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In the Office of the Secretary of State  
of the State of California

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ALIPHCOM

*Bill Jones*  
BILL JONES, Secretary of State

AMENDED AND RESTATED ARTICLES OF INCORPORATION

Alex Asseily and Hosain Rahman hereby certify that:

1. They are the president and secretary, respectively, of AliphCom, a California corporation.
2. The articles of incorporation of this corporation are amended and restated to read as follows:

I

The name of the corporation is AliphCom (the "Company").

II

The purpose of the Company is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business, or the practice of a profession permitted to be incorporated by the California Corporations Code.

III

The Company is authorized to issue two classes of shares, designated respectively "Common Stock" and "Preferred Stock". The Company is authorized to issue 50,000,000 shares of Common Stock. The Company is authorized to issue 10,000,000 shares of Preferred Stock, of which 1,250,000 shares are designated Series A Preferred Stock ("Series A Preferred") and 3,000,000 shares are designated Series B Preferred Stock ("Series B Preferred").

IV

The relative rights, preferences, privileges, and restrictions granted to or imposed upon the Common Stock and the Preferred Stock and the holders thereof are as follows:

SECTION 1. DIVIDENDS.

The holders of record of the Series A Preferred Stock (the "Series A Preferred Holders") and the holders of record of the Series B Preferred Stock (the "Series B Preferred Holders", and together with the Series A Preferred Holders, the "Preferred Holders") shall be entitled to receive dividends at the rate of 8% per share and 8% per share (as adjusted for any stock dividends, combinations or

splits with respect to such shares), per annum, respectively. Such dividends shall be payable out of funds legally available therefor only when, and if, declared by the board of directors of the Company (the "Board") and shall be non-cumulative. No dividends shall be paid to the holders of record of Common Stock (the "Common Holders") on any Common Stock of the Company until dividends at the rate of 8% per share and 8% per share (as adjusted for any stock dividends, combinations or splits with respect to such shares) per annum on the Series A and B Preferred Stock shall have been paid or declared and set apart during that fiscal year. After payment of such preferential dividends on the Series A and Series B Preferred, any dividends declared or paid shall be declared or paid (as the case may be) on the Series A and Series B Preferred (on an as converted to Common Stock basis) and the Common Stock.

## SECTION 2. LIQUIDATION PREFERENCES.

2.1 Liquidation. In the event of any liquidation, dissolution, or winding up of the Company, whether voluntary or involuntary:

(i) The Preferred Holders shall be entitled to receive a liquidation preference of \$0.80 per share of Series A Preferred and \$0.86 per share of Series B Preferred (adjusted appropriately for stock splits and the like) plus any declared but unpaid dividends thereon (the "Liquidation Preference").

(ii) If the assets of the Company legally available for distribution to the shareholders (the "Assets") are insufficient to permit the payment of such full Liquidation Preferences, then all of the Assets shall be distributed ratably among the Preferred Holders in proportion to the full Liquidation Preferences such holders would otherwise be entitled to receive.

(iii) After payment of such full Liquidation Preferences, the Preferred Holders and the Common Holders shall be entitled to receive ratably the remaining Assets until the Preferred Holders have received an additional \$1.60 per share of Series A Preferred and \$1.72 per share of Series B Preferred (adjusted appropriately for stock splits and the like), after which the Common Holders will be entitled to receive ratably any remaining Assets.

2.2 Merger or Sale of Assets. For purposes of this Section 2, a "liquidation" shall include (i) a merger or consolidation in which the Company's outstanding shares are exchanged for other securities, property, and/or cash, and (ii) a sale of all or substantially all of the assets of the Company.

2.3 Repurchases. As authorized by Section 402.5(c) of the California Corporations Code, the provisions of Sections 502, 503, and 506 shall not apply with respect to repurchases by the Company of shares of Common Stock held by employees, directors, or consultants upon termination of their employment or services, if such repurchase is pursuant to an agreement providing for the right of such repurchase.

### SECTION 3. CONVERSION.

The Preferred Holders shall have conversion rights as follows (the "Conversion Rights"):

#### 3.1 Right to Convert; Automatic Conversion.

(i) Subject to Section 3.3, each share of 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 this Company or any transfer agent for such shares, into such number of fully paid and nonassessable shares of Common Stock determined as set forth below.

Each share of Series A Preferred shall be convertible into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$0.80 by the Series A Conversion Price, determined as hereafter provided, in effect at the time of conversion. Each share of Series B Preferred shall be convertible into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$0.86 by the Series B Conversion Price, determined as hereafter provided, in effect at the time of conversion. The initial Series A Conversion Price shall be \$0.80 per share and the initial Series B Conversion Price shall be \$0.86 per share; provided, however, that such Conversion Price shall be subject to adjustment as set forth below.

(ii) Each share of each series of Preferred Stock shall automatically be converted into shares of Common Stock at the applicable Conversion Price immediately upon the occurrence of the first of the following:

(A) Immediately upon the closing of the sale of the Company's Common Stock in a firm commitment, underwritten public offering registered under the Securities Act of 1933, as amended (the "Securities Act"), other than a registration relating solely to a transaction under Rule 145 under such Act (or any successor thereto) or to an employee benefit plan of the Company, at a public offering price (prior to underwriters' discounts and expenses) equal to or exceeding \$3.00 per share of Common Stock (as adjusted for any stock dividends, combinations or splits with respect to such shares) and the aggregate proceeds to the Company (after deduction for underwriters' discounts and expenses relating to the issuance, including without limitation fees of the Company's counsel) in excess of \$25,000,000.

(B) The approval of such conversion by the written consent of the holders of a majority of the outstanding shares of such series of Preferred Stock.

3.2 Mechanics of Conversion. Before any holder of shares of Preferred Stock shall be entitled to convert the same into shares of Common Stock, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or of any transfer agent for such shares, and shall give written notice by mail, postage prepaid, to the Company 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. (A Preferred Holder may not effect a transfer of shares pursuant to a conversion unless all applicable restrictions on transfer are complied with.) The Company shall, as soon as practicable thereafter, issue and

deliver at such office to such holder of shares of 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 provided above. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the certificate or certificates representing the shares of 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.

3.3 Conversion Price Adjustments. The Conversion Price of each series of Preferred Stock shall be subject to adjustment from time to time as follows:

(i) (A) If the Company shall issue any Additional Stock (as defined below) without consideration or for a consideration per share less than such Conversion Price in effect immediately prior to the issuance of such Additional Stock, then such Conversion Price in effect immediately prior to each such issuance shall (except as otherwise provided in this clause (i)) be adjusted to:

the Conversion Price determined by dividing (X) an amount equal to the sum of (a) the product derived by multiplying the Conversion Price of such series in effect immediately prior to such issue times the number of shares of Common Stock (including shares of Common Stock deemed to have been issued upon conversion of the out-standing Preferred Stock or otherwise under Section 3.3(i)(E)) outstanding immediately prior to such issue, plus (b) the consideration, if any, received by or deemed to have been received by the Company upon such issue, by (Y) an amount equal to the sum of (c) the number of shares of Common Stock (including shares of Common Stock deemed to have been issued upon conversion of the out-standing Preferred Stock or otherwise under Section 3.3(i)(E)) outstanding immediately prior to such issue, plus (d) the number of shares of Common Stock issued or deemed to have been issued in such issue.

(B) No adjustment of the Conversion Price for any series of Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustment that is not required to be made by reason of this sentence shall be carried forward and taken into account in any subsequent adjustment. Except to the limited extent provided for in Sections 3.3(i)(E)(3), 3.3(i)(E)(4) and 3.3(iv), no adjustment of such Conversion Price 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 after deducting any discounts, commissions or other expenses paid or incurred by this corporation to any underwriter in connection with the issuance and sale of such Common Stock.

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

(E) In the case of the issuance of options to purchase or rights to subscribe for Common Stock, 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 (where the shares of Common Stock issuable upon exercise of such options or rights or upon conversion or exchange of such securities are not excluded from the definition of Additional Stock), the following provisions shall apply:

(1) the aggregate maximum number of shares of Common Stock deliverable upon exercise 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 Sections 3.3(i)(C) and 3.3(i)(D)), if any, received by the Company upon the issuance of such options or rights plus the minimum purchase price provided in such options or rights for the Common Stock covered thereby;

(2) the aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange 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 Company for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the additional consideration, if any, to be received by the Company 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 Sections 3.3(i)(C) and 3.3(i)(D));

(3) In the event of any change in the number of shares of Common Stock deliverable upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof, the Conversion Price in effect at the time for each series of Preferred Stock shall forthwith be readjusted to such Conversion Price as would have obtained had the adjustment that was made upon the issuance of such options, rights or securities not converted prior to such change or the options or rights related to such securities not converted prior to such change been made upon the basis of such change, but no further adjustment shall be made for the actual issuance of Common Stock upon the exercise of any such options or rights or the conversion or exchange of such securities;

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price for each series of Preferred Stock shall forthwith be readjusted to such Conversion Price as would have obtained had

the adjustment which was made upon the issuance of such options, rights or securities or options or rights related to such securities been made upon the basis of the issuance of only the number of shares of Common Stock 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.

(ii) "Effective Date" with respect to each series of Preferred Stock means the first date on which shares of such series of Preferred Stock were issued.

"Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to Section 3.3(i)(E)) by this Company after the Effective Date other than:

(A) Common Stock issued (or deemed to have been issued pursuant to Section 3.3(i)(E)) pursuant to a transaction described in Section 3.3(iii).

(B) Common Stock issued (or deemed to have been issued pursuant to Section 3.3(i)(E)) or issuable (or deemed to be issuable pursuant to Section 3.3(i)(E)) to employees, officers, or directors of, or consultants to, the Company, pursuant to an arrangement approved by the Board but not exceeding 2,000,000 shares of Common Stock (net of any repurchases of such shares, or cancellation or expiration of options) as adjusted for any stock dividends, combinations or splits with respect to such shares.

(C) Common Stock issued (or deemed to have been issued pursuant to Section 3.3(i)(E)) or issuable (or deemed to be issuable pursuant to Section 3.3(i)(E)) upon conversion of the shares of Preferred Stock.

(D) Common Stock issued (or deemed to have been issued pursuant to Section 3.3(i)(E)) or issuable (or deemed to be issuable pursuant to Section 3.3(i)(E)) to equipment lessors or commercial lenders in connection with an equipment lease or commercial loan transaction where the principal purpose of the transaction is not to raise equity financing.

(iii) In the event the Company should at any time or from time to time after the Effective 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 such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of each series of Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each such share shall be increased in proportion to such increase of outstanding shares determined by taking Section 3.3(i)(E) into account.

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

3.4 Other Distributions. In the event this Company shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by this Company or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 3.3(iii), then, in each such case for the purpose of this Section 3.4, the holders of the 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 Company into which their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Company entitled to receive such distribution.

3.5 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), provision shall be made (in form and substance satisfactory to the holders of a majority of the Preferred Stock then outstanding) so that the holders of the Preferred Stock shall thereafter be entitled to receive, upon conversion of the Preferred Stock, such shares or other securities or property of the Company 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 with respect to the rights of the holders of the Preferred Stock after the recapitalization to the end that the provisions of this Section (including adjustment of the Conversion Prices then in effect and the number of shares purchasable upon conversion of shares of Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

3.6 No Impairment. This Company will not, by amendment of its articles of incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by this Company, but will at all times in good faith assist in the carrying out of all the provisions of this Section and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Preferred Stock against impairment; provided that in any event, any provision of this Section may be amended by the approval of the holders of a majority of the outstanding shares of any series of Preferred Stock adversely effected (in addition to all other approvals required by law).

3.7 No Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares shall be issued upon conversion of shares of Preferred Stock. In lieu of fractional shares, the number of shares of Common Stock to be issued to

a Preferred Holder upon conversion of all of the shares being converted of any series of Preferred Stock held by such holder shall be rounded to the nearest whole number.

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

3.8 Notices of Record Date. In the event of any taking by this Company of a record of its shareholders for the purpose of determining shareholders who are entitled to receive payment of any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of any class or any other securities or property, or to receive any other right, this Company shall mail to each holder of shares of Preferred Stock, at least 20 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, distribution or right, and the amount and character of such dividend, distribution, or right.

3.9 Reservation of Shares Issuable Upon Conversion. This Company 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 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 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 Preferred Stock, this Company 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.

3.10 Notices. Any notice required by the provisions of this Section to be given to the holders of shares of Preferred Stock shall be deemed to be delivered when deposited in the United States mail, postage prepaid, registered or certified, and addressed to each holder of record at his address appearing on the stock transfer books of this Company.

#### SECTION 4. VOTING RIGHTS.

4.1 General. Except as provided by law, the Common Holders and the Preferred Holders shall vote together on an as if converted basis.



#### 4.2 Voting for the Election of Directors.

(i) So long as at least 625,000 shares of Series A Preferred originally issued remain outstanding, the holders of the Series A Preferred, voting as a separate class, shall be entitled to elect one (1) director of the Company at each annual election of directors (and to fill any vacancies with respect thereto).

(ii) The holders of outstanding Common Stock, voting as a separate class, shall be entitled to elect three (3) directors of the Company at each annual election of directors (and to fill any vacancies with respect thereto).

(iii) The holders of the Series A Preferred, Series B Preferred and Common Stock, voting together as a single class, shall be entitled to elect one (1) director of the Company at each annual election of directors (and to fill any vacancies with respect thereto).

4.3 Protective Provisions. So long as any shares of Series A Preferred or Series B Preferred remain outstanding, the Company shall not, without the approval (by vote or written consent, as provided by law) of the holders of at least 50% of the outstanding shares of each of the Series A Preferred and Series B Preferred (each voting as a separate class):

- (A) Amend the articles of incorporation.
- (B) Increase the authorized number of shares of Series A Preferred or Series B Preferred.
- (C) Declare any dividend or other distribution with respect to Common Stock.
- (D) Merge or consolidate with any other corporation.
- (E) Sell all or substantially all of the assets of the Company.

## V

#### SECTION 1. LIMITATION OF DIRECTORS LIABILITY.

The liability of the directors of this corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

#### SECTION 2. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

This corporation is authorized to indemnify the directors and officers of the corporation to the fullest extent permissible under California law.

SECTION 3. REPEAL OR MODIFICATION.


Any repeal or modification of the foregoing provisions of this Section 3 shall not adversely affect any right of indemnification or limitation of liability of a director or officer of this corporation relating to acts or omissions occurring prior to such repeal or modification.

3. The foregoing amendment and restatement of the articles of incorporation has been duly approved by the Company's board of directors.

4. The foregoing amendment and restatement of the articles of incorporation has been duly approved by the Company's shareholders in accordance with Sections 902 and 903 of the California Corporations Code. The total number of outstanding shares of capital stock of the Company is 5,000,000 shares of Common Stock and 1,250,000 shares of Series A Preferred Stock. The number of shares approving the amendment equaled or exceeded that required. The percentage approval required was more than 50% of the outstanding shares of Common Stock, and more than 50% of the outstanding shares of Series A Preferred Stock, voting as separate classes.

The undersigned further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of their own knowledge.

Dated: February 26, 2001.

  
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Alex Asseily, President  
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Hosain Rahman, Secretary