counsel, or stockholders) to have made its determination prior to the commencement of such action that indemnification of, or advancement of costs of defense to, the claimant is permissible in the circumstances nor an actual determination by the Corporation (including its board of directors or any committee thereof, independent legal counsel, or stockholders) that such indemnification or advancement is not permissible shall be a defense to the action or create a presumption that such indemnification or advancement is not permissible. In the event of the death of any person having a right of indemnification under the foregoing provisions, such right shall inure to the benefit of his or her heirs, executors, administrators, and personal representatives. The rights conferred above shall not be exclusive of any other right that any person may have or hereafter acquire under any statute, by-law, resolution of stockholders or directors, agreement, or otherwise.

The Corporation may additionally indemnify any employee or agent of the Corporation to the fullest extent permitted by law.

As used herein, the term "*proceeding*" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative,

any appeal in such an action, suit, or proceeding, and any inquiry or investigation that could lead to such an action, suit, or proceeding.

NINTH: A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (a) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (b) for acts or omissions not in good faith or that involve intentional misconduct or knowing violation of law, (c) under Section 174 of the DGCL, or (d) for any transaction from which the director derived an improper personal benefit. Any repeal or amendment of this Article Ninth shall be prospective only and shall not adversely affect any limitation on the personal liability of a director of the Corporation arising from an act or omission occurring prior to the time of such repeal or amendment. In addition to the circumstances in which a director of the Corporation is not personally liable as set forth in the foregoing provisions of this Article Ninth, a director shall not be liable to the Corporation or its stockholders to such further extent as permitted by any law hereafter enacted, including without limitation any subsequent amendment to the DGCL.

I, the undersigned, for the purpose of forming the Corporation under the laws of the State of Delaware, do make, file, and record this Certificate of Incorporation and do certify that this is my act and deed and that the facts stated herein are true and, accordingly, I do hereunto set my hand on this 1st day of October, 2002.

/s/ R. Barton Harris, II
R. Barton Harris, II, Authorized Person

**RESTATED CERTIFICATE OF INCORPORATION
OF
CLEARLIX NETWORK CORPORATION**

**(Pursuant to Sections 242 and 245 of the
General Corporation Law of the State of Delaware)**

ClearLinx Network Corporation (the "Corporation"), a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "General Corporation Law"),

DOES HEREBY CERTIFY:

FIRST: That the name of this Corporation is ClearLinx Network Corporation and that this Corporation was originally incorporated pursuant to the General Corporation Law on October 1, 2002 under the name ClearLinx Network Corporation.

SECOND: That the Board of Directors of the Corporation duly adopted resolutions proposing to amend and restate the Certificate of Incorporation of the Corporation, declaring said amendment and restatement to be advisable and in the best interests of the Corporation and its stockholders, and authorizing the appropriate officers of the Corporation to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment and restatement is as follows:

RESOLVED, that the Certificate of Incorporation of the Corporation be amended and restated in its entirety as follows:

ARTICLE I

The name of the Corporation is ClearLinx Network Corporation.

ARTICLE II

The address of the registered office of the Corporation in the State of Delaware is located at 2711 Centerville Road, Suite 400, City of Wilmington, County of New Castle, 19808. The name of its registered agent at such address is Corporation Service Company.

ARTICLE III

The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law. The Corporation will have perpetual existence.

ARTICLE IV

A. Authorization of Stock. The Corporation is authorized to issue two classes of stock to be designated, respectively, common stock and preferred stock. The total number of shares that the Corporation is authorized to issue is Forty-Three Million Three Hundred Sixty Six Thousand Six Hundred Sixty Four (43,366,664). The total number of shares of common stock authorized to be issued is Twenty-Five Million (25,000,000), par value \$0.001 per share (the "Common Stock"). The total number of shares of preferred stock authorized to be issued is Eighteen Million Three Hundred Sixty Six Thousand Six Hundred Sixty Four (18,366,664), par value \$0.001 per share (the "Preferred Stock"), all of which are designated as "Series A Preferred Stock." Upon the filing of this Restated Certificate of Incorporation with the Delaware Secretary of State (the "Effective Time"), each share of Common Stock, par value \$0.01 per share, outstanding as of the Effective Time shall automatically be deemed split and converted into Twenty Thousand Five Hundred (20,500) shares of Common Stock, par value \$0.001 per share.

B. Rights, Preferences and Restrictions of Series A Preferred Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Series A Preferred Stock are as set forth below in this Article IV(B).

1. Dividend Provisions. The holders of shares of Series A Preferred Stock (on an as converted to Common Stock basis) shall be entitled to receive dividends, out of any assets legally available therefor, ratably with the holders of Common Stock payable when, as and if declared by the Board of Directors. Such dividends shall not be cumulative. Declared but unpaid dividends with respect to a share of Series A Preferred Stock shall, upon conversion of such share to Common Stock, be paid to the extent assets are legally available therefor either in cash or in Common Stock (valued at the fair market value on the date of payment as determined by the Board of Directors of the Corporation).

2. Liquidation Preference.

(a) Upon the occurrence of any Liquidation Event (as defined below), either voluntary or involuntary, the holders of Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of the proceeds of such Liquidation Event (the "Proceeds") to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to the sum of the applicable Original Issue Price (as defined below) for such Series A Preferred Stock, together with all declared but unpaid dividends on such share plus a per annum amount for the number of complete calendar months such share has been issued and outstanding equal to five percent (5%) of the applicable Original Issue Price. If, upon the occurrence of such event, the Proceeds thus distributed among the holders of the Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire Proceeds legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock in proportion to the full preferential amount that each such holder is otherwise entitled to receive under this subsection (a). For purposes of this Restated Certificate of Incorporation, "Original Issue Price" shall mean \$1.20 per share for each share of the Series A Preferred Stock (as adjusted for any

stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like with respect to such series of Preferred Stock).

(b) Upon completion of the distribution required by subsection (a) of this Section 2, then all of the remaining Proceeds shall be distributed among the holders of Series A Preferred Stock and Common Stock pro rata based on the number of shares of Common Stock held by each (assuming full conversion of all such Series A Preferred Stock).

(c) Intentionally omitted.

(d) (i) For purposes of this Section 2, a "Liquidation Event" shall include (A) the closing of the sale, transfer or other disposition of all or substantially all of the Corporation's assets other than to a parent or a wholly-owned subsidiary, (B) the consummation of the merger or consolidation of the Corporation with or into another entity (except a merger or consolidation in which the holders of capital stock of the Corporation immediately prior to such merger or consolidation continue after the consummation thereof to hold at least 50% of the voting power of the capital stock of the Corporation or the surviving or acquiring entity), (C) the closing of an issuance or transfer (whether by sale, merger, consolidation or otherwise), in one transaction or a series of related transactions, to a Person (as defined below) or group of affiliated Persons (other than an underwriter or underwriters of the Corporation's securities and their transferees), of the Corporation's securities if, after such closing, the holders of the Corporation's securities prior to such transfer would hold less than 50% of the outstanding voting securities of the Corporation, or (D) a liquidation, dissolution or winding up of the Corporation; provided, however, that a transaction shall not constitute a Liquidation Event if its sole purpose is to change the state of the Corporation's incorporation or to create a holding company that will be owned in substantially the same proportions by the Persons who held the Corporation's securities immediately prior to such transaction. Notwithstanding the prior sentence, the sale of shares of the Company's Series A Preferred Stock shall not be deemed a "Liquidation Event." The treatment of any particular transaction or series of related transactions as a Liquidation Event may be waived by the vote or written consent of the holders of at least sixty percent (60%) of all the outstanding shares of Series A Preferred Stock (voting together as a single class on an as-converted basis). For the purposes of this Restated Certificate of Incorporation, "Person" means an individual, a corporation, a partnership, an association, a trust, a limited liability company or any other entity or organization, including a government or political subdivision or any agency or instrumentality thereof.

(ii) In any Liquidation Event, if Proceeds received by the Corporation or its stockholders are other than cash, the value of such Proceeds will be equal to their fair market value. Any securities included within Proceeds shall be valued as follows:

(A) Securities traded on a public market and not subject to restrictions on free marketability covered by (B) below:

(1) If traded on a securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange or system over the twenty (20) trading-day period ending three (3) trading days prior to the closing or consummation of the Liquidation Event;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the twenty (20) trading-day period ending three (3) trading days prior to the closing or consummation of the Liquidation Event; and

(3) If there is no active public market, the value shall be the fair market value thereof, as mutually determined in good faith by the Board of Directors of the Corporation and the holders of at least sixty percent (60%) of the voting power of all then outstanding shares of Series A Preferred Stock.

(B) The method of valuation of securities subject to restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate under Rule 144 of the Securities Act of 1933, as amended) shall be to make an appropriate discount from the market value determined as above in (A) (1), (2) or (3) to reflect the approximate fair market value thereof, as mutually determined in good faith by the Board of Directors of the Corporation and the holders of at least sixty percent (60%) of the voting power of all then outstanding shares of such Series A Preferred Stock.

(C) The foregoing methods for valuing non-cash consideration to be distributed in connection with a Liquidation Event shall be superseded by any determination of such value set forth in the definitive agreements governing such Liquidation Event.

(iii) In the event the requirements of this Section 2 are not complied with, the Corporation shall forthwith either:

(A) cause the closing of such Liquidation Event to be postponed until such time as the requirements of this Section 2 have been complied with; or

(B) cancel such transaction, in which event the rights, preferences and privileges of the holders of the Series A Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in subsection 2(d)(iv) hereof.

(iv) The Corporation shall give each holder of record of Series A Preferred Stock written notice of each impending Liquidation Event not later than ten (10) days prior to the closing or consummation of such transaction, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes to the terms of the transaction. The transaction shall in no event take place sooner than ten (10) days after the Corporation has given the first notice provided for herein or sooner than two (2) days after the Corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of Series A Preferred Stock that (i) are entitled to such notice rights or similar notice rights and (ii) represent at least sixty percent (60%) of the voting power of all then outstanding shares of the Series A Preferred Stock. The holders of the outstanding Series A Preferred Stock can waive the

notice requirements described in this subsection (iv) upon the affirmative vote or written consent of the holders of at least sixty percent (60%) of the shares of Series A Preferred Stock then outstanding (voting together as a single class on an as-converted basis). Notwithstanding the foregoing, the Corporation shall not be obligated to provide such notices to the holders of Series A Preferred Stock so long as each of Sevin Rosen Fund VIII L.P., CenterPoint Venture Fund III(Q), L.P., Columbia Capital Equity Partners III (QP), L.P. and Centennial Ventures VII, L.P. or their respective affiliates retains the right to appoint a member of the Corporation's Board of Directors.

3. Intentionally omitted.

4. Conversion. The Series A Preferred Stock shall be converted into Common Stock as follows (the "Conversion Rights"):

(a) Right to Convert. Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the applicable Original Issue Price for such Series A Preferred Stock by the applicable Conversion Price (the conversion rate for the Series A Preferred Stock into Common Stock is referred to herein as the "Conversion Rate"), determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Conversion Price per share for the Series A Preferred Stock shall be the Original Issue Price applicable to such Series A Preferred Stock; provided, however, that the Conversion Price for the Series A Preferred Stock shall be subject to adjustment as set forth in subsection 4(d).

(b) Automatic Conversion. Each share of Series A Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Rate at the time in effect for such Series A Preferred Stock immediately upon the earlier of (i) the Corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement on Form S-1 or Form SB-2 under the Securities Act of 1933, as amended, the public offering price of which was not less than \$2.00 per share (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like) and that results in aggregate proceeds to the Corporation, net of underwriting expenses, in excess of \$30,000,000 (a "Qualified Public Offering") or (ii) the date specified by written consent or agreement of the holders of at least sixty percent (60%) of the then outstanding shares of Series A Preferred Stock.

(c) Mechanics of Conversion. Before any holder of Series A Preferred Stock shall be entitled to voluntarily convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Series A Preferred Stock, and shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior

to the close of business on the date of such surrender of the shares of Series A Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act of 1933, as amended, as set forth in subsection 4(b)(i), the conversion may, at the option of any holder tendering Series A Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the persons entitled to receive the Common Stock upon conversion of the Series A Preferred Stock shall not be deemed to have converted such Series A Preferred Stock until immediately prior to the closing of such sale of securities. If the conversion is in connection with the provisions of subsection 4(b)(ii) above, such conversion shall be deemed to have been made on the conversion date described in the stockholder approval approving such conversion, and the Persons entitled to receive shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holders of such shares of Common Stock as of such date.

(d) Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations. The Conversion Price of the Series A Preferred Stock shall be subject to adjustment from time to time as follows:

(i) (A) If the Corporation shall issue, on or after the date upon which this Restated Certificate of Incorporation is accepted for filing by the Secretary of State of the State of Delaware (the "Filing Date"), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price applicable to the Series A Preferred Stock in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for such Series A Preferred Stock in effect immediately prior to each such issuance shall forthwith (except as otherwise provided in this clause (i)) be adjusted to a price determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock Outstanding (as defined below) immediately prior to such issuance plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for such issuance would purchase at such Conversion Price; and the denominator of which shall be the number of shares of Common Stock Outstanding (as defined below) immediately prior to such issuance plus the number of shares of such Additional Stock. For purposes of this subsection 4(d)(i)(A), the term "Common Stock Outstanding" shall mean and include the following: (1) outstanding Common Stock; (2) Common Stock issuable upon conversion of outstanding Series A Preferred Stock; and (3) Common Stock issuable upon conversion or exchange of all other outstanding securities that are convertible into or exchangeable for Common Stock and upon exercise of all outstanding options to purchase or rights to subscribe for Common Stock and such convertible or exchangeable securities (including Common Stock issuable upon conversion or exchange of such convertible or exchangeable securities), including without limitation outstanding stock options and stock purchase warrants. Securities described in (1) through (3) above shall be included for the purpose of computing the Common Stock Outstanding irrespective of whether such securities are vested or unvested, contingent or non-contingent, and exercisable or not yet exercisable.

(B) No adjustment of the Conversion Price for the Series A Preferred Stock shall be made in an amount less than one cent per share, provided that any

adjustments that are not required to be made by reason of this sentence shall be carried forward and either shall be taken into account in any subsequent adjustment made prior to three (3) years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three (3) years from the date of the event giving rise to the adjustment being carried forward. Except to the limited extent provided for in subsections 4(d)(i)(E)(3) and 4(d)(i)(E)(4), no adjustment of such Conversion Price pursuant to this subsection 4(d)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(C) In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any discounts, fees, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

(D) In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the value of consideration other than cash shall be deemed to be the fair market value thereof as determined in good faith by the Board of Directors irrespective of any accounting treatment.

(E) In the case of the issuance of options to purchase or rights to subscribe for Common Stock the issuance of securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for purposes of determining the number of shares of Additional Stock issued and the consideration paid therefor:

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in subsections 4(d)(i)(C) and 4(d)(i)(D)), if any, received by the Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of, or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for, any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution

adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in subsections 4(d)(i)(C) and 4(d)(i)(D)).

(3) In the event of any change in the number of shares of Common Stock deliverable or in the amount of consideration payable to the Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, the Conversion Price of the Series A Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of any such securities.

(4) Upon the expiration or termination of any such options or rights, or of any such rights to convert or exchange or of any options or rights related to such convertible or exchangeable securities, the Conversion Price of the Series A Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities that remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(5) The number of shares of Additional Stock deemed issued and the consideration deemed paid therefore pursuant to subsections 4(d)(i)(E)(1) and 4(d)(i)(E)(2) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either subsection 4(d)(i)(E)(3) or 4(d)(i)(E)(4).

(ii) "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to subsection 4(d)(i)(E)) by the Corporation on or after the Filing Date other than:

(A) Common Stock or Common Stock Equivalents issued pursuant to a transaction described in subsection 4(d)(iii) hereof (or Common Stock issued upon conversion of such Common Stock Equivalents);

(B) Common Stock issued to employees, directors, consultants and other service providers for the primary purpose of soliciting or retaining their services pursuant to plans or agreements approved by the Corporation's Board of Directors;

(C) Common Stock issued pursuant to a firm commitment underwritten public offering;

(D) Common Stock issued pursuant to the conversion or exercise of convertible or exercisable securities outstanding on the Filing Date;

(E) Common Stock issued or deemed to be issued upon the exercise of options to purchase or rights to subscribe for Common Stock outstanding on the Filing Date;

(F) Common Stock issued or deemed to be issued upon the exercise of options to purchase or rights to subscribe for convertible or exchangeable securities or upon the subsequent conversion or exchange thereof outstanding on the Filing Date;

(G) Common Stock issued upon conversion of Series A Preferred Stock or as dividends or distributions on the Series A Preferred Stock;

(H) Common Stock issued in connection with a bona fide business acquisition of or by the Corporation, whether by merger, consolidation, sale of assets, sale or exchange of stock or otherwise, which transaction is approved by the Corporation's Board of Directors;

(I) Common Stock issued or deemed issued pursuant to subsection 4(d)(i)(E) as a result of a decrease in the Conversion Price of the Series A Preferred Stock resulting from the operation of subsection 4(d)(i);

(J) Common Stock issued pursuant to corporate partnering agreements, joint ventures or other strategic transactions, provided such issuances are primarily for purposes other than equity financing and provided that such arrangements are approved by the Corporation's Board of Directors; or

(K) Common Stock issued or issuable pursuant to any equipment lease financing or bank credit arrangement, provided such transaction is entered into primarily for purposes other than equity financing and is approved by the Corporation's Board of Directors.

(iii) In the event the Corporation should at any time or from time to time after the Filing Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of effectuation or payment of such split, subdivision, dividend or other distribution if no record date is fixed), the Conversion Price of the Series A Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase of the aggregate of the shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in subsection 4(d)(i)(E). Notwithstanding the foregoing, if after the fixing of such a record date the proposed split,

subdivision, dividend or other distribution shall be rescinded or there shall be any change in the resulting increase of the aggregate of the shares of Common Stock outstanding and those issuable with respect to such Common Stock, then the Conversion Price of the Series A Preferred Stock, to the extent in any way affected by or computed as a result of the fixing of such record date, shall be recomputed to reflect the issuance of only the shares of Common Stock and Common Stock Equivalents, if any, actually issued or issuable pursuant to such split, subdivision, dividend or other distribution.

(iv) If the number of shares of Common Stock outstanding at any time after the Filing Date is decreased by a reverse stock split or a combination of the outstanding shares of Common Stock, then, upon the record date of such reverse stock split or combination, the Conversion Price for the Series A Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the outstanding shares of Common Stock.

(e) Other Distributions. In the event the Corporation shall declare a distribution payable in securities of other Persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in subsection 4(d)(iii), then, in each such case for the purpose of this subsection 4(e), the holders of the Series A Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Series A Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(f) Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 or in Section 2), provision shall be made so that the holders of the Series A Preferred Stock shall thereafter be entitled to receive upon conversion of the Series A Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of the Series A Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of the Series A Preferred Stock) shall be applicable after that event as nearly equivalently as may be practicable.

(g) No Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares of Common Stock shall be issued upon the conversion of any shares of the Series A Preferred Stock and the aggregate number of shares of stock to be issued to particular stockholders shall be rounded down to the nearest whole share, and the Corporation shall pay in cash the fair market value of any fractional shares as of the time when entitlement to receive such fractions is determined. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares

of Series A Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of Series A Preferred Stock pursuant to this Section 4, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price for such Series A Preferred Stock then in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property that at the time would be received upon the conversion of a share of Series A Preferred Stock.

(h) Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend and other than a stock dividend of the type described in subsection 4(iii)) or other distribution, the Corporation shall mail to each holder of Series A Preferred Stock, at least ten (10) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend or distribution, and the amount and character of such dividend or distribution.

(i) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, in addition to such other remedies as shall be available to the holder of such Series A Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in reasonable best efforts to obtain the requisite stockholder approval of any necessary amendment to this Restated Certificate of Incorporation.

(j) Notices. Any notice required by the provisions of this Section 4 to be given to the holders of shares of Series A Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation or if given by any other method permitted under the General Corporation Law.

(k) Waiver of Adjustment to Conversion Price. Notwithstanding anything herein to the contrary, any reduction of the Conversion Price of the Series A Preferred Stock may be waived, either prospectively or retroactively and either generally or in a particular instance, by the consent or vote of the holders of sixty percent (60%) of the then outstanding shares of the

Series A Preferred Stock. Any such waiver shall bind all future holders of shares of the Series A Preferred Stock.

(l) Special Mandatory Conversion.

(i) In the event:

(A) the Corporation wishes to consummate a financing that results in the sale of any shares of its Common Stock, or securities convertible into or exchangeable or exercisable for any shares of its Common Stock, or options to purchase or rights to subscribe for such convertible or exchangeable securities, at a price per share for the Common Stock (as determined below) less than the price per share of the most recent issuance of Preferred Stock of the Corporation (on a Common Stock equivalent basis);

(B) the Board of Directors of the Corporation (including at least a majority of the directors elected exclusively by the holders of Series A Preferred Stock) determines (with interested directors able to vote for purposes of this provision) in good faith that it is in the best interests of the Corporation to request that the holders of Series A Preferred Stock of the Corporation participate in such financing (in which case such financing will be deemed a "Mandatory Offering") and determines the aggregate dollar amount to be invested by all holders of Series A Preferred Stock (the "Aggregate Investment Amount"), which amount may be more than or less than any particular holder's right to participate in the financing pursuant to any contractual right of first offer or similar right;

(C) the Corporation delivers a notice ("Notice") to the holders of Series A Preferred Stock (1) stating the Corporation's bona fide intention to consummate such Mandatory Offering, (2) indicating the number and type of securities to be offered, (3) indicating the price and terms upon which it proposes to offer such securities, (4) identifying the Pro Rata Share (as defined below) of each holder of Series A Preferred Stock of the Aggregate Investment Amount, and (5) offering each holder of Series A Preferred Stock the right to purchase such holder's Pro Rata Share of the Aggregate Investment Amount for no less than twenty (20) calendar days after the giving of the Notice (or such longer time period as may be provided with respect to the contractual right of first offer held by holders of Series A Preferred Stock pursuant to Section 2.4 of the Corporation's Investors' Rights Agreement, dated as of the Filing Date, among the Corporation and the holders of Series A Preferred Stock, as it may be amended from time to time); and

(D) any holder of Series A Preferred Stock and affiliates of such holder (collectively, a "Non-Participating Holder") does not acquire at least its Pro Rata Share of the Aggregate Investment Amount (whether or not such Aggregate Investment Amount is more than or less than the aggregate dollar amount actually received by the Corporation from the holders in connection with the Mandatory Offering, as may be the case, for example, if certain holders do not participate in the Mandatory Offering) within the time periods set forth in the Notice;

(ii) then that percentage of such Non-Participating Holder's shares of Series A Preferred Stock equal to the percentage of such Non-Participating Holder's Pro Rata

Share of the Aggregate Investment Amount not acquired by such Non-Participating Holder shall automatically and without further action on the part of such holder be converted, effective upon, subject to and concurrently with the consummation of the Mandatory Offering (the "Mandatory Offering Date"), into shares of Common Stock of the Corporation at a Conversion Price equal to the Original Issue Price for such Series A Preferred Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like, but without any adjustment by reason of consummation of the Mandatory Offering or for any adjustment pursuant to subsection 4(d)(i)(A) subsequent to the Filing Date). For purposes of this subsection 4(l), each holder's Pro Rata Share of the Aggregate Investment Amount shall be an amount determined by multiplying the Aggregate Investment Amount by a fraction, the numerator of which shall be the number of shares of Common Stock issuable upon conversion of all shares of Series A Preferred Stock then held by such holder and the denominator of which shall be the total number of shares of Common Stock issuable upon conversion of the Series A Preferred Stock then outstanding. For purposes of calculating a holder's Pro Rata Share, the applicable number of shares of Common Stock issuable upon conversion of the shares of Series A Preferred Stock shall be calculated based on the number of shares of Series A Preferred Stock outstanding immediately following the closing of the Mandatory Offering, assuming all such holders of Series A Preferred Stock acquire such number of shares in such Mandatory Offering as may be necessary so that the provisions of this Section 4(l) would not cause a conversion of any shares of Series A Preferred Stock into Common Stock.

(iii) The holder of any shares of Series A Preferred Stock converted into Common Stock pursuant to this subsection 4(l) shall deliver to the Corporation during regular business hours at the office of any transfer agent of the Corporation for the Series A Preferred Stock, or at such other place as may be designated by the Corporation, the certificate or certificates for the shares so converted, duly endorsed or assigned in blank or to the Corporation. As promptly as practicable thereafter, the Corporation shall issue and deliver to such holder, at the place designated by such holder, a certificate or certificates for the number of full shares of the Common Stock to be issued and such holder shall be deemed to have become a stockholder of record of Common Stock on the Mandatory Offering Date, unless the transfer books of the Corporation are closed on that date, in which event such holder shall be deemed to have become a stockholder of record of Common Stock on the next succeeding date on which the transfer books are open. From and after the Mandatory Offering Date, the certificate or certificates representing shares of Series A Preferred Stock converted pursuant to this subsection 4(l) shall represent the shares of Common Stock into which such shares of Series A Preferred Stock were converted.

(iii) In the event that a holder of Series A Preferred Stock converts any Series A Preferred Stock into Common Stock pursuant to subsections 4(a) or 4(b) hereof within ninety (90) days prior to the date of closing of a Mandatory Offering, such holder shall be deemed to have converted such shares pursuant to this subsection 4(l), and such holder shall be required to transfer to the Corporation all shares of Common Stock issued upon such conversion resulting from any adjustment pursuant to subsection 4(d)(i)(A) subsequent to the Filing Date.

5. Voting Rights.

(a) General Voting Rights. The holder of each share of Series A Preferred Stock shall have the right to one vote for each share of Common Stock into which such Series A Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation, and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Series A Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

(b) Voting for the Election of Directors. As long as any shares of Series A Preferred Stock remain outstanding, the holders of such shares of Series A Preferred Stock shall be entitled to elect four (4) directors of the Corporation at any election of directors. The holders of outstanding Common Stock shall be entitled to one (1) director of the Corporation at any election of directors, provided that such director shall be the chief executive officer of the Corporation. The holders of Series A Preferred Stock and Common Stock (voting together as a single class and not as separate series, and on an as-converted basis) shall be entitled to elect any remaining directors of the Corporation.

Notwithstanding the provisions of Section 223(a)(1) and 223(a)(2) of the General Corporation Law, any vacancy, including newly created directorships resulting from any increase in the authorized number of directors or amendment of this Restated Certificate of Incorporation, and vacancies created by removal or resignation of a director, may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and shall qualify, unless sooner displaced; provided, however, that where such vacancy occurs among the directors elected by the holders of a class or series of stock pursuant to a contractual agreement by and among the Corporation and certain stockholders of the Corporation, the holders of shares of such class or series entitled to elect such director may override the Board's action to fill such vacancy by (i) voting for their own designee to fill such vacancy at a meeting of the Corporation's stockholders or (ii) written consent in accordance with the requirements of the General Corporation Law. Any director elected as provided in the immediately preceding sentence hereof may be removed during the aforesaid term of office, either with or without cause, by, and only by, the affirmative vote of the holders of the shares of the class or series of stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders, and any vacancy thereby created may be filled by the holders of that class or series of stock represented at the meeting or pursuant to written consent.

6. Protective Provisions. (a) So long as any shares of Series A Preferred Stock remain outstanding, the Corporation shall not (by amendment, merger, consolidation or otherwise) without first obtaining the approval (by vote or written consent) of the holders of at

least sixty percent (60%) of the then outstanding shares of Series A Preferred Stock (voting together as a single class on an as converted basis):

- (i) consummate a Liquidation Event;
- (ii) alter or change the rights, preferences or privileges of the shares of Series A Preferred Stock so as to affect adversely the shares;
- (iii) increase or decrease (other than by conversion) the total number of authorized shares of Preferred Stock or Common Stock or create (by reclassification or otherwise) any new class of stock;
- (iv) authorize or issue, or obligate itself to issue, any equity security (including any other security convertible into or exercisable for any such equity security) having a preference over, or being on a parity with, the Series A Preferred Stock with respect to dividends or payment upon liquidation, dissolution, winding up, redemption, voting (in all respects) and conversion;
- (v) redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any share or shares of Series A Preferred Stock or Common Stock; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements under which the Corporation has the option to repurchase such shares upon the occurrence of certain events, such as the termination of employment or service, or pursuant to a right of first refusal;
- (vi) amend the Corporation's Certificate of Incorporation or Bylaws in a manner adverse to the Series A Preferred Stock;
- (vii) pay dividends on any class or series of equity securities, other than dividends payable on the Series A Preferred Stock;
- (viii) make any loans or advances to its employees or any members of their immediate families, other than loans or advances in the ordinary course of business or loans to employees made pursuant to promissory notes issued for the purchase of shares under a stock option plan, restricted stock plan or similar equity incentive plan approved by the Board of Directors of the Corporation;
- (ix) guarantee, other than in the ordinary course of business, any indebtedness or obligation of any other party other in excess of \$1,000,000, or create or suffer to be imposed any lien, mortgage, security interest or other charge on or against all or substantially all of the properties or assets of the Corporation or any subsidiary or incur indebtedness in excess of \$1,000,000, other than in the ordinary course of business;
- (x) acquire, or permit any subsidiary to acquire, any stock or other securities of any Person unless immediately following such acquisition such Person would be wholly owned by the Corporation or a subsidiary of the Corporation;

(xi) enter into any transactions with any officer, director or employee of the Corporation or parents, spouses, siblings or lineal descendants of any of the foregoing, except for employment, engagement, option or benefit agreements or other similar agreements entered into by the Corporation in the ordinary course of business, or except for the provision of goods or services on terms and conditions substantially similar to those that would be available from an independent third party for the provision of comparable goods or services;

(xii) make any capital expenditures of more than \$1,000,000 or make material changes in the nature of the business conducted by the Company; or

(xiii) increase the number of shares available for issuance under the Company's 2004 Equity Incentive Plan in excess of twelve percent (12%) of the fully diluted capitalization of the Company (assuming for the purposes of such calculation the issuance of all stock options issued under such Equity Incentive Plan and the exercise of all such stock options, and also assuming the conversion, exchange or exercise of all securities convertible into or exchangeable or exercisable for any shares of Common Stock, or the exercise of all options to purchase or rights to subscribe for such convertible or exchangeable securities and the subsequent conversion or exchange of all such convertible or exchangeable securities).

7. Status of Converted Stock. In the event any shares of Series A Preferred Stock shall be converted pursuant to Section 4 hereof, the shares so converted shall be cancelled and shall not be issuable by the Corporation.

C. Common Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Common Stock are as set forth below in this Article IV(C).

1. Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of any assets of the Corporation legally available therefor, any dividends as may be declared from time to time by the Board of Directors.

2. Liquidation Rights. Upon the liquidation, dissolution or winding up of the Corporation (including upon the occurrence of a Liquidation Event), the assets of the Corporation shall be distributed as provided in Section 2 of Article IV(B) hereof.

3. Voting Rights. The holder of each share of Common Stock shall have the right to one vote for each such share, and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

ARTICLE V

Except as otherwise provided in this Restated Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation.

ARTICLE VI

The number of directors of the Corporation shall be determined in the manner set forth in the Bylaws of the Corporation.

ARTICLE VII

Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

ARTICLE VIII

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws of the Corporation may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware 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.

ARTICLE IX

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit. If the General Corporation Law is amended after approval by the stockholders of this Article IX to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended.

Any repeal or modification of the foregoing provisions of this Article IX by the Board of Directors and stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

ARTICLE X

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Restated Certificate of Incorporation, in the manner now or hereafter prescribed

by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

ARTICLE XI

To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) agents of the Corporation (and any other persons to which General Corporation Law permits the Corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law, subject only to limits created by applicable General Corporation Law (statutory or non-statutory), with respect to actions for breach of duty to the Corporation, its stockholders, and others.

Any amendment, repeal or modification of the foregoing provisions of this Article XI shall not adversely affect any right or protection of a director, officer, agent, or other person existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director, officer or agent occurring prior to, such amendment, repeal or modification.

* * *

THIRD: The foregoing amendment and restatement was approved by the holders of the requisite number of shares of the Corporation in accordance with Section 228 of the General Corporation Law.

FOURTH: That this Restated Certificate of Incorporation, which restates and integrates and further amends the provisions of the Corporation's Certificate of Incorporation, has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law.

IN WITNESS WHEREOF, this Restated Certificate of Incorporation has been executed by a duly authorized officer of the Corporation on this 27th day of August, 2004.

/s/ Ross Manire

Ross Manire, President

EXHIBIT 2

COMPETITIVE ACCESS PROVIDER TARIFF

COMPETITIVE ACCESS PROVIDER SERVICES TARIFF

COMPETITIVE ACCESS PROVIDER SERVICES TARIFF

Provided by

CLEARLINX NETWORK CORPORATION
1901 S. Meyers Road, Suite 190
Oakbrook Terrace, IL 60181

Applying to Dedicated Point-To-Point Communications Services
Between Points in the Commonwealth of Pennsylvania
and Containing Rates, Rules and Regulations Governing Service

Issued: December 16, 2005

Issued by:
Terry Ray, Vice President
1901 S. Meyers Road, Suite 190
Oakbrook Terrace, IL 60181

Effective: December __, 2005

COMPETITIVE ACCESS PROVIDER TARIFF

CHECK PAGE

Pages of this tariff as listed below are effective as of the date shown at the bottom of the respective page(s). Original and revised pages as named below comprise all changes from the original tariff and are currently in effect as of the date on the bottom of this page.

Page	Number of Revision	Page	Number of Revision	Page	Number of Revision
1	Original*	26	Original*		
2	Original*	27	Original*		
3	Original*	28	Original*		
4	Original*	29	Original*		
5	Original*	30	Original*		
6	Original*	31	Original*		
7	Original*	32	Original*		
8	Original*	33	Original*		
9	Original*	34	Original*		
10	Original*	35	Original*		
11	Original*	36	Original*		
12	Original*				
13	Original*				
14	Original*				
15	Original*				
16	Original*				
17	Original*				
18	Original*				
19	Original*				
20	Original*				
21	Original*				
22	Original*				
23	Original*				
24	Original*				
25	Original*				

* Included in this filing

COMPETITIVE ACCESS PROVIDER TARIFF**TARIFF FORMAT**

This tariff is divided into the following major sections:

- Section 1: Definitions
- Section 2: Rules and Regulations
- Section 3: Rate Schedules

- A. Page Numbering:** Page numbers appear in the upper right corner of the page. Pages are numbered sequentially. However, new pages are occasionally added to the tariff. When a new page is added between pages already in effect, a decimal is added. For example, a new page added between pages 14 and 15 would 14.1.
- B. Page Revision Numbers:** Revision numbers also appear in the upper right corner of each page. These numbers are used to determine the most current page version on file with the Pennsylvania Public Utility Commission. For example, the 4th revised Page 14 cancels the 3rd revised Page 14. Because of various suspension periods, deferrals, etc., the Pennsylvania Public Utility Commission follows in its tariff approval process, the most current page number on file with the Pennsylvania Public Utility Commission is not always the tariff page in effect. Consult the Check Page for the page currently in effect.
- C. Paragraph Numbering Sequence:** There are seven levels of paragraph coding. Each level of coding is subservient to its next higher level:
- 2
 - 2.1
 - 2.1.1
 - 2.1.1.1
 - 2.1.1.1.1
 - 2.1.1.1.1.1
 - 2.1.1.1.1.1.1
- D. Check Pages:** When a tariff filing is made with the Pennsylvania Public Utility Commission, an updated check page accompanies the tariff filing. The check page lists the pages contained in the tariff, with a cross reference to the current revision number. When new pages are added, the check page is changed to reflect the revision.

COMPETITIVE ACCESS PROVIDER TARIFF

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COMPETITIVE ACCESS PROVIDER TARIFF**Preliminary Statement**

This tariff governs the service offerings, rates, terms and conditions applicable to the furnishing of Competitive Access Provider ("CAP") Services by ClearLinx Network Corporation (referred to herein as "Company" or "ClearLinx") that originate and terminate in Pennsylvania. Service is offered for dedicated point-to-point circuits on a Distributed Antenna System Network pursuant to the terms of this tariff. Descriptions applicable to specific offerings are found in the Rate Schedules of this tariff. Service is not offered or available for purchase by residential and/or business end users. Service is available 24 hours per day, seven days per week and is subject to the availability of necessary equipment and facilities and the economic feasibility of providing such necessary equipment and facilities. Services are offered via the Company's facilities (whether owned, leased, or under contract), and may be provided in combination with services provided by other carriers.

This tariff is on file with the Pennsylvania Public Utility Commission, and copies may be inspected during normal business hours at the Company's principal place of business, 1901 S. Meyers Road, Suite 190, Oakbrook Terrace, IL 60181. This tariff is intended to be in conformance with all applicable State and Federal laws (including, but not limited to, 52 Pa. Code, 66 Pa C.S., and the Telecommunications Act of 1996), and with the Commission's applicable Rules and Regulations and Orders. Any provisions contained in this tariff that are inconsistent with the foregoing mentioned will be deemed inoperative and superseded.

Issued: December 16, 2005

Issued by:

Effective: December __, 2005

Terry Ray, Vice President
1901 S. Meyers Road, Suite 190
Oakbrook Terrace, IL 60181

COMPETITIVE ACCESS PROVIDER TARIFF

EXPLANATION OF SYMBOLS

- (D) To signify decreased rate
- (I) To signify increased rate
- (C) To signify all other changes

Issued: December 16, 2005

Issued by:
Terry Ray, Vice President
1901 S. Meyers Road, Suite 190
Oakbrook Terrace, IL 60181

Effective: December ____, 2005

COMPETITIVE ACCESS PROVIDER TARIFF

1 DEFINITIONS

Advance Payment: Part or all of a payment required before the start of service.

Business Hours: The time after 8:00 a.m. and before 5:00 p.m., Monday through Friday, excluding Holidays.

Business Office: The primary location where the business operations of Company are performed and where the Company makes a copy of the Company's tariff available for public inspection. The address of the business is: 1901 S. Meyers Road, Suite 190 Oakbrook Terrace, IL 60181.

Commission or CPUC: The Pennsylvania Public Utility Commission.

Common Carrier: An authorized company or entity providing telecommunications services to the public.

Company: The term "Company" means ClearLinx Network Corporation.

Competitive Local Exchange Carrier: A Common Carrier authorized to provide services within exchange areas.

Customer: The person, firm or corporation that orders service and is responsible for the payment of charges and compliance with the terms and conditions of this tariff.

Customer Premises: A location designated by the Customer for the purposes of connecting to the Company's services.

Dark Fiber: Unactivated optical fiber deployed without optoelectronics and through which no light is transmitted and no signal is carried.

Dim Fiber: Unactivated optical fiber deployed with optoelectronics on one end owned by the customer, and on one end owned by the Company, and which may carry signals.

COMPETITIVE ACCESS PROVIDER TARIFF**1 DEFINITIONS (cont'd.)**

Distributed Antenna System ("DAS"): As used by Company, a network of components that input an RF signal from Customer equipment located at a Head End, convert it to an optical signal, transport it on fiber optic facilities to one or more remote locations, and then re-convert it back to an RF signal that is transmitted from an antenna at the remote location. This network is bi-directional, and the same components input an RF signal from an antenna at the remote location, convert it to an optical signal, transport it on fiber optic facilities to a Head End, and then re-convert it back to an RF signal that is handed off to Customer equipment located at a Head End.

Head End: A physical location, building or structure used to house the Company equipment and Customer equipment used to transfer originating and terminating traffic between Company and Customer.

Holiday: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. When holidays fall on Saturdays or Sundays, the holiday rate applies unless a larger discount would normally apply.

Individual Case Basis ("ICB"): Customer-specific arrangements that may vary from tariff in rates, terms and/or conditions according to Customer-specific requirements and service-specific parameters.

Interruption: The inability to complete calls due to equipment malfunctions or human errors. Interruption shall not include the failure of any service or facilities provided by a Common Carrier or other entity other than the Company. Any Interruption allowance provided within this tariff by Company shall not apply where service is interrupted by the negligence or willful act of the Customer, or where the Company, pursuant to the terms of this tariff, terminates service because of non-payment of bills, unlawful or improper use of the Company's facilities or service, or any other reason covered by this tariff or by applicable law.

Interexchange Carrier: A Common Carrier authorized to provide services between exchange areas.

Lambda: A specific wavelength on a fiber optic system.

COMPETITIVE ACCESS PROVIDER TARIFF**1 DEFINITIONS (cont'd.)**

Non-Business Hours: The time period after 5:00 p.m. and before 8:00 a.m., Monday through Friday, and all day Saturday, Sunday, and Holidays.

Nonrecurring Charges: Charges to the Customer for services and equipment, assessed by the Company once, usually at the origination or termination of services, and/or installation of equipment.

Permanent Virtual Circuit ("PVC"): A bi-directional transmission path of variable bandwidth that carries RF traffic between a Company Head End and one or more remote Point(s) of Presence, provisioned on a Company-provided DAS.

Point of Presence: A physical location at the remote end (i.e., non-Head End) of a PVC that hosts Company and/or Customer RF/optical conversion, fiber interconnect, and/or multiplexing equipment that is connected to the fiber optic system carrying the PVC.

Recurring Charges: Monthly, quarterly or other periodic charges to the Customer for services and equipment, which continue for the agreed-upon duration of the service.

RF: Radio Frequency.

SONET: Synchronous Optical Network standard for optical telecommunications transport services developed by the American National Standards Institute.

Service: Any service or services, singly or in any combination, offered pursuant to the terms of this tariff.

Telecommunications: The transmission of voice and/or data communications between two points.

Timely Payment: A payment on Customer's account made on or before the due date.

Term Agreement: An agreement between the Company and the Customer for a fixed period of time.

COMPETITIVE ACCESS PROVIDER TARIFF

2 RULES AND REGULATIONS

2.1 UNDERTAKING OF THE COMPANY

- 2.1.1 The Company's services are furnished for telecommunications services originating and terminating within the Commonwealth of Pennsylvania.
- 2.1.2 The Company is a facilities-based and resale provider of telecommunications to Customers for the direct transmission and reception of voice, data, and other types of communications. Services are offered via the Company's facilities (whether owned, leased, or under contract), and may be provided in combination with services provided by other certificated carriers. The Company is responsible under this tariff only for the services and facilities the Company provides hereunder.
- 2.1.3 The Company's services are provided on a monthly basis unless otherwise provided, and are available twenty-four (24) hours per day, seven (7) days per week, subject to the availability of necessary service, equipment and facilities and the economic feasibility of providing such necessary service, equipment, and facilities.

2.2 SHORTAGE OF FACILITIES OR EQUIPMENT AND OTHER LIMITATIONS

- 2.2.1 The Company reserves the right to limit or to allocate the use of existing facilities, or of additional facilities offered by the Company, when necessary because of lack of facilities, or due to some other cause beyond the Company's control.
- 2.2.2 The furnishing of service under this tariff is subject to the availability on a continuing basis of all the necessary facilities and is limited to the capacity of the Company's facilities as well as facilities the Company may obtain from other carriers to furnish service from time to time as required at the sole discretion of the Company.

COMPETITIVE ACCESS PROVIDER TARIFF**2 RULES AND REGULATIONS (cont'd.)****2.3 TERMS AND CONDITIONS**

- 2.3.1** A Service may be initiated only based on a written agreement between the Company and the Customer. To initiate a service request, the Customer must provide the following information: the Customer's name; an address to which the Company shall provide service; and a billing address (if different). The service application does not itself bind either the Customer to subscribe to the service or the Company to provide the service.
- 2.3.2** Request for service under this tariff will authorize the Company to conduct a credit search on the Customer. The Company reserves the right to refuse service on the basis of credit history unless the Customer pays a deposit, and to refuse further service due to late payment or nonpayment by the Customer. Potential customers who are denied service must be given the reason for the denial in writing within 10 days of service denial.

2.4 LIMITATIONS ON LIABILITY

- 2.4.1** In view of the fact that the Customer has exclusive control over the use of service and facilities furnished by the Company, and because certain errors incident to the services and to the use of such facilities of the Company are unavoidable, services and facilities are furnished by the Company subject to the terms, conditions and limitations herein specified:

2.4.1.1 Service Irregularities

- 2.4.1.1.1** The liability of the Company for damages arising out of mistakes, omissions, interruptions, delays, errors or defects in transmission, or failures or defects in facilities furnished by the Company, occurring in the course of furnishing service or other facilities and not caused by the negligence of the Customer, shall in no event exceed an amount equivalent to the proportionate charge to the Customer for the service or facilities affected during the period such mistake, omission, interruption, delay, error or defect in transmission, or failure or defect in facilities continues after notice and demand to the Company.

COMPETITIVE ACCESS PROVIDER TARIFF

2 RULES AND REGULATIONS (cont'd.)

2.4 LIMITATIONS ON LIABILITY (cont'd)

2.4.1.1.2 The Company shall not be liable for any act or omission of any connecting carrier, underlying carrier or local exchange company except where Company contracts with the other carrier; for acts or omissions of any other providers of connections, facilities, or service; or for culpable conduct of the Customer or failure of equipment, facilities or connection provided by the Customer.

2.4.1.1.3 The Company shall not be liable for any failure of performance due to causes beyond its control, including but not limited to cable dig-up by third party, acts of God, civil disorders, actions of governmental authorities, actions of civil or military authority, labor problems, national emergency, insurrection, riots, war, fire, flood, and atmospheric conditions or other phenomena of nature, such as radiation. In addition, the Company will not be liable for any failure of performance due to necessary Network reconfiguration, system modifications for technical upgrades, or actions taken by any court or government agency having jurisdiction over the Company.

2.4.1.2 Claims of Misuse of Service

2.4.1.2.1 The Company shall be indemnified and saved harmless by the Customer against claims for libel, slander, fraudulent or misleading advertisements or infringement of copyright arising directly or indirectly from material transmitted over its facilities or the use thereof., against claims for infringement of patents arising from combining or using apparatus and systems of the Customer with facilities of the Company; and against all other claims arising out of any act or omission of the Customer in connection with the services and facilities provided by the Company.

2.4.1.2.2 The Company does not require indemnification from the Customer where the action for which it is seeking indemnification is based on a claim of negligence by the Company.

COMPETITIVE ACCESS PROVIDER TARIFF

2 RULES AND REGULATIONS (cont'd.)

2.4 LIMITATIONS ON LIABILITY (cont'd)

2.4.1.3 Defacement of Premises

2.4.1.3.1 The Company is not liable for any defacement of, or damage to, the Customer's Premises resulting from the furnishing of service or the attachment of equipment and facilities furnished by the Company on such premises or by the installation or removal thereof, when such defacement or damage is not the result of negligence of the Company. For the purpose of this paragraph, no agents or employees of any other participating carrier(s) shall be deemed to be agents or employees of the Company except where contracted by the Company.

2.4.1.4 Facilities and Equipment in Explosive Atmosphere, Hazardous or Inaccessible Locations

2.4.1.4.1 The Company does not guarantee nor make any warranty with respect to installations provided by it for use in an explosive atmosphere. Company shall be indemnified, defended and held harmless by Customer from and against any and all claims, loss, demands, suits, or other action, or any liability whatsoever, whether suffered, made, instituted or asserted by the Customer or by any other party, for any personal injury to or death of any person or persons, and for any loss, damage or destruction of any property, including environmental contamination, whether owned by the Customer or by any other party, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, presence, condition, location, use or removal of any equipment or facilities or the service and not due to the gross negligence or willful misconduct of the Company.

COMPETITIVE ACCESS PROVIDER TARIFF

2 RULES AND REGULATIONS (cont'd.)

2.4 LIMITATIONS ON LIABILITY (cont'd)

2.4.1.5 Service at Outdoor Locations

2.4.1.5.1 The Company reserves the right to refuse to provide, maintain or restore service at outdoor locations unless the Customer agrees in writing to indemnify and save the Company harmless from and against any and all loss or damage that may result to equipment and facilities furnished by the Company at such locations. The Customer shall likewise indemnify and save the Company harmless from and against injury to or death of any person which may result from the location and use of such equipment and facilities.

2.4.1.6 Warranties

2.4.1.6.1 THE COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.

2.4.1.6.2 Acceptance of the provisions of Section 2.4 by the Commission does not constitute its determination that any disclaimer of warranties or representations imposed by the Company should be upheld in a court of law.

2.4.1.7 Scope of liability

2.4.1.7.1 Nothing in this tariff shall be construed to limit the Company's liability in cases of gross negligence or willful misconduct.

COMPETITIVE ACCESS PROVIDER TARIFF

2 RULES AND REGULATIONS (cont'd.)

2.5 OWNERSHIP OF FACILITIES

2.5.1 Title to all facilities provided in accordance with this tariff remains in the Company, its agents, contractors or suppliers.

2.6 PROHIBITED USES

2.6.1 The services the Company offers shall not be used for any unlawful purpose or for any use for which the Customer has not obtained all required governmental approvals, authorization, licenses, consents and permits.

2.6.2 The Company may require applicants for service who intend to use the Company's offering for resale and/or for shared use to file a letter with the Company confirming that their use of the Company's offerings complies with relevant laws and regulations, policies, orders, and decisions.

2.6.3 The Company may require a Customer to immediately shut down its transmission if such transmission is causing interference to others.

2.6.4 A Customer or authorized user may not assign, or transfer in any manner, the service or any rights associated with the service without the written consent of the Company. The Company will permit a Customer to transfer its existing service to another entity if the existing Customer has paid all charges owed to the Company for regulated access services. Such a transfer will be treated as a disconnection of existing service and installation of new service, and non-recurring installation charges as stated in this tariff will apply. Additionally, Customer may be liable for termination charges if Customer terminates any contract prior to expiration of its term.

COMPETITIVE ACCESS PROVIDER TARIFF

2 RULES AND REGULATIONS (cont'd.)

2.7 OBLIGATIONS OF THE CUSTOMER

The Customer shall be responsible for:

- 2.7.1 placing any necessary Service Orders; complying with tariff terms and conditions; for assuring that users comply with tariff regulations; and for payment of charges for calls originated from the Customer's telephone lines
- 2.7.2 arranging access to its premises at times mutually agreeable to Company and the Customer when required for installation, repair, maintenance, inspection or removal of equipment associated with the provision of Company services
- 2.7.3 maintaining its equipment and facilities in good operating condition. The Customer is liable for any loss, including loss through theft, of any Company equipment installed at the Customer's premises.

2.8 INTERCONNECTION OF FACILITIES

- 2.8.1 A Service furnished by Company may be interconnected with services or facilities of other authorized communications common carriers and with private systems, subject to the technical limitations established by Company. Any special interface of equipment or facilities necessary to achieve compatibility between the facilities of Company and other participating carriers shall be provided at the Customer's expense.
- 2.8.2 Interconnection between the facilities or services of other carriers shall be under the applicable terms and conditions of the other carriers' tariffs. The Customer is responsible for taking all necessary legal steps for interconnecting Customer-provided equipment with Company's facilities. The Customer shall secure all licenses, permits, rights-of-way and other such arrangements necessary for interconnection.

COMPETITIVE ACCESS PROVIDER TARIFF

2 RULES AND REGULATIONS (cont'd.)

2.9 CUSTOMER ADVANCE PAYMENTS AND DEPOSITS

2.9.1 Advance Payments

2.9.1.1 *The Company reserves the right to require from an applicant for service advance payments for the construction of facilities and furnishing of special equipment. The advance payment will not exceed an amount equal to the nonrecurring charge(s) and one month's charges for the service or facility. In addition, where special construction is involved, the advance payment may also include an amount equal to the estimated nonrecurring charges for the special construction. The advance payment will be applied to any indebtedness for the service and facilities for which the advance payment is made on the Customer's initial bill.*

2.9.1.2 *Advance payments for installation costs or special construction will be credited on the first bill in their entirety.*

2.9.2 Deposits

2.9.2.1 *The Company may, at its sole discretion, require a deposit or usage prepayment as a condition to Customer's receiving new service or additional service. The Company reserves the right to review an applicant's or a Customer's credit history at any time to determine if a deposit is required.*

2.9.2.2 *In the event the Customer fails to establish a satisfactory credit history, deposits are a form of security that may be required from Customers to ensure payment of bills.*

2.9.2.3 *Deposits shall be no greater than twice the estimated average monthly bill for the class of service applied for.*

2.9.2.4 *Deposits will be refunded with interest within 30 days after discontinuance of service or after 12 months of service, whichever comes first. Interest on deposits are payable at the rate of the average 1-year US Treasury bills for September, October, and November of the-previous year without deduction for any taxes on such deposits. Interest will not accrue on any deposits after the date on which reasonable effort has been made to return it to the customer.*

COMPETITIVE ACCESS PROVIDER TARIFF

2 RULES AND REGULATIONS (cont'd.)

2.10 PAYMENT ARRANGEMENTS

2.10.1 Payment for Service

2.10.1.1 The Customer is responsible for the payment of all charges for facilities and services furnished by the Company to the Customer.

2.10.2 Taxes

2.10.2.1 Appropriate federal, state, local and municipal taxes and surcharges will be charged on Services and are in addition to the rates for Service set forth in this tariff unless otherwise stated

2.10.2.2 Customers shall pay all sales, use, gross receipts, excise, access, bypass, or other local, state and Federal taxes, charges, or surcharges, however designated, imposed on or based upon the provision, sale or use of the services (excluding taxes on the Company's net income). Such taxes shall be separately stated on the applicable invoice.

2.10.2.3 When a municipal corporation or other political subdivision of the state collects from the Company a license tax, privilege tax, street use tax, franchise fee, permit fee, or any tax, exaction, or fee measured by poles, wires, conduits, manholes, telephones, other units of plant, income or activities as a public service corporation, such taxes, exactions and fees shall, insofar as practicable, be billed pro rata to the Customers receiving service within the territorial limits of the municipal corporation or political subdivision.

COMPETITIVE ACCESS PROVIDER TARIFF**2 RULES AND REGULATIONS (cont'd.)****2.11 BILLING AND COLLECTION OF CHARGES**

- 2.11.1** The Customer is responsible for payment of all charges incurred by the Customer for services and facilities furnished to the Customer by the Company. The Company is not responsible for any telephone charges that may be incurred by the Customer in gaining access to the Company's Network.
- 2.11.2** Charges for service are applied on a recurring basis. Service is provided and billed on a monthly (30 day) basis. Months are presumed to have 30 days. The billing date is dependent on the billing cycle assigned to the Subscriber. Service continues to be provided for the minimum service term.
- 2.11.3** Billing is payable upon receipt and past due thirty (30) days after issuance and posting of invoice. Bills not paid within thirty-one (31) days after the date of posting are subject to a 1.25 percent per month late payment charge for any unpaid balance. The late payment date will be prominently displayed on the Customer's bill. Company shall endeavor to credit payments within 24 hours of receipt to avoid assessing late payment charges incorrectly.
- 2.11.4** Monthly recurring charges that are not usage-sensitive are billed monthly in advance. Usage charges are billed monthly in arrears. In the event the Company changes its rates, recurring monthly charges affected by such change will be assessed at the new rate for the full billing period during which the new recurring charge rate became effective.

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COMPETITIVE ACCESS PROVIDER TARIFF

2 RULES AND REGULATIONS (cont'd.)

2.11 BILLING AND COLLECTION OF CHARGES (cont'd)

2.11.5 If the Company hires a collection agency to collect, or attempt to collect, any charges owed, the Customer will be liable to the Company for an additional payment equal to 35% of the charges owed, where permitted by applicable law. If the Company incurs any fees or expenses, including attorneys' fees, in collecting, or attempting to collect, any charges owed the Company other than by hiring a collection agency, the Customer will be liable to the Company for the payment of all such fees and expenses reasonably incurred.

2.11.6 The Company does not offer service to residential customers. In the event that the Company offers services to residential customers in the future, it will comply with the requirements of Chapter 64 in 52 Pa. Code regarding billing standards and practices for residential customers. In instances where sections of this tariff may conflict with Chapter 64 regulations, the regulations in Chapter 64 will prevail.

2.12 BILLING DISPUTES

2.12.1 General

2.12.1.1 Billing disputes should be addressed to Company's customer service organization via telephone to 800-XXX-XXXX. Customer service representatives are available from 9:00 AM to 5:00 PM Central Time. Messages may be left for Customer Service from 5:00 PM to 9:00 AM Central Time, which will be answered on the next business day, except in the event of an emergency which threatens customer service, in which case Customer Service Staff may be paged.

2.12.1.2 The undisputed portions of the bill must be paid by the payment due date shown on the bill to avoid assessment of a late payment charge on the undisputed amount under Section 2.5.2.C., preceding.

COMPETITIVE ACCESS PROVIDER TARIFF

2 RULES AND REGULATIONS (cont'd.)

2.12 BILLING DISPUTES(cont'd)

2.12.2 Adjustments or Refunds to the Customer

2.12.2.1 *In the event that the Company resolves the billing dispute in favor of a Customer who has withheld payment of the disputed amount pending resolution of the disputed bill, the Company will credit the Customer's account for the disputed amount in the billing period following the resolution of the dispute.*

2.12.2.2 *In the event the Company resolves the billing dispute in favor of a Customer who has paid the total amount of the disputed bill, the Company will credit the Customer's account for any overpayment by the Customer in the billing period following the resolution of the dispute.*

2.12.2.3 *In the event that the Company resolves the billing dispute in favor of a Customer who has paid the total amount of the disputed bill but canceled the service, the Company will issue a refund of any overpayment by the Customer.*

2.12.2.4 *All adjustments or refunds provided by the Company to the Customer at the Customer's request, or provided by the Company to the Customer by way of compromise of a billing dispute, and which are accepted by the Customer, are final and constitute full satisfaction, settlement, and/or compromise of all of the Customer's claims for the billing period for which the adjustment or refund was issued.*

COMPETITIVE ACCESS PROVIDER TARIFF

2 RULES AND REGULATIONS (cont'd.)

2.13 UNRESOLVED BILLING DISPUTES

2.13.1 In the case of a billing dispute between the Customer and the Company for service furnished to the Customer, which cannot be settled to the mutual satisfaction of the Customer and the Company, the Customer can take the following course of action:

2.13.1.1 First, the Customer may request and the Company will provide an in-depth review of the disputed amount. The undisputed portion and subsequent bills must be paid on a timely basis or the service may be subject to disconnection.

2.13.1.2 Second, if after investigation and review by the Company, a disagreement remains as to the disputed amount, the Customer may file an appropriate complaint with:

Pennsylvania Public Utility Commission
Bureau of Consumer Services
P.O. Box 3265
Harrisburg, Pennsylvania 17105-3265
Telephone: 1-8 00-PUC-1110
Fax: 1-717-783-5659

2.13.1.3 In order to avoid suspension of service and late payment charges, the disputed amount must be paid within fourteen (14) calendar days after the date the Company notifies the Customer that the investigation and review are completed and that such payment must be made or service will be interrupted. However, the Company will not suspend service prior to the payment due date as shown on the bill.

COMPETITIVE ACCESS PROVIDER TARIFF

2 RULES AND REGULATIONS (cont'd.)

2.14 DISCONTINUANCE OF SERVICE

2.14.1 Upon violation of any of the material terms or conditions for furnishing service, the Company shall mail or deliver written notice to the Customer at least seven (7) days before the date of the proposed suspension. When at least 10 days have passed since suspension of service, the Company may terminate service for failure to pay a reconnection fee and to remedy the original grounds for suspension.

2.14.2 Service may be suspended by written notice for any of the following reasons:

2.14.2.1 Nonpayment of any sum due to the Company for service more than thirty (30) days beyond the date of the invoice for such service. In the event the Company terminates service for nonpayment, the Customer may be liable for all reasonable court costs and attorney fees as determined by the Pennsylvania Public Utility Commission or by the Court.

2.14.2.2 By reason of any order or decision of a court or any other governmental authority which prohibits the Company from furnishing such service.

2.14.2.3 Failure to post a required deposit or guarantee.

2.14.2.4 Unlawful use of the service or use of the service for unlawful purposes.

2.14.2.5 Violation of, or failure to comply with, any regulation or condition governing the furnishing of service.

2.14.2.6 If the Company deems such refusal necessary to protect itself or third parties against fraud or to otherwise protect its personnel, agents, facilities or services.

2.14.2.7 If the Customer provides false information to the Company regarding the Customer's identity, address, creditworthiness, or past, current or planned use of Company's services.

COMPETITIVE ACCESS PROVIDER TARIFF

2 RULES AND REGULATIONS (cont'd.)

2.14 DISCONTINUANCE OF SERVICE (cont'd.)

2.14.3 The Company may suspend service without prior notice if it is based on an occurrence that endangers the safety of a person or appears likely to prove physically harmful to the service delivery system. At the time of suspension, the Company shall mail a notice of suspension to the Customer's billing address.

2.14.4 Upon condemnation of any material portion of the facilities used by the Company to provide service to a Customer or if a casualty renders all or any material portion of such facilities inoperable beyond feasible repair, the Company, by notice to the Customer, may discontinue or suspend service without incurring any liability.

2.15 RESTORATION OF SERVICE

2.15.1 The Customer may restore service by full payment in any reasonable manner including by personal check. However, the Company may refuse to accept a personal check if a Customer's check for payment of service has been dishonored, excepting bank error, within the last twelve months. There is a \$35.00 charge for restoration of service after disconnection; if, however, the equipment necessary for service has been removed, the non-recurring fee will apply.

COMPETITIVE ACCESS PROVIDER TARIFF

2 RULES AND REGULATIONS (cont'd.)

2.16 NOTICE TO COMPANY FOR CANCELLATION OF SERVICE

- 2.16.1** Customer may cancel service by providing written notice to Company five (5) days prior to cancellation. However, Customer may not cancel service prior to expiration of the initial one (1) year term.
- 2.16.2** Customer is responsible for charges while still connected to the Company's service and the payment of associated local exchange company charges, if any, for service charges.
- 2.16.3** Any non-recoverable cost of Company expenditures shall be borne by the Customer if:
 - 2.16.3.1** Customer orders service requiring special facilities dedicated to the Customer's use and then cancels the order before such service begins, before completion of the minimum period or before completion of some period mutually agreed with the Customer for the non-recoverable portions of expenditures; or
 - 2.16.3.2** Liabilities are incurred expressly on behalf of the Customer by Company and not fully reimbursed by installation and monthly charges; or
 - 2.16.3.3** Customer has ordered service and construction has either begun or has been completed, but no service provided.

COMPETITIVE ACCESS PROVIDER TARIFF

2 RULES AND REGULATIONS (cont'd.)

2.17 ALLOWANCES FOR INTERRUPTION IN SERVICE

- 2.17.1** A credit allowance will be given when service is interrupted, except as specified in Section 2.18 following. A service is interrupted when it becomes inoperative to the Customer, e.g., the Customer is unable to transmit or receive, because of a failure of a service, facility or circuit furnished by the Company under this tariff.
- 2.17.2** An interruption period begins when the Customer reports a service, facility or circuit to be inoperative and, if necessary, releases it for testing and repair. An interruption period ends when the service, facility or circuit is operative.
- 2.17.3** If the Customer reports a service, facility or circuit to be interrupted but declines to release it for testing and repair, the service, facility or circuit is considered to be impaired but not interrupted. No credit allowances will be made for a service, facility or circuit considered by the Company to be impaired.

COMPETITIVE ACCESS PROVIDER TARIFF

2 RULES AND REGULATIONS (cont'd.)

2.18 LIMITATIONS ON ALLOWANCES

2.18.1 No credit allowance will be made for any interruption in service:

2.18.1.1 Due to the negligence of or noncompliance with the provisions of this tariff by any person or entity other than the Company, including but not limited to the Customer or other common carriers connected to the service of the Company;

2.18.1.2 Due to the failure of power, equipment, systems, connections or services not provided by the Company;

2.18.1.3 Due to circumstances or causes beyond the control of the Company;

2.18.1.4 During any period in which the Company is not given full and free access to its facilities and equipment for the purposes of investigating and correcting interruptions;

2.18.1.5 During any period in which the Customer continues to use the service on an impaired basis;

2.18.1.6 During any period when the Customer has released service to the Company for maintenance purposes or for implementation of a Customer order for a change in service arrangements;

2.18.1.7 That occurs or continues due to the Customer's failure to authorize replacement of any element of special construction; or

2.18.1.8 That was not reported to the Company within thirty (30) days of the date that service was affected.

COMPETITIVE ACCESS PROVIDER TARIFF

2 RULES AND REGULATIONS (cont'd.)

2.19 USE OF ANOTHER MEANS OF COMMUNICATIONS

2.19.1 If the Customer elects to use another means of communications during the period of interruption, the Customer must pay the charges for the alternative service used.

2.20 APPLICATION OF CREDITS FOR INTERRUPTIONS IN SERVICE

2.20.1 Except as provided in Section 2.18 above, when main service is interrupted for a period of at least 24 hours, the Company shall provide credits to Customers at the following rate:

2.20.1.1 One-thirtieth of monthly rate for each of the first three full 24-hour periods.

2.20.1.2 Two-thirtieths of monthly rates for each full 24-hour period beyond the first three 24-hour periods.

2.20.1.3 However, in no instance shall the allowance for the out-of-service period exceed the total charges in a billing period for the service and facilities furnished by the Company that have been rendered useless or impaired.

COMPETITIVE ACCESS PROVIDER TARIFF**3 RATE SCHEDULES****3.1 SCHEDULE 1: DEDICATED POINT-TO-POINT PERMANENT VIRTUAL CIRCUIT ("PVC") TRANSPORT SERVICE****3.1.1 Service Description**

Dedicated Point-To-Point PVC Transport Service is available on the Company's Distributed Antenna Systems. Dedicated Point-To-Point PVC Transport Service begins at a Company Head End. Customers are responsible for providing or obtaining circuits to connect from their networks to the Company Head End. The Head End contains Customers' circuit terminating equipment, Base Transceiver Station and related peripheral equipment, as well as Company's and/or Customer's RF/Optical conversion equipment. The RF/Optical conversion equipment converts Customers' RF signals into optical signals, and places those signals into a PVC that traverses Company DAS network facilities between the Head End and one or more Points of Presence ("POPs").

3.1.2 Monthly Recurring Rate Elements

The following monthly recurring rate elements apply to Dedicated Point-To-Point PVC Transport Service:

3.1.2.1 Signal Conversion Rate

Signal Conversion Rates apply where Company owns the RF/optical conversion equipment. Signal Conversion Rates are not applicable when the Customer owns the RF/optical conversion equipment.

3.1.2.1.1 Local Signal Conversion Rate

A Local Signal Conversion Rates applies when the RF/optical conversion equipment located at the Head End is owned and operated by Company.

3.1.2.1.2 Remote Signal Conversion Rates

Remote Signal Conversion Rates apply when the RF/optical conversion equipment located at the POPs distributed throughout a Company network is owned and operated by Company.

COMPETITIVE ACCESS PROVIDER TARIFF**3. RATE SCHEDULES (cont'd.)****3.1.2.2 Committed Information Rate**

The Committed Information Rate ("CIR") of a PVC is the amount of bandwidth selected by Customer to carry the RF traffic that is optically converted and transported over the Company DAS network, stated in MegaHertz ("MHZ") and made available in Tiers (increments) of 5 MHZ to 60 MHZ per PVC.

3.1.2.3 Permanent Virtual Circuit ("PVC") Rate Elements

PVC Rate Elements relate to both the physical layer and the bandwidth required to create a PVC to transport Customer's CIR from the Head End to one or more POPs on the Company DAS network. The rate elements that will apply depend on the type of optical conversion and multiplexing methodology used to aggregate one or more Customer CIR Tiers over a PVC to one or more POPs.

3.1.2.3.1 Dedicated Strand Charge

The Dedicated Strand Charge applies to PVCs utilizing one or more dim or dark fibers between the Head End and the POP(s).

3.1.2.3.2 Wave Division Multiplexed ("WDM") Charge

The WDM Charge applies to PVCs utilizing one or more lambdas engineered with WDM technology and equipment on a fiber between the Head End and the POP(s). The WDM charge applies to all current and future variations of WDM, including but not limited to Coarse Wave and Dense Wave Division Multiplexing in both analog and digital transport topologies.

3.1.2.3.3 SONET Ring Charge

The SONET Ring Charge applies to a PVC deployed on a SONET ring network configuration, using Dedicated Strand(s) or WDM, engineered in a point to multi-point configuration. SONET Ring PVCs may be provisioned using customary add/drop, physical interconnect or WDM technology for both originating and terminating traffic, from a head end to one or more POPs connected to the SONET Ring.

COMPETITIVE ACCESS PROVIDER TARIFF

3. RATE SCHEDULES (cont'd.)

3.1.2.3.4 Add/Drop Charges

Add/Drop charges apply to each POP requested by Customer on a SONET Ring or point to multi-point PVC.

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COMPETITIVE ACCESS PROVIDER TARIFF

3. RATE SCHEDULES (cont'd.)

3.1.3 Non-Recurring Rate Elements

The following non-recurring rate elements may apply to Dedicated Point-To-Point PVC Transport Service:

3.1.3.1 Lateral Construction Charge

A Lateral Construction Charge applies where POPs requested by Customer are to be integrated into a Company network and the cost of construction of the lateral and/or building riser facilities cannot reasonably be recovered by Company over the expected duration of service to Customer.

3.1.3.2 Lateral Connection Charge

A Lateral Connection Charge applies where POPs requested by Customer are to be integrated into a Company network and the cost of (i) interconnecting to circuits or facilities not owned by Company, and/or (ii) non-standard interconnection requested by Customer, cannot reasonably be recovered by Company over the expected duration of service to Customer.

3.1.3.3 Network Connection Charge

A Network Connection Charge applies where Company provides certain specified network integration and connection services to integrate and optimize the physical and virtual connections between Company and Customer equipment.

COMPETITIVE ACCESS PROVIDER TARIFF

3. RATE SCHEDULES (cont'd.)

3.1.4 Rates

	PVC RATE ELEMENT	MONTHLY RECURRING CHARGE	CHARGING BASIS
1.1	SIGNAL CONVERSION RATES		
1.1.1	Local Signal Conversion Rate)	\$500.00	Per Month Per POP
1.1.2	Remote Signal Conversion Rate	\$2,000.00	Per Month Per POP
1.2	COMMITTED INFORMATION RATES		
1.2.1	Tier 1: 5 MHZ	\$2,000.00	Per Month Per POP
1.2.2	Tier 2: 10 MHZ	\$2,275.00	Per Month Per POP
1.2.3	Tier 3: 15 MHZ	\$2,425.00	Per Month Per POP
1.2.4	Tier 4: 20 MHZ	\$2,575.00	Per Month Per POP
1.2.5	Tier 5: 25 MHZ	\$2,725.00	Per Month Per POP
1.2.6	Tier 6: 30 MHZ	\$2,875.00	Per Month Per POP
1.2.7	Tier 7: 35 MHZ	\$3,025.00	Per Month Per POP
1.2.8	Tier 8: 40 MHZ	\$3,175.00	Per Month Per POP
1.2.9	Tier 9: 45 MHZ	\$3,325.00	Per Month Per POP
1.2.10	Tier 10: 50 MHZ	\$3,475.00	Per Month Per POP
1.2.11	Tier 11: 55 MHZ	\$3,625.00	Per Month Per POP
1.2.12	Tier 12: 60 MHZ	\$3,775.00	Per Month Per POP
1.3	PERMANENT VIRTUAL CIRCUIT ELEMENTS		
1.3.1	Dedicated Fiber Strand	\$5,200.00	Per Month Per Strand
1.3.2	WDM	\$3,900.00	Per Month Per POP
1.3.5	SONET Ring	\$2,080.00	Per Month Per Ring
1.3.6	Add / Drop	\$625.00	Per Month Per Drop
2	NON-RECURRING ELEMENTS	NON-RECURRING CHARGES	
2.1	Lateral Construction Charge	\$200,000.00	Per POP
2.2	Lateral Connection Charge	\$30,000.00	Per POP
2.3	Network Connection Charge	\$100,000.00	Per Network

COMPETITIVE ACCESS PROVIDER TARIFF

3. RATE SCHEDULES (cont'd.)

3.2 SCHEDULE 2: COLLOCATION

3.2.1 Service Description

Collocation service allows a Customer to place Customer's telecommunications equipment on certain of the Company's premises and within space allocated at the Company's Head Ends, in designated locations at such premises. Collocation shall be subject to the availability of appropriately sized and located space at such locations. The prices, terms and conditions of collocation shall be negotiated between the Company and Customer on a site-specific basis. The Company shall provide space that is appropriately conditioned for Customer's equipment.

3.2.2 Non-Recurring and Monthly Recurring Rates

ICB

COMPETITIVE ACCESS PROVIDER TARIFF

3. RATE SCHEDULES (cont'd.)

3.3 SCHEDULE 3: SPECIAL CONSTRUCTION

3.3.1 Service Description

Special construction or arrangement of facilities may be undertaken on a reasonable efforts basis at the request of the Customer, and upon a determination by the Company that such charges should apply in that particular instance, Special Construction is undertaken:

- (a) where facilities are not presently available,
- (b) where the service is of a type other than that which the Company would normally utilize in the furnishing of its service;
- (c) where the service is requested over a route other than that which the Company would normally utilize in the furnishing of its services;
- (d) where the service is in a quantity greater than that which the Company would normally provide;
- (e) where service is requested on an expedited basis;
- (f) where service is requested on a temporary basis until permanent facilities are available;
- (g) where the service requested involves abnormal costs; or
- (h) where service is requested in advance of the Company's normal construction schedule.

3.3.2 Non-Recurring and Monthly Recurring Rates

ICB

COMPETITIVE ACCESS PROVIDER TARIFF**3. RATE SCHEDULES (cont'd.)****3.4 SCHEDULE 4: TIME AND MATERIALS SERVICE****3.4.1 Service Description**

This service provides for the Time and Materials charges associated with installation, maintenance, testing and repair deemed to be associated with equipment and facilities not provided by the Company or deemed to be non-standard or non-routine.

The Company shall have no responsibility for the maintenance and repair of any kind with respect to equipment and facilities not provided by the Company. The Company will charge the Customer time, materials and charges listed in Section 2 for any maintenance visits with respect to service problems which are determined to arise from equipment or facilities not provided by the Company.

When a Customer reports a trouble to the Company for clearance and no trouble is found in the Company's facilities, the Customer shall be responsible for payment of Time and Materials Charges as listed in Section 2 for the period of time from when the Company personnel were dispatched to the Customer's premises to when the work is completed. Failure of Company personnel to find trouble in Company facilities will result in no charge if the trouble is actually in those facilities, but not discovered at the time.

If the Customer, after being informed that the trouble is not in Company facilities, wishes to have the maintenance work performed by Company, and the Company agrees to perform the work, the Time and Materials Charges listed below shall apply.

At the Customer's request, installation and/or maintenance may be performed outside the Company's regular business hours or in hazardous locations. In such cases Time and Materials Charges listed in Section 2 will apply. If installation is started during regular business hours but, at the Customer's request, extends beyond regular business hours into time periods including, but not limited to, weekends, holidays, and/or night hours, additional charges may apply.

3.4.2 Non-Recurring and Monthly Recurring Rates

ICB

COMPETITIVE ACCESS PROVIDER TARIFF

3. RATE SCHEDULES (cont'd.)

3.5 SCHEDULE 5: INDIVIDUAL CASE BASIS ("ICB") PRICING ARRANGEMENTS

3.5.1 In lieu of the rates otherwise set forth in this tariff, rates and charges, including installation, special construction, and recurring charges, may be established at negotiated rates on an Individual Case Basis, taking into account such factors as the nature of the facilities and services, the costs of construction and operation, the volume of traffic commitment, and the length of service commitment by the Customer, as long as the rates and charges are not less than Company's costs of providing the service. Such arrangements shall be considered Specialized Pricing Arrangements, the terms of which will be set forth in individual contracts or customer term agreements. Specialized Pricing Arrangement rates or charges will be made available to similarly-situated customers on comparable terms and conditions. Upon reasonable request, Company will make the terms of these contracts available to the Commission and its staff for review on a confidential and proprietary basis.

EXHIBIT 3

FINANCIAL STATEMENTS

CONFIDENTIAL AND PROPRIETARY--FILED UNDER SEAL

PUBLIC VERSION

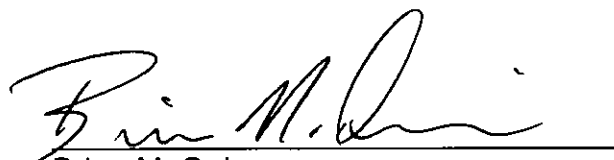
The Applicant submitted all financial information to the Commission under seal. Accordingly, the Applicant's financial information is not for public release and is available only to the Commission and its staff.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th of December, 2005, a copy of the foregoing Application for Approval of Authority to Offer, Render, Furnish, or Supply Telecommunications Services to the Public in the Commonwealth of Pennsylvania was delivered via first class mail postage prepaid to:

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923

Office of Small Business
Advocate Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101

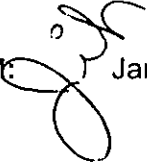


Brian M. Quinn

DATE: December 22, 2005

SUBJECT: A-311399

TO: Bureau of Fixed Utility Services

FROM:  James J. McNulty, Secretary

Application of ClearLinx Network Corporation

We attach hereto a copy of the Application of ClearLinx Network Corporation, for approval to provide telecommunication services as a Competitive Access Provider to the public in the Commonwealth of Pennsylvania, which has been captioned and docketed to the above number.

The Protest period for this application will expire on December 31, 2005.

This matter is being referred to your Bureau to schedule it for consideration by the Commission at Public Meeting.

jih

Attachment

DOCKETED
DEC 22 2005

DOCUMENT
FOLDER

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P. O. BOX 3265, HARRISBURG PA 17105-3265

December 22, 2005

IN REPLY PLEASE
REFER TO OUR FILE
A-311399

CARVILLE B. COLLINS
BRIAN M. QUINN
DLA PIPER RUDNICK GRAY CARY US LLP
6225 SMITH AVENUE
BALTIMORE MD 21209-3600

Dear Sir/Madam:

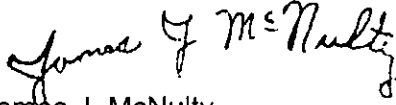
Please be advised that the Application of ClearLinx Network Corporation to provide telecommunications services as a Competitive Access Provider to the public in the Commonwealth of Pennsylvania, has been reviewed and found to be in compliance with the filing requirements of the Commission's Opinion and Order entered June 3, 1996, at Docket Number M-00960799.

This matter is being referred to the Bureau of Fixed Utility Services to schedule it for consideration by the Commission at Public Meeting.

Please be advised that you now have provisional authority to do business in Pennsylvania.

Should you have any further questions concerning this matter, please do not hesitate to contact me.

Sincerely,


James J. McNulty
Secretary

DOCKETED
DEC 22 2005

JJM:jih

cc: Janet Tuzinski-FUS

George Vinyard – Sachnoff & Weaver, Ltd.

**DOCUMENT
FOLDER**

PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIPT

The addressee named here has paid the PA P.U.C. for the following bill:

DATE: 12/22/2005
RECEIPT NO: 203862

CLEARLINX NETWORK CORPORATION
1901 S. MEYERS ROAD SUITE 190
OAKBROOK TERRACE IL 60181

**DOCUMENT
FOLDER**

IN RE: Application fees for CLEARLINX NETWORK CORPORATION

Docket Number A-311399..... \$250.00

REVENUE ACCOUNT: 001780-017601-102

CHECK NUMBER: 1761
CHECK AMOUNT: \$250.00

Stephen Reed
(for Department of Revenue)

DOCKETED
JAN 3 - 2006

SECRETARY'S BUREAU
PA P.U.C.

2005 DEC 23 AM 9:37

RECEIVED