

# SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

3000 K STREET, NW, SUITE 300  
WASHINGTON, DC 20007-5116  
TELEPHONE (202)424-7500  
FACSIMILE (202) 424-7645

NEW YORK OFFICE  
405 LEXINGTON AVENUE  
NEW YORK, NY 10174

December 28, 2000

**RECEIVED**

DEC 29 2000

PUBLIC SERVICE  
COMMISSION

95157800-0570  
22251578-0505  
9500

## VIA OVERNIGHT DELIVERY

Thomas Dorman, Executive Director  
Public Service Commission of Kentucky  
211 Sower Boulevard  
Frankfort, KY 40601

Re: Domino Networks Communications, Inc.'s Notification of Intent to Provide  
Facilities-Based and Resold Long Distance and Local Exchange Services in the  
Commonwealth of Kentucky

Dear Mr. Huelsmann:

On behalf of Domino Networks Communications, Inc. ("DNC" or the "Company"), enclosed for filing are an original and four (4) copies of this letter of intent, as well as DNC's proposed tariff. In accordance with the Commission's Orders in Administrative Case No. 359 (dated June 12, 1996), Administrative Case No. 355 (dated September 26, 1996) and Administrative Case No. 370 (dated January 8, 1998), DNC submits the following information:

1. Name, address, telephone number and fax number of the Company are as follows:

Domino Networks Communications, Inc.  
2950 Gallows Road  
Falls Church, VA 22042  
Telephone: (571) 226-1434  
Facsimile: (571) 226-1350

2. DNC is a corporation organized under the laws of the State of Delaware. DNC will market its services in Kentucky under the name Domino Networks Communications, Inc. Copies of DNC's Certificate of Incorporation is attached hereto at Exhibit A. DNC's application for a Certificate of Authority to transact business in Kentucky is pending approval. DNC will submit this exhibit, under separate cover, immediate upon approval by the Secretary of State.

Mr. Thomas Dorman  
December 28, 2000  
Page 2

3. The name, address, telephone number and facsimile number of the responsible contact persons for regulatory issues are as follows:

Woody Traylor  
Vice President of Regulatory Affairs  
Domino Networks Communications, Inc.  
2950 Gallows Road  
Falls Church, VA 22042  
Telephone: (571) 226-1434  
Facsimile: (571) 226-1350

DNC's toll free customer service number is: (888) 535-4226

4. DNC has not provided nor collected for telecommunications service in Kentucky prior to filing this notice of intent. Please see notarized statement attached hereto at Exhibit B.
5. DNC does not seek to provide operator assisted services to traffic aggregators as defined in Administrative Case No. 330.
6. DNC plans to provide all forms of telecommunications services throughout the Commonwealth of Kentucky, including both intrastate local exchange and interexchange telecommunications services. To the extent that areas of Kentucky are served by carriers that qualify as small or rural local exchange carriers under the Telecommunications Act of 1996, DNC does not intend to provide local service in those areas at this time.

DNC will construct its own fiber optic network and facilities to provide voice and data communications services, dedicated access services, and private line data communications services to its customers. DNC's network will be based on VoIP technology and employ Sonus Networks packet switches. DNC may supplement these services with other resold services provided by incumbent local exchange carriers, competitive local carriers, or interexchange carriers. In addition to these services, DNC intends to lease its dedicated and private line fiber optic communications infrastructure to wholesale carriers.

DNC will continuously monitor and maintain a high level of control over its network on a 24-hour basis through its network operations center.

Initially, DNC may lease the fiber optics facilities of other carriers while its own facilities are being built. As DNC completes the build-out of its network, DNC will move this traffic onto its own network.

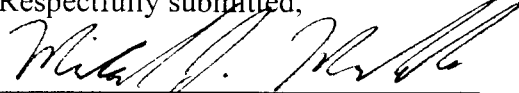
Mr. Thomas Dorman  
December 28, 2000  
Page 3

DNC does not currently own any telecommunications facilities, including switches, in the State of Kentucky. At such time as DNC may plan to construct its own facilities, it will comply with the Commission's requirements and all other relevant regulations.

7. A copy of DNC's proposed tariffs are attached hereto as Exhibit C. The tariffs are to become effective thirty (30) days from the date of this filing, which is consistent with the regulatory requirements set forth in the Commission's Order in Administrative Case No. 359, dated June 21, 1996.
8. DNC will comply with applicable Commission statutes and regulations unless specific exemptions are granted pursuant to KRS 278.512.

Please date-stamp the enclosed extra copy of this filing and return it to the undersigned in the attached self-addressed, stamped envelope. Should you have any questions, please do not hesitate to contact the undersigned.

Respectfully submitted,



Russell M. Blau  
Michael J. Mendelson

Counsel for Domino Networks Communications, Inc.

Enclosures

cc: Woody Traylor  
Jason M. Yanowitz

**EXHIBITS**

- |           |                                                                                                                                                       |
|-----------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| Exhibit A | Certificate of Incorporation<br><br>(DNC's Certificate of Authority to Transact Business will<br>be forwarded to the Commission under separate cover) |
| Exhibit B | Notarized Statement                                                                                                                                   |
| Exhibit C | Local Exchange Tariff                                                                                                                                 |
| Exhibit D | Interexchange Tariff                                                                                                                                  |
| Exhibit E | Switched Access Tariff                                                                                                                                |

**Exhibit A**

**Certificate of Incorporation**

State of Delaware  
Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "DOMINO NETWORKS COMMUNICATIONS, INC.", FILED IN THIS OFFICE ON THE FOURTEENTH DAY OF NOVEMBER, A.D. 2000, AT 9 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



Edward J. Freel, Secretary of State

3316307 8100

001573381

AUTHENTICATION: 0793789

DATE: 11-15-00

STATE OF DELAWARE  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
FILED 09:00 AM 11/14/2000  
001573381 - 3316307

CERTIFICATE OF INCORPORATION

OF

DOMINO NETWORKS COMMUNICATIONS, INC.

FIRST The name of the Corporation is: Domino Networks Communications, Inc.

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

THIRD The nature of the business or purposes to be conducted or promoted by the Corporation is as follows:

To engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

FOURTH The total number of shares of stock which the Corporation shall have authority to issue is 1000 shares of Common Stock, \$0.01 par value per share.

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 of Delaware.

FIFTH The name and mailing address of the sole incorporator are as follows:

<u>NAME</u>	<u>MAILING ADDRESS</u>
Eleanor Krivick	11951 Freedom Drive Suite 1400 Reston, Virginia 20190

SIXTH In furtherance of and not in limitation of powers conferred by statute, it is further provided:

1. Election of directors need not be by written ballot.
2. The Board of Directors is expressly authorized to adopt, amend or repeal the By-Laws of the Corporation.

SEVENTH Except to the extent that the General Corporation Law of Delaware prohibits the elimination or limitation of liability of directors for breaches of fiduciary duty, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty as a director, notwithstanding any provision of law imposing such liability. No amendment to or repeal of this provision shall apply to or have any

effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment.

EIGHTH. The Corporation shall, to the fullest extent permitted by Section 145 of the General Corporation Law of Delaware, as amended from time to time, indemnify each person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was, or has agreed to become, a director or officer of the Corporation, or is or was serving, or has agreed to serve, at the request of the Corporation, as a director, officer or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan) (all such persons being referred to hereafter as an "Indemnitee"), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by or on behalf of an Indemnitee in connection with such action, suit or proceeding and any appeal therefrom.

As a condition precedent to his right to be indemnified, the Indemnitee must notify the Corporation in writing as soon as practicable of any action, suit, proceeding or investigation involving him for which indemnity will or could be sought. With respect to any action, suit, proceeding or investigation of which the Corporation is so notified, the Corporation will be entitled to participate therein at its own expense and/or to assume the defense thereof at its own expense, with legal counsel reasonably acceptable to the Indemnitee.

In the event that the Corporation does not assume the defense of any action, suit, proceeding or investigation of which the Corporation receives notice under this Article, the Corporation shall pay in advance of the final disposition of such matter any expenses (including attorneys' fees) incurred by an Indemnitee in defending a civil or criminal action, suit, proceeding or investigation or any appeal therefrom; provided, however, that the payment of such expenses incurred by an Indemnitee in advance of the final disposition of such matter shall be made only upon receipt of an undertaking by or on behalf of the Indemnitee to repay all amounts so advanced in the event that it shall ultimately be determined that the Indemnitee is not entitled to be indemnified by the Corporation as authorized in this Article, which undertaking shall be accepted without reference to the financial ability of the Indemnitee to make such repayment; and further provided that no such advancement of expenses shall be made if it is determined that (i) the Indemnitee did not act in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, or (ii) with respect to any criminal action or proceeding, the Indemnitee had reasonable cause to believe his conduct was unlawful.

The Corporation shall not indemnify an Indemnitee seeking indemnification in connection with a proceeding (or part thereof) initiated by such Indemnitee unless the initiation thereof was approved by the Board of Directors of the Corporation. In addition, the Corporation shall not indemnify an Indemnitee to the extent such Indemnitee is reimbursed from the proceeds of insurance, and in the event the Corporation makes any indemnification payments to an Indemnitee and such Indemnitee is subsequently reimbursed from the proceeds of insurance, such Indemnitee shall promptly refund such indemnification payments to the Corporation to the extent of such insurance reimbursement.



All determinations hereunder as to the entitlement of an Indemnitee to indemnification or advancement of expenses shall be made in each instance: by (a) a majority vote of the directors of the Corporation consisting of persons who are not at that time parties to the action, suit or proceeding in question ("disinterested directors"), whether or not a quorum, (b) a majority vote of a quorum of the outstanding shares of stock of all classes entitled to vote for directors, voting as a single class, which quorum shall consist of stockholders who are not at that time parties to the action, suit or proceeding in question, (c) independent legal counsel (who may, to the extent permitted by law, be regular legal counsel to the Corporation), or (d) a court of competent jurisdiction.

The indemnification rights provided in this Article (I) shall not be deemed exclusive of any other rights to which an Indemnitee may be entitled under any law, agreement or vote of stockholders or disinterested directors or otherwise, and (ii) shall inure to the benefit of the heirs, executors and administrators of the Indemnitee. The Corporation may, to the extent authorized from time to time by its Board of Directors, grant indemnification rights to other employees or agents of the Corporation or other persons serving the Corporation and such rights may be equivalent to, or greater or less than, those set forth in this Article.

NINTH The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute and this Certificate of Incorporation, and all rights conferred upon stockholders herein are granted subject to this reservation.

EXECUTED at Reston, Virginia, on November 14, 2000.

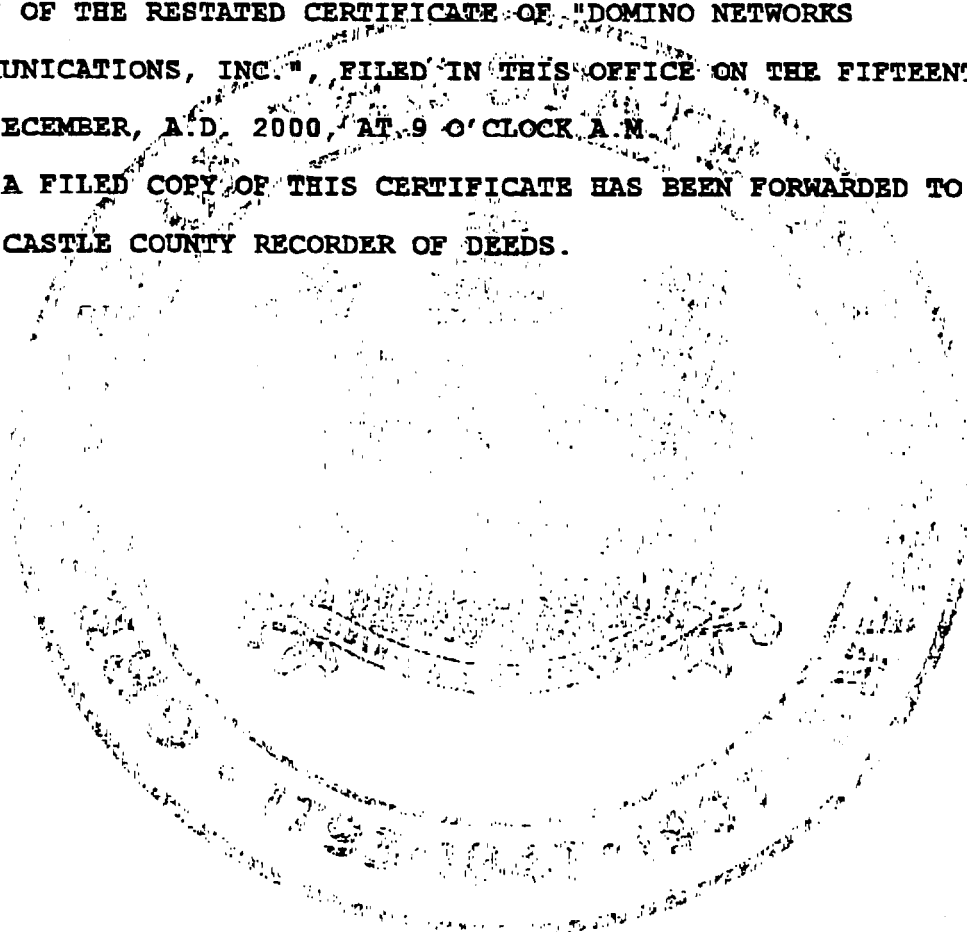
Ellean Kurci  
Incorporator

Office of the Secretary of State

---

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "DOMINO NETWORKS COMMUNICATIONS, INC.", FILED IN THIS OFFICE ON THE FIFTEENTH DAY OF DECEMBER, A.D. 2000, AT 9 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



*Edward J. Freel*

Edward J. Freel, Secretary of State

AUTHENTICATION: 0861812

3316307 8100

001630490

DATE: 12-18-00

**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF**

**DOMINO NETWORKS COMMUNICATIONS, INC.**

Domino Networks Communications, Inc., a corporation organized and existing under and by virtue of the laws of the General Corporation Law of the State of Delaware, hereby certifies as follows:

1. The name of the corporation is Domino Networks Communications, Inc (the "Corporation"). The Corporation filed its original Certificate of Incorporation with the Secretary of State of the State of Delaware on November 14, 2000.
2. This Amended and Restated Certificate of Incorporation amends, restates and integrates the provisions of the Corporation's Certificate of Incorporation and (i) was duly adopted by the sole member of the Board of Directors in accordance with the provisions of Section 245 of the General Corporation Law of the State of Delaware (the "DCGL"), (ii) was declared by the Board of Directors to be advisable and in the best interests of the Corporation and was directed by the Board of Directors to be submitted to and be considered by the sole stockholder of the Corporation for approval by the affirmative vote of such stockholder in accordance with Section 242 of the DCGL and (iii) was unanimously adopted by the sole stockholder by a written action in lieu of a meeting of the sole stockholder in accordance with the provisions of Sections 228 and 242 of the DCGL and in accordance with the terms of the Corporation's Certificate of Incorporation in effect prior to the effective time hereof.

**RESOLVED:** That the Corporation's Certificate of Incorporation is hereby amended and restated in its entirety as follows:

**FIRST** The name of the Corporation is: Domino Networks Communications, Inc.

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

**THIRD** The nature of the business or purposes to be conducted or promoted by the Corporation is as follows:

To engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

**FOURTH** The total number of shares of stock which the Corporation shall have authority to issue is 1,000 shares of Common Stock, \$0.01 par value per share.

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 of Delaware.

**FIFTH** In furtherance of and not in limitation of powers conferred by statute, it is further provided:

1. Election of directors need not be by written ballot.
2. The Board of Directors is expressly authorized to adopt, amend or repeal the By-Laws of the Corporation.

**SIXTH** Except to the extent that the General Corporation Law of Delaware prohibits the elimination or limitation of liability of directors for breaches of fiduciary duty, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty as a director, notwithstanding any provision of law imposing such liability. No amendment to or repeal of this provision shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment.

**SEVENTH** The Corporation shall not, without the vote or written consent by the holders of at least a majority of the then outstanding shares of the Common Stock:

1. authorize or issue any other equity security, including any other security convertible into or exercisable for any equity security, having a preference over, or being on a parity with, the Common Stock, including, without limitation, with respect to dividends, redemption or voting rights or upon liquidation;
2. effect any reclassification or other change of any stock, or other recapitalization of the Corporation, or any voluntary liquidation, dissolution or winding up of the Corporation;
3. declare or pay any dividends on Common Stock;
4. amend or waive any provision of the Corporation's Certificate of Incorporation or Bylaws in a manner that adversely affects the holders of Common Stock;
5. sell, convey or otherwise dispose of or encumber (other than pursuant to a credit arrangement in the ordinary course of business) all or substantially all of its assets or business or merge into or consolidate with any other entity (other than a wholly owned subsidiary corporation) or effect any transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Corporation is disposed of; or
6. redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any share of 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 at cost upon the occurrence of certain events, such as the termination of employment.

**EIGHTH** The Corporation shall, to the fullest extent permitted by Section 145 of the General Corporation Law of Delaware, as amended from time to time, indemnify each person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was, or has agreed to become, a director or officer of the Corporation, or is or was serving, or has agreed to serve, at the request of the Corporation, as a director, officer or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan) (all such persons being referred to hereafter as an "Indemnitee"), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by or on behalf of an Indemnitee in connection with such action, suit or proceeding and any appeal therefrom.

As a condition precedent to his right to be indemnified, the Indemnitee must notify the Corporation in writing as soon as practicable of any action, suit, proceeding or investigation involving him for which indemnity will or could be sought. With respect to any action, suit, proceeding or investigation of which the Corporation is so notified, the Corporation will be entitled to participate therein at its own expense and/or to assume the defense thereof at its own expense, with legal counsel reasonably acceptable to the Indemnitee.

In the event that the Corporation does not assume the defense of any action, suit, proceeding or investigation of which the Corporation receives notice under this Article, the Corporation shall pay in advance of the final disposition of such matter any expenses (including attorneys' fees) incurred by an Indemnitee in defending a civil or criminal action, suit, proceeding or investigation or any appeal therefrom; provided, however, that the payment of such expenses incurred by an Indemnitee in advance of the final disposition of such matter shall be made only upon receipt of an undertaking by or on behalf of the Indemnitee to repay all amounts so advanced in the event that it shall ultimately be determined that the Indemnitee is not entitled to be indemnified by the Corporation as authorized in this Article, which undertaking shall be accepted without reference to the financial ability of the Indemnitee to make such repayment; and further provided that no such advancement of expenses shall be made if it is determined that (i) the Indemnitee did not act in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, or (ii) with respect to any criminal action or proceeding, the Indemnitee had reasonable cause to believe his conduct was unlawful.

The Corporation shall not indemnify an Indemnitee seeking indemnification in connection with a proceeding (or part thereof) initiated by such Indemnitee unless the initiation thereof was approved by the Board of Directors of the Corporation. In addition, the Corporation shall not indemnify an Indemnitee to the extent such Indemnitee is reimbursed from the proceeds of insurance, and in the event the Corporation makes any indemnification payments to an Indemnitee and such Indemnitee is subsequently reimbursed from the proceeds of insurance, such Indemnitee shall promptly refund such indemnification payments to the Corporation to the extent of such insurance reimbursement.

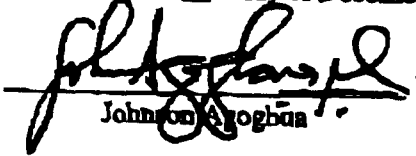
All determinations hereunder as to the entitlement of an Indemnitee to indemnification or advancement of expenses shall be made in each instance by (a) a majority vote of the directors of

the Corporation consisting of persons who are not at that time parties to the action, suit or proceeding in question ("disinterested directors"), whether or not a quorum, (b) a majority vote of a quorum of the outstanding shares of stock of all classes entitled to vote for directors, voting as a single class, which quorum shall consist of stockholders who are not at that time parties to the action, suit or proceeding in question, (c) independent legal counsel (who may, to the extent permitted by law, be regular legal counsel to the Corporation), or (d) a court of competent jurisdiction.

The indemnification rights provided in this Article (i) shall not be deemed exclusive of any other rights to which an Indemnitee may be entitled under any law, agreement or vote of stockholders or disinterested directors or otherwise, and (ii) shall inure to the benefit of the heirs, executors and administrators of the Indemnitees. The Corporation may, to the extent authorized from time to time by its Board of Directors, grant indemnification rights to other employees or agents of the Corporation or other persons serving the Corporation and such rights may be equivalent to, or greater or less than, those set forth in this Article.

NINTH The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute and this Certificate of Incorporation, and all rights conferred upon stockholders herein are granted subject to this reservation.

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be signed by its President this <sup>14</sup>th day of December, 2000.

  
Johnson Agobua

**Exhibit B**

**Notarized Statement**



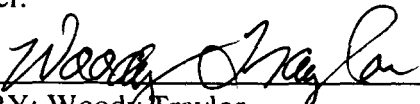
NOTARIZED STATEMENT

COMMONWEALTH OF VIRGINIA :  
 : ss  
COUNTY OF FAIRFAX :

I, Woody Traylor, being duly sworn, do hereby depose and state that

1. I am Vice President of Regulatory Affairs and Assistant Secretary of Domino Networks Communications, Inc. ("DNC") and am authorized to make this statement on DNC's behalf.
2. DNC has not provided nor collected for intrastate service in Kentucky prior to filing this application.

The foregoing statements are true and correct to the best of my knowledge, information and belief.



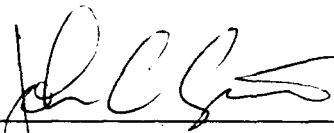
---

BY: Woody Traylor

TITLE: Vice President of Regulatory Affairs and Assistant Secretary

Domino Networks, Communications, Inc.

Subscribed and sworn to (or affirmed) before me this 21<sup>ST</sup> day of DEC, 2000.



---

Notary Public

My Commission Expires: 31 DEC 2002