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November 1, 2001

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AOR 2001-18

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RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

Lawrence H. Norton, Esq.
General Counsel
Federal Election Commission
999 E Street NW
Washington, DC 20463

Re: Advisory Opinion Request

Dear Mr. Norton:

This office represents BellSouth Corporation ("BellSouth"). This letter constitutes a request for an Advisory Opinion from the Federal Election Commission ("FEC" or "Commission") pursuant to 2 U.S.C. § 437f of the Federal Election Campaign Act of 1971, as amended.

QUESTION PRESENTED

Whether BellSouth's separate segregated fund, BellSouth Corporation Employees' Federal Political Action Committee ("BellSouth PAC"), is affiliated with Cingular Wireless LLC Employee Political Action Committee ("Cingular PAC"), a separate segregated fund established by Cingular Wireless LLC ("Cingular")?

FACTS

On October 2, 2000, SBC Communications Inc. ("SBC") and BellSouth contributed substantially all of their wireless assets to Cingular, a Delaware limited liability company, including the wireless businesses they conducted as BellSouth Mobility, BellSouth Mobility DCS, Cellular One, BellSouth Wireless Data, Southwestern Bell Wireless, Pacific Bell Wireless, Nevada Bell Wireless, Ameritech Wireless, SNET Wireless, and SBC Wireless. In addition, BellSouth contributed the wireless business it conducted as Houston Cellular to Cingular in January 2001. In return for the contribution of these assets, SBC and BellSouth received 60% and 40% interests in Cingular, respectively.[1]

Distributions by Cingular, as a limited liability company, are based on equity ownership. For example, SBC receives 60% of any distributed Cingular profits, and BellSouth receives the remaining 40%. Capital contributions, debt

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[1] Currently, the participating entities in Cingular are Cingular Wireless Corporation (f/k/a/ Cingular Wireless Management Corp.) ("Managing Company"), a Delaware company which is owned equally by BellSouth and SBC; SBC Alloy Holdings (a/k/a the SBC Members); BellSouth Cellular Corp., BellSouth Mobile Data, AB Cellular Holding, LLC, Wireless Telecommunications Investment Company, LLC, and RAM Communications Corporation (a/k/a the BellSouth Members). The SBC Members own approximately 60% of Cingular and the BellSouth Members own approximately 40% of Cingular. At this time, the Managing Company owns a very small interest.

Cingular files as a partnership with the Internal Revenue Service.

funding, and debt repayment are also based on the majority and minority equity stakes in Cingular held by SBC and BellSouth respectively.

In connection with the formation of Cingular, BellSouth and SBC formed the Managing Company to act as manager and to control the management and operation of Cingular.[2] BellSouth and SBC each own one share of super-voting Class B common stock in the Managing Company.[3] Through their Class B common shares, SBC and BellSouth appoint two directors each of the Managing Company's four-person Board of Directors. The structure of the Board will change following any initial public offering by Cingular in order to comply with stock exchange listing rules.

The Managing Company's Board of Directors has a Strategic Review Committee ("SRC"), currently comprised of the four directors.[4] The SRC, by a two-thirds vote, must approve substantially all important decisions prior to

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[2] Cingular has no separate board of directors of its own. SBC owns 60% of the total voting power of Cingular. BellSouth owns 40% of the total voting power, but, as stated below, the Managing Company controls the management and operation of Cingular. The total voting power in the limited liability company is not currently being exercised.

[3] The Managing Company is authorized to have both Class A and Class B common stock, and the Managing Company's Board of Directors has the ability to issue preferred stock. Currently, Cingular has issued only two shares of Class B common stock.

[4] Currently, the same four individuals constitute both the Managing Company's Board of Directors and its SRC.

submitting such decisions to the Board of the Managing Company. These decisions include approval of a business plan, appointment of executive officers, capital calls, declaration of dividends, purchases of new technology, public stock offerings, and changes to the certificate of incorporation and by-laws. Deadlocks between the directors of SBC and BellSouth are resolved by the CEOs of SBC and BellSouth.

The management and operation of Cingular PAC, including the setting of its budget, are not decisions that require the approval of the Managing Company's SRC or Board of Directors. Instead, Cingular's management handles the day-to-day aspects of Cingular's activities, including the management and operation of Cingular PAC. Even if a question regarding the operation of the PAC were to come before the SRC or Board, BellSouth would not participate in the operation and management of Cingular PAC and would not direct or control the operation of Cingular PAC.

SBC and BellSouth have also entered into a stockholders agreement. Under this agreement, SBC and BellSouth will, among other things, vote their shares for (i) the election of Class B directors nominated by each company; (ii) the removal of a director as determined by the shareholder who nominated the director; and (iii) the

approval of any matter submitted to the stockholders that has been previously approved by the SRC.

Cingular has entered into separate transition service agreements with BellSouth and SBC, pursuant to which BellSouth and SBC each provided transition services and products such as legal, accounting and human resources to Cingular. Cingular has assumed substantially all of these services internally and reduced its reliance on BellSouth and SBC. Remaining transition agreements, if any, will terminate by January 1, 2002.[5]

In addition, SBC and BellSouth have each transferred their respective wireless employees to wholly-owned leasing company subsidiaries, and the employees are leased to Cingular. Under employee leasing agreements, SBC and BellSouth agreed to lease all of their current wireless employees and any wireless employees hired after October 2, 2000, to Cingular. These employee leasing agreements terminate no later than January 1, 2002 when the leasing companies will

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[5] Additionally, SBC and BellSouth each entered into a wireless agency agreement with Cingular. Under the Cingular wireless agency agreements with Bell South and SBC, subsidiaries and affiliates of BellSouth and SBC may elect to act as authorized agents exclusively on behalf of Cingular for the sale of wireless services to subscribers in BellSouth's and SBC's respective incumbent telephone service territories. Cingular is free to contract with other agents, including retailers and distributors, for wireless services in both the BellSouth and SBC incumbent service territories.

be contributed to Cingular. Prior to the contribution of the leasing companies to Cingular, the employees are employed by the leasing companies (and hence SBC or BellSouth), subject to the hiring decisions thereof in consultation with Cingular. To the extent the employees are within the restricted class, as defined in 11 C.F.R. § 114.1, they are solicited for voluntary contributions to the respective separate segregated funds ("PACs") of SBC and BellSouth. After the contribution of the leasing companies to Cingular, all employees leased from both SBC and BellSouth will become employees of Cingular. At that time, BellSouth will no longer solicit or accept contributions from any Cingular employee.[6]

The executive officers of Cingular are the executive officers of the Managing Company. The Managing Company has no other employees.

BellSouth has established and operates BellSouth PAC. Cingular established its own federal PAC, Cingular PAC, on September 7, 2001. When it filed its Form 1, Cingular PAC identified SBC Communications Inc. Employee Federal Political Action Committee as an affiliated committee.

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[6] Although BellSouth would have a legal right to solicit any of its stockholders who are or become Cingular employees, it does not intend to do so.

DISCUSSION

Based upon recent Commission precedent, it appears that the BellSouth PAC is not affiliated with Cingular PAC.

Where an entity is not an acknowledged subsidiary of another entity, the Commission generally examines several indicia of affiliation as it most recently did in Advisory Opinion 2001-7, Fed. Election Camp. Fin. Guide (CCH) ¶ 6362 (2001). The factors are as follows:

(A) The ownership by one sponsoring organization of a controlling interest in the voting stock or securities of the sponsoring organization;

(B) The authority or ability of one sponsoring organization to direct or participate in the governance of another sponsoring organization through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures;

(C) The authority or ability to hire, demote or otherwise control the officers, or other decisionmaking employees of another sponsoring organization; [. . .]

(E) Common or overlapping officers or employees, indicating a formal or ongoing relationship between the sponsoring organizations;

(F) Members, officers, or employees of one sponsoring organization who were members, officers, or employees of another sponsoring organization which indicates a formal or ongoing relationship or the creation of a successor entity; [. . .] and

(I) An active or significant role by one sponsoring organization in the formation of another.

11 C.F.R. § 110.3(a)(3)(ii).

The Commission has stated that conclusion of nonaffiliation may be based on a combination of factors even though any one of the factors might not, by itself, be sufficient to lead to a conclusion of nonaffiliation. FEC Advisory Opinion 1996-49, Fed. Election Camp. Fin. Guide (CCH) ¶ 6227 (1996). In the context of a joint venture, the factors must be analyzed in such a way as to ascertain what partner, if any, has a majority interest. Here, such analysis shows that BellSouth should not be deemed affiliated with Cingular. BellSouth only holds a 40% minority interest in Cingular and participates financially as a minority partner. Although BellSouth shares management oversight of Cingular with SBC, decisions regarding Cingular PAC lie with Cingular management, which is dominated by former SBC employees. Additionally, there will be no common or overlapping officers or employees between BellSouth and Cingular after January 1, 2002, and the former employees of BellSouth constitute only one-third of Cingular's total employees as opposed to the approximately two-thirds who hail from SBC.

The Commission has never found a minority corporate owner of a joint venture partnership or joint venture limited liability company to be affiliated with

the partnership or limited liability company. See, e.g., FEC Advisory Opinion 2001-7 (holding five corporate partners not to be affiliated with a joint venture limited liability company because each did not own a controlling interest in the joint venture and despite the fact that four of the partners participated in the founding of the joint venture, the joint venture provided services solely to each of the five partners, and there was a transfer of employees from the partners to the joint venture); FEC Advisory Opinion 1994-11, Fed. Election Camp. Fin. Guide (CCH) ¶ 6115 (1994) (finding corporate owner of a 40% interest in a limited partnership not to be affiliated); FEC Advisory Opinion 1984-36, Fed. Election Camp. Fin. Guide (CCH) ¶ 5781 (1984) (finding 40% corporate owner not to be affiliated). In FEC Advisory Opinion 1984-36, the fact that a 40% minority corporate partner was also the managing partner of the partnership did not create an affiliated relationship.

Conversely, an ownership interest of at least 50% has often resulted in affiliation between the participant and the joint venture. See, e.g., FEC Advisory Opinion 1997-13, Fed. Election Camp. Fin. Guide (CCH) ¶ 6241 (1997) (finding both The Boeing Company and Lockheed Martin Corporation to be affiliated with a limited liability company joint venture where each owned 50% of the joint venture); FEC Advisory Opinion 1996-49 (finding Bell Atlantic Corporation to be affiliated

with a limited partnership in which it owned 50%); FEC Advisory Opinion 1992-17, Fed. Election Camp. Fin. Guide (CCH) ¶ 6060 (1992) (finding both E.I. Du Pont de Nemours and Company and Merck & Co., Inc. to be affiliated with a joint venture general partnership because of their 50% ownership stakes).

In one instance the Commission did not find affiliation when a 50% ownership stake existed. In FEC Advisory Opinion 1981-54, Fed. Election Camp. Fin. Guide (CCH) ¶ 5644 (1981) the Commission did not allow the PAC of Fairchild Industries, Inc. to solicit the personnel of a partnership in which Fairchild held a 50% interest because the corporation did not concede that its PAC would be affiliated with any PAC that might be established by the partnership.

In the case at hand, BellSouth only has a 40% minority economic ownership stake in Cingular and has the right to receive the corresponding share of any distributions by Cingular and the obligation only to fund 40% of future capital and debt requirements. Even in the Managing Company, BellSouth's voting power is only equal to SBC's. BellSouth, therefore, is the minority partner in the joint venture limited liability company. SBC, on the other hand, is the majority partner and has a 60% economic stake in Cingular, receiving 60% of any Cingular distributions and participating in 60% of any Cingular capital contributions, debt

funding, and debt repayments. Accordingly, for FEC purposes, it appears that BellSouth is not affiliated with Cingular.

Although the Commission has not addressed a situation exactly like the one at hand, FEC Advisory Opinion 1984-36 does seem to provide some guidance. Like the minority corporate partner in that opinion which the Commission found to be unaffiliated with a partnership, BellSouth owns a 40% equity share in Cingular. Like the unaffiliated partner, BellSouth may not take action unilaterally or make decisions with regard to Cingular. Rather, BellSouth must reach agreement with the majority equity partner. Moreover, unlike the unaffiliated minority partner in Advisory Opinion 1984-36, BellSouth is not the managing partner of Cingular. It cannot bind Cingular, act in its name, or execute contracts on its behalf. Arguably, the unaffiliated managing partner in Advisory Opinion 1984-36 had a greater role in the operation of that partnership than does BellSouth in Cingular.

In addition, after the contribution of the leasing companies by January 1, 2002, there will be no overlapping officers or employees between BellSouth (or SBC) and Cingular. All Cingular employees will report to Cingular officers, who are accountable to the Board of Directors of the Managing Company. There are no

formal or informal agreements in place that any Cingular officer or employee will return to SBC or BellSouth after working at Cingular for a set period of time.

Finally, most of the employees and officers of Cingular will have formerly been employed by SBC and BellSouth. Approximately one-third of the Cingular employees will have previously worked for BellSouth. Approximately two-thirds of the roughly 34,000 Cingular employees will have formerly worked for SBC. The former officers and employees of BellSouth do not constitute a dominant part or a plurality of the total officers and employees of Cingular. See FEC Advisory Opinion 2001-7 (noting that a similar lack of a majority or plurality of former employees and officers of any one corporate partner weighed in favor of not finding affiliation). For example, the Chief Executive Officer of Cingular and nine of Cingular's executive officers were formerly employed by SBC. Only four of the sixteen senior executives previously worked for BellSouth.

Importantly, the executive officers of Cingular will be the individuals who manage and operate Cingular PAC. Since the cost of operating and managing Cingular PAC will not reach the threshold for consideration by the Managing Company's SRC or Board of Directors, the decisions regarding Cingular PAC will fall within the day-to-day functions of the Cingular's senior management.

BellSouth, accordingly, will not be involved in the management and operation of Cingular PAC.

CONCLUSION

In sum, BellSouth should not be deemed affiliated with Cingular.

- BellSouth owns a 40% minority interest in Cingular.
- BellSouth receives 40% of any Cingular distributions and is obligated to contribute only 40% of future Cingular capital and debt requirements.
- BellSouth has two seats on both the SRC and Board of Directors of the Managing Company; however, decisions regarding Cingular PAC lie with the senior management of Cingular and not with the SRC or Board of Directors of the Managing Company.
- There will be no overlapping officers or employees between BellSouth and Cingular after January 1, 2002.
- Former senior officers of BellSouth constitute only one-fourth of the senior management of Cingular.

Under these circumstances and given the above structure of Cingular, BellSouth Corporation respectfully requests that the Commission determine that the BellSouth PAC is not affiliated with Cingular PAC.

Please contact the undersigned for any additional information.

Sincerely yours,

Jan Witold Baran

Enclosures:

1. Certificate of Incorporation and Restated Certificate of Incorporation of the Managing Company.

2. Amended and Restated By-Laws of the Managing Company.

3. Stockholders' Agreement by and among SBC, BellSouth, and the Managing Company.

4. Articles 1-8 & 15-17 of the Cingular LLC Agreement.

1

State of Delaware

Office of the Secretary of 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 "CINGULAR WIRELESS CORPORATION" AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

CERTIFICATE OF INCORPORATION, FILED THE ELEVENTH DAY OF APRIL, A.D. 2000, AT 4:30 O'CLOCK P.M.

RESTATED CERTIFICATE, FILED THE SECOND DAY OF OCTOBER, A.D. 2000, AT 11 O'CLOCK A.M.

CERTIFICATE OF AMENDMENT, CHANGING ITS NAME FROM "ALLOY MANAGEMENT CORP." TO "CINGULAR WIRELESS MANAGEMENT CORP.", FILED THE THIRTY-FIRST DAY OF OCTOBER, A.D. 2000, AT 9 O'CLOCK A.M.

CERTIFICATE OF AMENDMENT, CHANGING ITS NAME FROM "CINGULAR WIRELESS MANAGEMENT CORP." TO "CINGULAR WIRELESS CORPORATION", FILED THE SIXTEENTH DAY OF APRIL, A.D. 2001, AT 9 O'CLOCK A.M.

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

Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

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010196892

AUTHENTICATION: 1097625

DATE: 04-24-01

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 04:30 PM 04/11/2000
001186736 - 3202758

CERTIFICATE OF INCORPORATION

OF

ALLOY MANAGEMENT CORP.

FIRST. The name of the corporation is Alloy Management Corp.

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

THIRD. The purpose of the corporation is 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 that the Corporation shall have the authority to issue is 1,001 shares, consisting of: (i) 1,000 shares of Class A Common Stock, par value $0.01 per share (the "Class A Common Stock"); and (ii) 1 share of Class B Common Stock, par value $0.01 per share (the "Class B Common Stock"). Each share of Class A Common Stock shall be entitled to one vote per share and each share of Class B Common Stock shall be entitled to two votes per share.

FIFTH. The name and mailing address of the incorporator is J. David Enriquez, Sullivan & Cromwell, 125 Broad Street, New York, New York 10004.

SIXTH. The board of directors of the corporation is expressly authorized to adopt, amend or repeal by-laws of the corporation.

SEVENTH. Elections of directors need not be by written ballot except and to the extent provided in the by-laws of the corporation.

EIGHTH. Any action required or permitted to be taken by the holders of any class or series of stock of the corporation, including but not limited to the election of directors, may be taken by written consent or consents but only if such consent or consents are signed by all holders of the class or series of stock entitled to vote on such action.

NINTH. A director of the corporation shall not be liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent that such exemption from liability or limitation thereof is not permitted under the Delaware General Corporation Law as currently in effect or as the same may hereafter be amended. No amendment, modification or repeal of this Article NINTH shall adversely affect any right or protection of a director that exists at the time of such amendment, modification or repeal.

TENTH. Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under the provisions of Section 279 of Title 8 of the Delaware Code

order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this corporation, as the case may be, and also on this corporation.

IN WITNESS WHEREOF, I have signed this certificate of incorporation this 11th day of April, 2000.

J. David Enriquez

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 11:00 AM 10/02/2000
001496128 - 3202758

RESTATED CERTIFICATE OF INCORPORATION

OF

ALLOY MANAGEMENT CORP.

Alloy Management Corp., a Delaware corporation, hereby certifies as follows:

FIRST. The date of filing of its original certificate of incorporation with the Secretary of State was April 11, 2000.

SECOND. This restated certificate of incorporation amends, restates and integrates the provisions of the certificate of incorporation of said corporation and has been duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware by written consent of the holder of all of the outstanding stock entitled to vote thereon in accordance with the provisions of Section 228 of the General Corporation Law of the State of Delaware.

THIRD. The text of the certificate of incorporation is hereby amended and restated to read herein as set forth in full:

FIRST. The name of the Corporation is: Alloy Management Corp.

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

THIRD. Purpose of the Corporation. The purpose of the Corporation is to engage in the Business, including the provision and development of the Products and Services. Subject to the provisions hereof, the Corporation is empowered to do any and all acts and things necessary, appropriate, proper, advisable, incidental to or convenient for the furtherance and accomplishment of the purposes and business as set forth in this Article THIRD and for the protection and benefit of the Corporation and its Subsidiaries, including, without limitation, full power and authority, subject to the terms of this Certificate, directly or through its Subsidiaries or Affiliates, to enter into, perform and carry out contracts of any kind, borrow money and issue evidences of indebtedness whether or not secured by mortgage, deed of trust, pledge or other lien, acquire, own, manage, improve and develop any property, and lease, sell, transfer and dispose of any property. All capitalized terms used in this Certificate and not otherwise defined shall have the meanings ascribed to them in Article EIGHTH.

FOURTH. (a) Authorized Capital Stock. The total number of shares of stock that the Corporation shall have the authority to issue is 7,000,000,002 shares, consisting of: (i) 6,000,000,000 shares of Class A Common Stock, par value $0.01 per share (the "Class A Common Stock"); (ii) 2 shares of Class B Common Stock, par value $0.01 per share (the "Class B Common Stock"); and (iii) 1,000,000,000 shares of Preferred Stock, par value $0.01 per share (the "Preferred Stock"), issuable in one or more series as hereinafter provided. The Class A Common Stock and the Class B Common Stock shall hereinafter collectively be called the "Common Stock." The

number of authorized shares of any Class or classes of capital stock of the Corporation may be increased or decreased (but not below the number of shares thereof then outstanding) by each of the following, voting separately as a class: the affirmative vote of the holders of a majority of the voting power of the stock of the Corporation entitled to vote generally in matters other than the election of directors ("Voting Stock") irrespective of the provisions of Section 242(b)(2) of the DGCL or any corresponding provision hereinafter enacted.

(b) Terms of Common Stock; Voting; Directors.

(i) Rights and Privileges; Voting Rights. (A) All shares of Common Stock shall be identical in all respects and shall entitle the holders thereof to the same rights and privileges, and shall be subject to the same qualifications, limitations and restrictions thereof, except as otherwise provided in this Restated Certificate of Incorporation (this "Certificate") or as otherwise required by the DGCL.

(B) The holders of shares of Common Stock shall have the following voting rights:

(1) Each holder of Class A Common Stock shall be entitled to one vote for each share of Class A Common Stock standing in the name of such holder on the record of stockholders on all matters submitted to a vote of the stockholders of the Corporation, other than the election or removal and replacement of Class B Directors (as defined below).

(2) Each holder of Class B Common Stock shall be entitled to an aggregate number of votes, together with such holder's Ultimate Parent Entity and all holders of Class B Common Stock who have the same such Ultimate Parent Entity ("Affiliated Holders"), for all shares of Class B Common Stock standing in the name of such Affiliated Holder and all other Affiliated Holders on the record of stockholders on all matters submitted to a vote of the stockholders of the Corporation, other than the election, removal and replacement of Class A Directors, with such votes divided as nearly proportional as is practicable among the shares of Class B Common Stock Beneficially Owned by such Affiliated Holders based on the number of shares of Class B Common Stock standing in the name of such holder on the record of stockholders equal to: ten multiplied by the number of LLC Units Beneficially Owned by such Affiliated Holders' Ultimate Parent Entity.

(3) Except as may be provided pursuant to resolutions of the Board, adopted pursuant to the provisions of this Certificate and the By-Laws, establishing any series of Preferred Stock and granting to the holders of such shares of Preferred Stock rights to elect additional directors under specified circumstances, and subject to Article FIFTH, clause (c) below, the holders of Class B Common Stock, voting as a separate class, at all times for so long as any shares of Class B Common Stock are outstanding, shall be entitled to elect at least 75% of the total number of directors (each a "Class B Director") and, if such 75% is not a whole number, then the holders of Class B Common Stock shall be entitled to elect the nearest higher

whole even number of directors that is at least 75% of the total number of directors; provided that, and subject to the exceptions set forth above, until shares of Class A Common Stock are outstanding, the holders of Class B Common Stock shall elect 100% of the directors. Following the time shares of Class A Common Stock become outstanding, the remaining directors shall be elected by the vote of the holders of the Class A Common Stock (each a "Class A Director") (or if any holders of shares of Preferred Stock are entitled to vote together with the holders of Class A Common Stock, as a single Class with such holders of shares of Preferred Stock), voting as a class.

(4) Except as otherwise expressly required in this Certificate or the By-Laws or by applicable law, the holders of shares of Common Stock shall vote together as one Class on all matters submitted to a vote of stockholders of the Corporation (or if any holders of shares of Preferred Stock are entitled to vote together with the holders of Common Stock, as a single Class with such holders of shares of Preferred Stock); provided, however, that the affirmative vote or consent of the holders of all of the outstanding shares of Class B Common Stock, voting separately as a class, shall be required for any amendment, alteration or repeal, whether directly or indirectly through any merger, consolidation, or exchange or similar transaction, of any of the provisions of this Certificate which would alter or change the powers, preferences or special rights of the shares of Class B Common Stock so as to affect them adversely.

(5) In addition to the vote, if any, as may be required by the DGCL or this Certificate, the vote or consent of the holders of all of the

outstanding shares of Class B Common Stock, voting separately as a single class, shall be required to repeal, amend or restate this Certificate, whether directly or indirectly through any merger, consolidation, or exchange or similar transaction, in a manner that creates any Class of common stock or preferred stock having more than one vote per share, unless such Class is to be issued in exchange for the Class B Common Stock and does not have more than ten votes per share and the terms of this Section (5) apply to it to the same extent as to the Class B Common Stock.

(6) Notwithstanding anything in this Article FOURTH to the contrary, unless an additional series of Common Stock shall be issued, the holders of Class A Common Stock shall have exclusive voting power on all matters upon which, pursuant to this Certificate of Incorporation or applicable laws, the holders of Common Stock are exclusively entitled to vote, at any time when no shares of Class B Common Stock are issued and outstanding.

(7) Notwithstanding anything in this Article FOURTH to the contrary, unless an additional series of Common Stock shall be issued, the holders of Class B Common Stock shall have exclusive voting power on all matters upon which, pursuant to this Certificate or applicable laws, the holders of Common Stock are exclusively entitled to vote, at any time when no shares of Class A Common Stock are issued and outstanding.

(8) Wherever any provision of this Certificate sets forth a specific percentage of the shares outstanding and entitled to vote

which is required for approval or ratification of any action upon which the vote of the stockholders is required or may be obtained, such provision shall mean such specified percentage of the votes entitled to be cast by holders of shares then outstanding and entitled to vote on such action.

(9) There shall be no cumulative voting.

(10) In any matter on which the shares of Class B Common Stock shall be entitled to vote separately as a class, the affirmative vote of all of the shares of Class B Common Stock shall be required to approve such matter.

(ii) Dividends and Distributions.

(A) Subject to the preferences applicable to Preferred Stock, if any, outstanding at any time, the holders of shares of Common Stock shall be entitled to receive such dividends and other distributions in cash, property or shares of stock of the Corporation as may be declared thereon, upon the prior approval of the Strategic Review Committee (as defined below), by the Board from time to time out of assets or funds of the Corporation legally available thereof; provided, that, subject to the provisions of this Article FOURTH, clause (b)(ii)(B), (C) and (D), the Corporation shall not pay stock dividends or distributions to any holders of any Class of Common Stock unless simultaneously with such dividend or distribution, as the case may be, the Corporation makes the same dividend or distribution with respect to each outstanding share of Common Stock regardless of class.

(B) In the case of dividends or other distributions payable in Class A Common Stock or Class B Common Stock including distributions pursuant to stock splits or divisions of Class A Common Stock or Class B Common Stock which occur after the first date upon which the Corporation has issued shares of any of Class A Common Stock or Class B Common Stock, only shares of Class A Common Stock shall be distributed with respect to Class A Common Stock and only shares of Class B Common Stock shall be distributed with respect to Class B Common Stock. In the case of any such dividend or distribution payable in shares of Class A Common Stock or Class B Common Stock, as the case may be, the number of shares of each Class of Common Stock payable per share of such Class of Common Stock shall be equal in number.

(C) In the case of dividends or other distributions consisting of other voting securities of the Corporation or of voting securities of any corporation or other entity which is a subsidiary of the Corporation, the Corporation shall declare and pay such dividends in two separate classes of such voting securities, identical in all respects, except that: (1) the voting rights of each such security paid to the holders of Class B Common Stock, when compared to the voting rights of each such security paid to the holders of Class A Common Stock, shall have proportionate greater voting rights determined pursuant to the same formula as provided in clause (b)(i)(B)(2) of Article FOURTH above; (2) such security paid to the holders of Class B Common Stock shall convert into the security paid to the holders of Class A Common Stock upon the same

terms and conditions applicable to the conversion of Class B Common Stock into Class A Common Stock and shall have the same restrictions on ownership applicable to the ownership of Class B Common Stock; and (3) the respective voting rights of each such security paid to holders of Class A Common Stock and Class B Common Stock with respect to the election of directors shall otherwise be as comparable as is practicable, as determined by the Board, to those of the Class A Common Stock and Class B Common Stock, respectively.

(D) In the case of dividends or other distributions consisting of securities convertible into, or exchangeable for, voting securities of the Corporation or voting securities of another corporation or other entity which is a subsidiary of the Corporation, the Corporation shall provide that such convertible or exchangeable securities and the underlying securities be identical in all respects (including, without limitation, the conversion or exchange rate), except that: (1) the voting rights of each security underlying the convertible or exchangeable security paid to the holders of Class B Common Stock, when compared to the voting rights of each security underlying the convertible or exchangeable security paid to the holders of the Class A Common Stock, shall have proportionate greater voting rights determined pursuant to the same formula as provided in clause (b)(i)(B)(2) of Article FOURTH above; (2) such underlying securities paid to the holders of the Class B Common Stock shall convert into the underlying securities paid to the holders of Class A Common Stock upon the same terms and conditions applicable to the conversion of Class B Common

Stock into Class A Common Stock and shall have the same restrictions on ownership applicable to the ownership of the Class B Common Stock; and (3) the respective voting rights of each such underlying security paid to holders of Class A Common Stock and Class B Common Stock with respect to the election of directors shall otherwise be as comparable as is practicable, as determined by the Board, to those of the Class A Common Stock and Class B Common Stock, respectively.

(iii) Conversion of Class B Common Stock.

(A) Each holder of Class B Common Stock shall be entitled to convert, at any time and from time to time, any or all of the shares of such holder's Class B Common Stock, on a one-for-one basis, into validly issued, fully paid and non-assessable shares of Class A Common Stock. Such right shall be exercised by the surrender to the Corporation of the certificate or certificates representing the shares of Class B Common Stock to be converted at any time during normal business hours at the principal executive offices of the Corporation or at the office of the Corporation's transfer agent (the "Transfer Agent"), accompanied by a written notice of the record holder of such shares stating that such holder desires to convert such shares, or a stated number of the shares represented by such certificate or certificates, into an equal number of shares of Class A Common Stock, and, if any such Class A Common Stock certificate is to be issued in a name other than that of the holder of the share or shares of Class B Common Stock converted, by instruments of transfer, in form reasonably satisfactory to the Corporation and to the Transfer Agent, duly executed by such holder or such holder's duly

authorized attorney, and transfer tax stamps or funds therefor if required pursuant to Article FOURTH, clause (b)(iii)(E) below.

(B) As promptly as practicable following the surrender for conversion of certificates representing shares of Class B Common Stock in the manner provided in Article FOURTH, clause (b)(iii)(A) above, and the payment in cash of any amount required by the provisions of Article FOURTH, clause (b)(iii)(E) below, the Corporation will deliver or cause to be delivered at the office of the Transfer Agent, a certificate or certificates representing the number of full shares of Class A Common Stock issuable upon such conversion, issued in such name or names as such holder may direct. Such conversion shall be deemed to have been effected immediately prior to the close of business on the date of the surrender of the certificate or certificates representing shares of Class B Common Stock. Upon the date any such conversion is made or effected, all rights of the holder of such shares of Class B Common Stock in respect of such shares shall cease, and the person or persons in whose name or names the certificate or certificates representing the shares of Class A Common Stock are to be issued shall be treated for all purposes as having become the record holder or holders of such shares of Class A Common Stock. The Corporation shall not be required to convert Class B Common Stock, and no surrender of Class B Common Stock shall be effective for that purpose, while the stock transfer books of the Corporation are closed for any purpose; but the surrender of Class B Common Stock for conversion during any period while such books are closed shall be deemed effective for conversion immediately upon

the reopening of such books, as if the conversion had been made on the date such Class B Common Stock was surrendered.

(C) In the event of a reclassification or other similar transaction approved in accordance with Article FIFTH, clause (j) as a result of which the shares of Class A Common Stock are converted into another security, then a holder of Class B Common Stock shall be entitled to receive upon conversion the amount of such security that such holder would have received if such conversion had occurred immediately prior to the record date of such reclassification or other similar transaction. No adjustments in respect of dividends shall be made upon the conversion of any share of Class B Common Stock; provided, however, that if a share of Class B Common Stock shall be converted subsequent to the record date for the payment of a dividend or other distribution on shares of Class B Common Stock but prior to such payment, then the registered holder of such share on such record date shall be entitled to receive the dividend or other distribution payable on such share notwithstanding the conversion thereof or any default in payment of the dividend or distribution due.

(D) The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Class A Common Stock, solely for the purpose of issuance upon conversion of the outstanding shares of Class B Common Stock, such number of shares of Class A Common Stock that are issuable upon the conversion of all outstanding shares of Class B Common Stock; provided that nothing contained herein shall preclude the Corporation from satisfying its obligations in respect

of the conversion of the outstanding shares of Class B Common Stock by delivery of purchased shares of Class A Common Stock which are held in the treasury of the Corporation. The Corporation covenants that if any shares of Class A Common Stock require registration with or approval of any governmental authority under any foreign, federal or state law before such shares of Class A Common Stock may be issued upon conversion and exchange, the Corporation will promptly cause such shares to be registered or approved, as the case may be. The Corporation will use its best efforts to list the shares of Class A Common Stock required to be delivered upon conversion prior to such delivery upon each national securities exchange or other recognized trading market upon which the outstanding Class A Common stock is listed at the time of such delivery. The Corporation covenants that all shares of Class A Common Stock that are issued upon conversion of shares of Class B Common Stock will, upon issuance, be validly issued, fully paid and non-assessable.

(E) The issuance of certificates for shares of Class A Common Stock upon conversion of shares of Class B Common Stock shall be made without charge to the holders of such shares for any stamp or other similar transfer tax in respect of such issuance; provided, however, that if any such certificate is to be issued in a name other than that of the holder of the share or shares of Class B Common Stock converted, then the person or persons requesting the issuance thereof shall pay to the Corporation the amount of any tax that may be payable in respect of any transfer involved

in such issuance or shall establish to the satisfaction of the Corporation that such tax has been paid or is not payable.

(F) Shares of Class B Common Stock that are converted into shares of Class A Common Stock as provided herein shall continue to be authorized shares of Class B Common Stock and available for reissuance by the Corporation; provided, however, that no shares of Class B Common Stock shall be reissued except as expressly permitted by Article FOURTH, clause (b)(ii) above and Article FOURTH, clause (b)(iv) below.

(iv) Stock Splits. The Corporation shall not in any manner subdivide (by any stock split, stock dividend, reclassification, recapitalization, merger or otherwise) or combine (by reverse stock split, reclassification, recapitalization, merger or otherwise) the outstanding shares of one class of Common Stock unless the outstanding shares of all classes of Common Stock shall be proportionately subdivided or combined. The Corporation shall cause the Operating Company to adjust the exchange rights for LLC Units accordingly if there is: (A) any subdivision (by any unit split, unit distribution, reclassification, recapitalization, merger or otherwise) or combination (by reverse unit split, reclassification, recapitalization, merger or otherwise) of the LLC Units that is not accompanied by an identical subdivision or combination of the Common Stock; or (B) any subdivision (by any stock split, stock dividend, reclassification, recapitalization, merger or otherwise) or combination (by reverse stock split, stock dividend, reclassification, recapitalization, merger or otherwise) of the Common Stock

that is not accompanied by an identical subdivision or combination of the LLC Units; and in each such case, the Corporation shall adjust the conversion rights for the Class B Common Stock accordingly.

(v) Mergers, Consolidation, Etc. In the event that the Corporation shall enter into any consolidation, merger, combination or other transaction in which shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then, and in such event, the shares of each class of Common Stock shall be exchanged for or changed into either (A) the same amount of stock, securities, cash and/or any other property, as the case may be, into which or for which each share of any other class of Common Stock is exchanged or changed; provided, however, that if shares of Common Stock are exchanged for or changed into shares of capital stock, such shares so exchanged for or changed into may differ to the extent and only to the extent that the Class A Common Stock and the Class B Common Stock differ as provided herein, or (B) if holders of each class of Common Stock are to receive different distributions of stock, securities, cash and/or any other property (other than as contemplated by clause (b)(iv)(A) of this Article FOURTH), an amount of stock, securities, cash and/or property per share having a value, as determined by an independent investment banking firm of national reputation selected by the Board, equal to the value per share into which or for which each share of any other class of Common Stock is exchanged or changed. Further, the Corporation shall not enter into such consolidation,

merger, combination or other transaction, unless the acquiring entity agrees to preserve all rights of the holders of LLC Units set forth in the LLC Agreement.

(vi) Liquidation Rights. In the event of any dissolution, liquidation or winding-up of the affairs of the Corporation, whether voluntary or involuntary, after payment or provision for payment of the debts and other liabilities of the Corporation and after making provision for the holders of each series of Preferred Stock, if any, the remaining assets and funds of the Corporation, if any, shall be divided among and paid ratably to the holders of the shares of the Common Stock. For the purposes hereof, the voluntary sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all the property or assets of the Corporation shall be deemed a voluntary liquidation, dissolution or winding-up of the Corporation, but a consolidation or merger of the corporation with one or more other corporations shall not be deemed to be a liquidation, dissolution or winding-up, voluntary or involuntary.

(vii) No Preemptive Rights. The holders of shares of Common Stock are not entitled to any preemptive right to subscribe for, purchase or receive any part of any new or additional issue of stock of any class, whether now or hereafter authorized, or of bonds, debentures or other securities convertible into or exchangeable for stock.

(c) Preferred Stock.

(i) Shares of Preferred Stock may be issued in one or more series from time to time by the Board, subject to the prior approval of the Strategic Review Committee, and, subject to the voting and approval procedures set forth in this Certificate, including such approval of the Strategic Review Committee, the Board is expressly authorized to fix by resolution or resolutions the designations and the powers, preferences and rights, and the qualifications, limitations and restrictions thereof, of the shares of each series of Preferred Stock, including without limitation the following:

(A) the distinctive serial designation of such series which shall distinguish it from other series;

(B) the number of shares included in such series;

(C) the dividend rate (or method of determining such rate) payable to the holders of the shares of such series, any conditions upon which such dividends shall be paid and the date or dates upon which such dividends shall be payable;

(D) whether dividends on the shares of such series shall be cumulative and, in the case of shares of any series having cumulative dividend rights, the date or dates or method of determining the date or dates from which dividends on the shares of such series shall be cumulative;

(E) the amount or amounts which shall be payable out of the assets of the corporation to the holders of the shares of such series upon

voluntary or involuntary liquidation, dissolution or winding up the corporation, and the relative rights of priority, if any, of payment of the shares of such series;

(F) the price or prices at which, the period or periods within which and the terms and conditions upon which the shares of such series may be redeemed, in whole or in part, at the option of the corporation or at the option of the holder or holders thereof or upon the happening of a specified event or events;

(G) the obligation, if any, of the corporation to purchase or redeem shares of such series pursuant to a sinking fund or otherwise and the price or prices at which, the period or periods within which and the terms and conditions upon which the shares of such series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;

(H) whether or not the shares of such series shall be convertible or exchangeable, at any time or times at the option of the holder or holders thereof or at the option of the corporation or upon the happening of a specified event or events, into shares of any other Class or classes or any other series of the same or any other Class or classes of stock of the corporation, and the price or prices or rate or rates of exchange or conversion and any adjustments applicable thereto; and

(I) whether or not the holders of the shares of such series shall have voting rights, in addition to the voting rights provided by law, and if so the terms, subject to Article FOURTH, clause (b)(i)(B)(5) of such voting rights.

Subject to the rights of the holders of any series of Preferred Stock, the number of authorized shares of any Class or series of Preferred 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 outstanding shares of such Class or series, voting together as a single class, irrespective of the provisions of Section 242(b)(2) of the DGCL or any corresponding provision hereafter enacted.

(ii) Dividends. Dividends on outstanding shares of Preferred Stock shall be paid or declared and set apart for payment before any dividends shall be paid or declared and set apart for payment on the Common Stock with respect to the same dividend period.

(iii) Liquidation Rights. If upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the assets available for distribution to holders of shares of Preferred Stock of all series shall be insufficient to pay such holders the full preferential amount to which they are entitled, then such assets shall be distributed in accordance with the respective priorities and preferential amounts (including unpaid cumulative dividends, if any, and interest thereon, if any) payable with respect thereto, and among shares of any series of Preferred Stock, ratably among the shares of such series.

FIFTH. (a) The number of Directors shall be fixed only by resolution of the Board from time to time and shall be apportioned among the classes of Common Stock as provided in Article FOURTH, clause (b)(i)(B)(3). If the number of Directors is

changed, any increase or decrease shall be apportioned among the classes of Common Stock as provided in Article FOURTH, clause (b)(i)(B)(3). Unless and except to the extent that the By-Laws of the Corporation shall so require, the election of directors of the Corporation need not be by written ballot.

(b) Subject to the approval procedures in Article FIFTH, clause (j)(i), the Board may from time to time make, amend, supplement or repeal the By-Laws by a vote of a majority of the Board; provided, however, that the stockholders may change or amend or repeal any provision of the By-Laws by each of: (i) the affirmative vote of the holders of a majority of the Voting Stock voting as one class; and (ii) if any Class B Common Stock is issued and outstanding, by the affirmative vote of the holders of all of the Class B Common Stock, voting separately as a class.

(c) Any action required or permitted to be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, is signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote on such action were present and voted and shall be delivered to the Corporation by delivery to its registered office in the State of Delaware by hand or by certified mail or registered mail, return receipt requested, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to

the Corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of stockholders to take the action were delivered to the Corporation as provided in this clause (c).

Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the date the earliest dated consent is delivered in the manner required by this by-law to the Corporation, a written consent or consents signed by a sufficient number of holders to take action are delivered to the Corporation in the manner prescribed in the first paragraph of this clause (c).

(d) If none of SBC and BellSouth and their respective wholly-owned Subsidiaries shall own any shares of Class B Common Stock, then the term of all of the Class B Directors shall terminate.

(e) Any vacancies resulting from death, resignation, disqualification, removal or other reasons with respect to a Class A Director shall be filled by the affirmative vote of the remaining Class A Directors then in office, even if less than a quorum of the Board. Any vacancies resulting from death, resignation, disqualification, removal or other cause with respect to a Class B Director shall be filled

by the remaining Class B Directors, even if less than a quorum, or if there shall not be remaining any Class B Directors, by the holders of Class B Common Stock. In the absence of a sole remaining Class B Director, such vacancies shall be filled by the affirmative vote of the holders of all of the outstanding shares of Class B Common Stock, voting separately as a class. Any director elected in accordance with this clause (e) shall hold office until the next annual meeting of stockholders and until such director's successor shall have been duly elected and qualified, or until such director's term of office otherwise terminates.

(f) If there shall be no Class B Common Stock outstanding, the size of the Board shall be reduced by the number of Class B Directors serving on the Board immediately prior to the time that the Class B Common Stock was no longer outstanding.

(g) Removal of Directors. (i) Any Class A Director may be removed at any time, with cause, by a vote of the holders of the Class A Common Stock holding not less than eighty percent (80%) of the votes entitled to be cast for the election of Class A Directors, voting separately as a class, and (ii) any Class B Director may be removed at any time, with or without cause, only by the affirmative vote of all of the outstanding shares of Class B Common Stock, voting separately as a class.

(h) General Powers of the Board of Directors. Subject to Article FIFTH, clause (j), the business and affairs of the Corporation shall be managed by or under the direction of the Board. The Board may, subject to the approval procedures of Article FIFTH, clause (j) hereof, exercise all of the powers of the Corporation except as

otherwise provided by law or this Certificate. Decisions of the Board shall be by majority vote of the entire Board; provided, that Strategic Decisions specified in Article FIFTH, clause (j) below must be approved by the Strategic Review Committee (as defined in clause (j) below) prior to the approval of the Board in order to be valid acts of the Corporation.

(i) The Board shall meet at least quarterly, unless the directors determine that the meeting is unnecessary or that a different schedule is appropriate. Special meetings of the Board may be called by any director on at least five (5) Business Days' prior written notice of time and place of such meeting; provided, however, that such notice requirement shall be deemed waived by any director who is present at the commencement of any such special meeting. Regular and special meetings may be held at any place designated from time to time by the Corporation, including meetings by telephone conference.

(ii) Any action required or permitted to be taken at a meeting of the Board may be taken without a meeting if a written consent setting forth the action so taken is signed (by either manual or facsimile signature) by all Directors. Any such consent may be in one instrument or in several instruments, and shall have the same force and effect as a vote of such Directors. An action so taken shall be deemed to have been taken at a meeting held on the effective date so certified. Copies of all such written consents shall be sent promptly to each director.

(i) [Intentionally omitted].

(j) Appointment and Powers of Strategic Review Committee.

(i) The Board shall establish a four (4) member Strategic Review Committee (the "Strategic Review Committee") consisting of two (2) Class B Directors selected by SBC and two (2) Class B Directors selected by BellSouth, subject to increase as provided in next sentence and to reduction as provided in Article FIFTH, clause (j)(ii) below. Following the time shares of Class A Common Stock become outstanding and the election or appointment of Class A Directors, the Board shall appoint a Class A Director to serve as a member of the Strategic Review Committee and the Strategic Review Committee shall thereafter have five (5) members. The purpose of the Strategic Review Committee shall be to evaluate and decide any matters set forth on Schedule FIFTH, clause (j) attached to this Certificate ("Strategic Decisions"). Strategic Decisions shall be made by the affirmative vote of at least two-thirds of the full number of members of the Strategic Review Committee. The Strategic Review Committee shall have the full authority of the Board, except as is expressly prohibited by the DGCL. Unless expressly prohibited by the DGCL, the decision of the Strategic Review Committee on any Strategic Decision shall be final and binding on the Corporation. In addition, no matter which is a Strategic Decision, whether or not approval of the full Board is required by the DGCL, shall be validly approved by the Board or any committee of the Board unless previously approved by the Strategic Review Committee, and any such action shall not be effective unless and until such action has been approved by the Strategic Review Committee in accordance with this Article FIFTH, clause (j)(i) of this Certificate.

Decisions of the Strategic Review Committee shall be made only at a meeting at which a quorum is present. For a quorum of the Strategic Review Committee to be present, at least one Class B Director nominated by each of SBC, and BellSouth, must be in attendance. After SBC or BellSouth Beneficially Owns (A) less than 10% of the sum of (x) the total issued and outstanding shares of Common Stock, excluding treasury shares and (y) the total outstanding LLC Units, excluding any LLC Units Beneficially Owned by the Corporation (the sum of (x) and (y) being the "Total Outstanding Shares"), or (B) no Class B Common Stock ((A) or (B) being the "Class B Triggering Event" and the Stockholder that ceases to Beneficially Own 10% of the Total Outstanding Shares or any Class B Common Stock being the "Departing Class B Stockholder"), two directors appointed by the stockholder that is not the Departing Class B Stockholder shall constitute a quorum on the Strategic Review Committee. Any amendment repeal, whether directly or indirectly through any merger, consolidation, or exchange or similar transaction, to this clause (j)(i) shall be subject to the affirmative vote of the holders of all of the outstanding shares of Class B Common Stock, voting separately as a Class and no other stockholders shall be entitled to participate in such vote, except that an amendment to reduce the number of Class A Directors to serve on the Strategic Review Committee shall require the affirmative vote of at least a majority of the issued and outstanding shares of Class A Common Stock, voting separately as a class.

(ii) At any time that a Class B Triggering Event shall have occurred, then the number of Class B Directors appointed by the Departing Class B

Stockholder on the Strategic Review Committee shall be reduced to zero (0) (and the resulting size of the Strategic Review Committee shall be reduced by two (2) and no vacancy shall be created) and the term of the Class B Directors selected by such holder of Class B Common Stock shall terminate ten (10) days after the occurrence of the Class B Triggering Event.

(iii) At any time that a Class B Triggering Event shall have occurred with respect to both SBC and BellSouth, the Strategic Review Committee shall be dissolved as of such time, and this Article FIFTH, clause (j) shall cease to have any effect.

(iv) Vacancies on the Strategic Review Committee with respect to the Class B Directors that are members of the Strategic Review Committee shall be filled by the affirmative vote of the holders of all of the outstanding shares of Class B Common Stock.

SIXTH. A director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent that such exemption from liability or limitation thereof is not permitted under the DGCL as currently in effect or as the same may hereafter be amended. No amendment, modification or repeal of this Article SIXTH shall adversely affect any right or protection of a director that exists at the time of such amendment, modification or repeal. For the purposes of this Article SIXTH, the term "director" shall include any member of the Strategic Review Committee serving in such capacity.

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate, in the manner now or hereafter prescribed by statute, provided that such action is approved in the manner, and otherwise complies with the requirements, set forth in this Certificate, and all rights conferred upon stockholders herein are granted subject to this reservation.

SEVENTH. The Corporation hereby expressly elects not to be governed by Section 203 of the DGCL.

EIGHTH. The following are the definitions used in this Certificate:

"Advanced Services" shall mean high speed services, such as ADSL (but not cable modems), which enable users to originate and receive high quality voice and data services.

"Affiliate" shall mean with respect to any Person, any Person directly or indirectly Controlling, Controlled by, or under Common Control with such other Person at any time during the period for which the determination of affiliation is being made.

"Affiliated Holders" shall have the meaning set forth in Article FOURTH, clause (b)(i)(B)(2).

"Ancillary Agreements" shall mean, collectively, the Agency Agreements, Intellectual Property License Agreement, Registration Rights Agreement, the Resale Agreements, the Stockholders' Agreement, the Management Agreement, Transition Marks Agreement and Transition Services Agreement (each, as defined in the

Contribution Agreement), in each case substantially in the form attached as an Exhibit to the Contribution Agreement.

"BellSouth" shall mean BellSouth Corporation, a Georgia corporation and the Ultimate Parent Entity and any transferee of BellSouth in accordance with Section 4.1(f) of the LLC Agreement.

A Person shall be deemed the "Beneficial Owner", and to have "Beneficial Ownership" of, and to "Beneficially Own," any securities as to which such Person is or may be deemed to be the beneficial owner pursuant to Rule 13d-3 and 13d-5 under the Exchange Act, as such rules are in effect on the date of this Agreement, as well as any securities as to which such Person has the right to become Beneficial Owner (whether such right is exercisable immediately or only after the passage of time or the occurrence of conditions) pursuant to any agreement, arrangement or understanding (other than customary agreements with and between underwriters and selling group members with respect to a bona fide public offering of securities), or upon the exercise of conversion rights, exchange rights, rights, warrants or options, or otherwise; provided, however, that neither SBC nor BellSouth shall be deemed the "Beneficial Owner" or to have "Beneficial Ownership" of, or to "Beneficially Own," any LLC Units or Common Stock owned by the other party solely by virtue of the rights set forth in the Stockholders Agreement. For purposes of this Certificate, in determining any Person's percentage Beneficial Ownership of the Total Outstanding Shares, any shares of Class A Common Stock which are not

actually outstanding but which may be acquired upon exchange of outstanding LLC Units shall be excluded from the determination.

"Board" shall mean the Board of Directors of the Corporation.

"Business" shall mean (a) the acquisition, development, ownership and operation of businesses engaged in the Domestic provision of mobile wireless voice and data services utilizing radio frequencies licensed by the FCC for the provision of Cellular Service, PCS Service, Wireless Data Service, Satellite Services, Part 27 Service and Paging Services in Puerto Rico and the U.S. Virgin Islands, (b) business activities customarily ancillary to the provision of any of the foregoing services, and (c) the provision of a Package.

"Business Plan" shall mean the set of detailed one-year and more general five-year plans and projections with respect to Newco. Each Business Plan shall contemplate, among other matters: (a) the markets to be covered; (b) the activities of Newco; (c) amounts that must be invested or otherwise contributed to Newco by its members, whether as capital contributions or loans, during the calendar year following that of the approval of the Business Plan, as well as the estimate for the four years immediately following; and (d) the rates of return and profitability that are expected to be obtained by Newco. The Business Plan shall include, among other matters: (i) market and feasibility studies; (ii) financial and market projections and schedules; (iii) projected balance sheets and financial statements; (iv) projected cash flow; (v) human resources plan; (vi) projected rates of return; (vii) timetables of additional investments and other

contributions and (viii) an annual budget including, among other things, anticipated revenues, expenditures (capital and operating) and cash requirements of Newco for the following year.

"By-Laws" shall mean the By-Laws of the Corporation.

"Cellular Service" shall mean mobile wireless voice and data service provided pursuant to licenses issued by the FCC pursuant to Subpart H of Part 22 of the FCC Rules and all mobile voice and data services reasonably ancillary thereto.

"Certificate" shall have the meaning set forth in Article FOURTH, clause (b)(i).

"Class A Common Stock" shall have the meaning set forth in Article FOURTH, clause (a).

"Class A Director" shall have the meaning set forth in Article FOURTH, clause (b)(i)(B)(3).

"Class B Common Stock" shall have the meaning set forth in Article FOURTH, clause (a).

"Class B Director" shall have the meaning set forth in article FOURTH, clause (b)(i)(B)(3).

"Class B Triggering Event" shall have the meaning set forth in Article FIFTH, clause (j)(i).

"Common Stock" shall have the meaning set forth in Article FOURTH, clause (a).

"Communications Act" shall mean the Communications Act of 1934, as amended.

"Contribution Agreement" shall mean the Amended and Restated Contribution Agreement, dated as of April 4, 2000, among SBC, BellSouth and the Operating Company.

"Control" (including the correlative meanings of the terms "Controlled by" and "under Common Control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"Corporation" shall mean Alloy Management Corp., a Delaware corporation.

"CPE" shall mean customer-provided equipment.

"Departing Class B Stockholder" shall have the meaning set forth in Article FIFTH, clause (j)(i).

"DGCL" shall mean the General Corporation Law of the State of Delaware.

"Domestic" shall mean the fifty states comprising the United States of America, the District of Columbia, the U.S. Virgin Islands and the Commonwealth of Puerto Rico, but excluding all other territories and possessions of the United States of America.

"Entity" shall mean any corporation, firm, unincorporated organization, association, partnership, limited liability company, business trust, joint stock company, joint venture organization, entity or business.

"FCC" shall mean the Federal Communications Commission or the successor agency thereof.

"FCC Rules" shall mean any applicable rules and regulations of the FCC.

"Indebtedness" shall mean, with respect to any Person, (i) all indebtedness and obligations of or assumed by such Person in respect of money borrowed (including any indebtedness which is non-recourse to the credit of such Person, but which is secured by a Lien on any asset of such Person) or evidenced by a promissory note, bond, debenture, letter of credit reimbursement agreement or other written obligations to pay money for money borrowed; (ii) any indebtedness or obligation of others secured by a Lien on any asset of such Person, whether or not such indebtedness or obligation is assumed by such Person; (iii) any guaranty, endorsement, suretyship or other undertaking pursuant to which such Person may be liable on account of any obligation of any third party other than a Subsidiary of such Person; (iv) indebtedness for the deferred purchase price of property or services; (v) obligations of such Person incurred in connection with entering into a lease which, in accordance with GAAP, should be capitalized; (vi) payments to be made pursuant to Section 2.11 of the Contribution Agreement; and (vii) the similar indebtedness or obligations of a partnership or joint venture in which such Person is a general partner or joint venturer.

"LLC Agreement" shall mean the Limited Liability Company Agreement of the Operating Company, dated as of October 2, 2000, as amended from time to time.

"LLC Units" shall mean membership units in the Operating Company.

"Network Services" shall mean Telephone Exchange Service, Exchange Access Service, Private Line Service, ISP Service, InterLATA Services and Dedicated Lines. For the purpose of this definition, the term Exchange Access Service shall have the meaning set forth in Section 3 of the Communications Act.

"Operating Company" shall mean Alloy LLC, a Delaware limited liability company, or any successor entity thereto.

"Package" shall mean the marketing, sale, resale, or any other mode of selling a package of services, comprised of (x) one or more of Cellular Service, PCS Service, Wireless Data Service and/or Part 27 Service, and business activities customarily ancillary to the provision of any of the foregoing services, in combination, whether for a single price or otherwise, with (y) any other Telecom Service (or other product or service) of a third party (which may be provided by SBC, BellSouth or their respective Subsidiaries and Affiliates).

"Paging Service" shall mean the provision of Domestic one and two-way paging and radiotelephone service pursuant to licenses issued by the FCC pursuant to Subpart E of Part 22 of the FCC Rules and Subpart P of Part 90 of the FCC Rules and all one- and two-way paging and radiotelephone services reasonably ancillary thereto.

"Part 27 Service" shall mean mobile wireless voice and data service provided pursuant to licenses issued by the FCC pursuant to Part 27 of the FCC Rules and all mobile voice and data services reasonably ancillary thereto, other than with respect to the provision of multi-channel video programming service and data services reasonably ancillary thereto.

"PCS Service" shall mean mobile wireless voice and data service provided pursuant to licenses issued by the FCC pursuant to Part 24 of the FCC Rules regardless of the frequency block designated by the FCC under 47 C.F.R. § 24.229 and all mobile voice and data services reasonably ancillary thereto.

"Person" shall mean any natural person or Entity.

"Preferred Stock" has the meaning set forth in Article FOURTH, clause (a).

"PSTN" shall mean public switched telephone network.

"Products and Services" shall mean the creation and provision by the Corporation and the Operating Company of Wireless Services, including wireless voice and data services in a Package with Network Services and products, on the local, regional and national level and any activities related thereto.

"Satellite Services" shall mean mobile wireless voice and data services (other than multi-channel video services and data services reasonably ancillary thereto) provided via fixed or non-geostationary satellite, directly or indirectly pursuant to licenses issued by the FCC pursuant to Part 25 of the FCC Rules and all mobile wireless voice and

data services reasonably ancillary thereto that are also provided via fixed or non-geostationary satellite.

"SBC" shall mean SBC Communications Inc., a Delaware corporation and the Ultimate Parent Entity of any transferee of SBC in accordance with Section 4.1(f) of the LLC Agreement.

"Stockholders Agreement" shall mean the Stockholders Agreement dated as of October 2, 2000 by and among SBC Communications Inc., BellSouth Corporation and the Corporation, as amended from time to time.

"Strategic Decisions" shall have the meaning set forth in Article FIFTH, clause (j)(i) of this Certificate.

"Strategic Review Committee" shall have the meaning set forth in Article FIFTH, clause (j)(i).

"Subsidiary" shall mean, as to any Person, any Person (i) of which such Person directly or indirectly owns securities or other equity interests representing fifty percent or more of the aggregate voting power, (ii) of which such Person possesses fifty percent or more of the right to elect directors or Persons holding similar positions or (iii) which such Person Controls directly or indirectly through one or more intermediaries; it being understood that with respect to the Corporation, the Operating Company shall be deemed a Subsidiary.

"Telecom Services" shall mean any of the following products or services: (a) Advanced Services, Information Service, InterLATA Service, Telephone Exchange

Service, Electronic Publishing Service, or any other Telecommunications Service (other than Cellular Service, Paging Service, PCS Service, Wireless Data Services and/or Part 27 Service); (b) all current and future ancillary services offered in conjunction with any of the services listed in (a), including, but not limited to, voice mail, caller ID, call waiting, directory listing services, calling card services, toll calling plans and associated CPE and any successors thereto; (c) security services, virtual private networks and associated CPE; and (d) any product or service that emulates or replicates the foregoing utilizing an IP protocol and the PSTN (including IP telephony, IP fax, unified messaging and Internet call waiting and associated CPE). For the purpose of this definition, the terms Information Service, InterLATA Service, Telephone Exchange Service and Telecommunications Service each have the meaning set forth in Section 3 of the Communications Act and the term Electronic Publishing Service has the meaning set forth in Section 274(h) of the Communications Act.

"Total Outstanding Shares" shall have the meaning set forth in Article FIFTH, clause (j)(i).

"Transfer Agent" shall mean the transfer agent of the Corporation.

"Ultimate Parent Entity" shall mean, with respect to any Entity that is a Subsidiary of a Person, the Person that, directly or indirectly, Beneficially Owns at least 50% of the Voting Securities of such Subsidiary and is not a Subsidiary of any Person.

"Voting Securities" shall mean any securities entitled to vote in the ordinary course in the election of directors or of Persons serving in a similar governing

capacity of any partnership, limited liability company or other Entity, including the voting rights attached to such securities.

"Voting Stock" shall have the meaning set forth in Article FOURTH, clause (a).

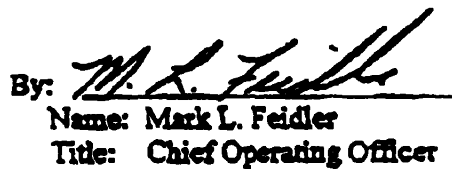
"Wireless Business" shall mean a business engaged in the provision of mobile wireless voice and data services utilizing radio frequencies licensed by the FCC for the provision of Cellular Service, PCS Service, Wireless Data Service, Paging Service in Puerto Rico and the U.S. Virgin Islands, Satellite Services and Part 27 Service.

"Wireless Data Service" shall mean the provision of Domestic Wireless data service pursuant to licenses issued by the FCC pursuant to Subpart E and H of Part 22 of the FCC Rules and Subpart S of Part 90 of the FCC Rules and all messaging and data services customarily ancillary thereto.

"Wireless Services" shall mean the mobile wireless and data products offered by a Wireless Business.

IN WITNESS WHEREOF, Alloy Management Corp. has caused this Amended and Restated Certificate, which has been duly adopted by the Board and consented to in writing and authorized by the holders of all of the issued and outstanding shares entitled to vote thereon and was duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware, to be signed and attested as of the 2nd day of October, 2000.

ALLOY MANAGEMENT CORP.

By: 
Name: Mark L. Feidler
Title: Chief Operating Officer

Schedule FIFTH, Clause (l)

MATTERS FOR THE STRATEGIC REVIEW COMMITTEE

(Except as indicated below, capitalized terms used and not defined in this Schedule shall have the respective meanings ascribed thereto in the Restated Certificate of Incorporation to which this Schedule is attached.)

1. Business Plan. Approval of any Business Plan with respect to the Corporation or its Subsidiaries (other than the initial Business Plan) or any modification thereof or amendment to any Business Plan.
2. Officers. Appointment of the Chief Executive Officer and the Chief Financial Officer of the Corporation, and individuals reporting directly to either of the foregoing (all of the foregoing, the "Executive Officers"), the successors to any Executive Officers and any removal of (or a material change in compensation of) any Executive Officer.
3. Delegation to Committees. Delegation of any powers and authority of the Board to a committee of the Board (other than the Strategic Review Committee as provided in this Certificate).
4. Acquisition or Disposition of Assets. Any acquisition or disposition of assets, properties or rights, including divestitures, and any other capital expenditures by the Corporation or any of its Subsidiaries not included in the Business Plan or any authorized modification or amendment thereto in one transaction or a series of related transactions which in the aggregate represent more than $75 million in value. The Strategic Committee shall not have the right to approve or disapprove of any acquisition made in accordance with the express provisions of the LLC Agreement unless required thereby.
5. Additional Capital Calls. Any capital contributions to the Corporation or its Subsidiaries by any stockholder of the Corporation (other than such stockholder's initial capital contribution to the Operating Company and other capital contributions required by the LLC Agreement).
6. Dividends. Any declaration or payment of any dividend or other distribution, direct or indirect, on account of any stock or other securities of the Corporation or its Subsidiaries except as provided in the LLC Agreement or as required by the organizational documents of any such Subsidiary.
7. Auditors. The appointment of auditors of the Corporation or its Subsidiaries.
8. Tax and Accounting Policies. Any material changes in the tax and accounting policies of the Corporation or its Subsidiaries.
9. Disposition of Assets. Any sale, lease, exchange or other disposition, directly or indirectly, of all or substantially all of the Corporation's or any of its Subsidiaries' rights, properties, businesses, licenses or other assets.
10. Indebtedness. Obtaining financing or refinancing for, or otherwise incurring any Indebtedness on behalf of, the Corporation or any of its Subsidiaries in excess of

the amounts set forth in, or contemplated by, the Business Plan plus an additional 10% of the Corporation's latest twelve months gross revenues.

11. Dealings with Affiliates. Entering into any transaction, agreement or arrangement (or series of related transactions, agreements or arrangements) with any Ultimate Parent Entity, or Affiliate of an Ultimate Parent Entity (other than the Corporation and its Subsidiaries) involving aggregate consideration in excess of $100,000 or more in the aggregate, except for any such agreement for the acquisition of goods and services pursuant to any tariff or other rate approved by a governmental or regulatory authority, court, agency, commission, body or other similar governmental entity, and except as expressly contemplated by an Ancillary Agreement.

12. Change in Company or Brand Name. Any change in the company name of the Corporation or its Subsidiaries or the brand name used by the Operating Company.

13. Headquarters. The location or relocation of company headquarters for the Corporation or its Subsidiaries.

14. New Technology Purchases. Entering into or taking any action to enter into any agreements or arrangements on behalf of the Corporation or any of its Subsidiaries involving the purchase of new or additional technology involving aggregate consideration in excess of $50 million or more in any year or otherwise material to the Business.

15. Change in Positions. Any adoption of or change in regulatory policies or public advocacy positions of the Corporation or its Subsidiaries in any manner that an Ultimate Parent Entity reasonably deems to be inconsistent with or adverse to such policies or positions supported by such Ultimate Parent Entity.

16. New Products and Services. The creation, provision and introduction by the Corporation or any of its Subsidiaries of any new Wireless Services, including any new wireless voice and data Network Services and products, on the local, regional or national and or any activities related thereto.

17. Change of Organization. Making or approval of any material changes in the corporate, partnership or limited liability company organization or structure of the Corporation or its Subsidiaries.

18. Employee Policies. Adopting or making or approval of any material changes in employee benefit or compensation plans or policies of the Corporation or its Subsidiaries or in any collective bargaining agreements.

19. Material Agreements. Except pursuant to an express provision in the Ancillary Agreements, the Corporation or its Subsidiaries entering into any transaction, agreement or arrangement, or series of related transactions, agreements or arrangements, in excess of $50 million or otherwise material to the Business.

20. Non-competition and Non-solicitation. The entry by the Corporation or its Subsidiaries into any non-competition or non-solicitation agreement.

21. Selection of Information Systems and Hardware. The selection of billing, customer care and management information systems and hardware by the Corporation or its Subsidiaries, to the extent such systems and hardware affect the ability of SBC or BellSouth, as the case may be, to offer Packages, joint marketing or single bill capabilities.
22. Amendment to Governing Documents. Any amendment, modification, waiver or repeal of any provisions of this Certificate of Incorporation or the By-laws of the Corporation or any organizational documents for any Subsidiary of the Corporation.
23. Amendment of Ancillary Agreements. Any amendment, modification or waiver of any of the Ancillary Agreements to which the Corporation or any of its Subsidiaries is a party.
24. Issuances of Equity Securities. The authorization or issuance of any equity securities (and the terms thereof) of the Corporation or any of its Subsidiaries, except for (i) issuances of equity to the Corporation by a wholly owned Subsidiary of the Corporation, (ii) as expressly contemplated by the Ancillary Agreements, or (iii) as expressly contemplated by the Business Plan.
25. Merger of the Corporation. Any merger, consolidation, share exchange, reorganization or other business combination or any dissolution or liquidation of the Corporation or any of its Subsidiaries, whether or not the Corporation or such Subsidiary is the surviving entity.
26. Conduct of Business. The engagement by the Corporation or its Subsidiaries in any line of business other than the Business.
27. Bankruptcy. Instituting proceedings to adjudicate the Corporation or any Subsidiary a bankrupt, or consent to the filing of a bankruptcy proceeding against the Corporation or any Subsidiary, or file a petition or answer or consent seeking reorganization of the Corporation or any Subsidiary under the Federal Bankruptcy Act or any other similar applicable federal or state law, or consent to the filing of any such petition against the Corporation or any Subsidiary, or consent to the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of the Corporation or any Subsidiary or of its property, or make an assignment for the benefit of creditors of the Corporation or any Subsidiary's inability to pay its debts generally as they become due.

STATE OF DELAWARE

CERTIFICATE OF AMENDMENT OF RESTATED CERTIFICATE OF INCORPORATION OF

ALLOY MANAGEMENT CORP.

Alloy Management Corp., a Delaware Corporation, hereby certifies as follows:

FIRST. The date of filing of its original certificate of incorporation with the Secretary of State was April 11, 2000 and the date of the filing of the Restated Certificate of Incorporation with the Secretary of State was October 2, 2000.

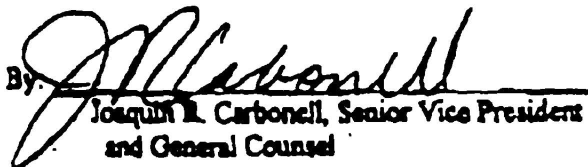
SECOND. This Certificate of Amendment of the Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware by written consent of all the outstanding stock entitled to vote thereon in accordance with the provisions of Section 228 of the General Corporation Law of the State of Delaware.

THIRD. The text of the certificate of incorporation is hereby amended to read herein as set forth below:

"The name of the corporation is: Cingular Wireless Management Corp."

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to the Restated Certificate of Incorporation, which has been duly adopted by the Board of Directors and consented to in writing and authorized by the holder of all of the issued and outstanding shares entitled to vote thereon and was duly adopted in accordance with Section 242 of the General Corporation Law of the State of Delaware, to be signed as of the 23rd day of October, 2000.

ALLOY MANAGEMENT CORP.



By: ______________________
Joaquin R. Carbonell, Senior Vice President and General Counsel

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 09:00 AM 10/31/2000

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 09:00 AM 04/15/2001
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STATE OF DELAWARE

CERTIFICATE OF AMENDMENT OF RESTATED CERTIFICATE OF INCORPORATION OF

CINGULAR WIRELESS MANAGEMENT CORP.

Cingular Wireless Management Corp., a Delaware corporation, hereby certifies as follows:

FIRST. The date of filing of its original certificate of incorporation with the Secretary of State was April 11, 2000. The date of the filing of the Restated Certificate of Incorporation with the Secretary of State was October 2, 2000 and the date of filing of the Certificate of Amendment of Restated Certificate of Incorporation was October 31, 2000.

SECOND. This Certificate of Amendment of the Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware by written consent of all the outstanding stock entitled to vote thereon in accordance with the provisions of Section 228 of the General Corporation Law of the State of Delaware.

THIRD. The text of the Certificate of Incorporation is hereby amended to read herein as set forth below:

"The name of the corporation is: Cingular Wireless Corporation".

IN WITNESS WHEREOF, the corporation has caused this Certificate of Amendment to the Restated Certificate of Incorporation, which has been duly adopted by the Board of Directors and consented to in writing and authorized by the holders of all of the issued and outstanding shares entitled to vote thereon and was duly adopted in accordance with Section 242 of the General Corporation Law of the State of Delaware, to be signed as of the 16th day of April, 2001.

CINGULAR WIRELESS MANAGEMENT CORP.

By:

Elizabeth A. Mussell, Assistant Secretary

CONSENT TO THE USE OF NAME

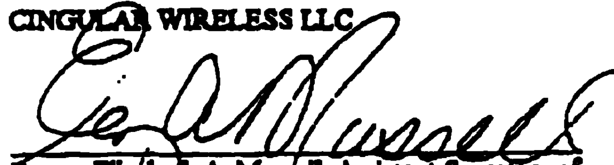
The undersigned, Elizabeth A. Mussell, Assistant Secretary of Cingular Wireless LLC (the "Company") and Cingular Wireless Management Corp., the Manager of the Company, certifies as follows:

1. Cingular Wireless Management Corp. is the Manager of the Company.

2. The Company consents to the use of the corporate name "Cingular Wireless Corporation" by Cingular Wireless Management Corp.

IN WITNESS WHEREOF, the undersigned has executed this consent as of 10th day of April, 2001.

CINGULAR WIRELESS LLC



By: Elizabeth A. Mussell, Assistant Secretary of Cingular Wireless LLC and its Manager, Cingular Wireless Management Corp.

CERTIFICATE OF CHANGE OF LOCATION OF REGISTERED OFFICE AND OF REGISTERED AGENT

It is hereby certified that:

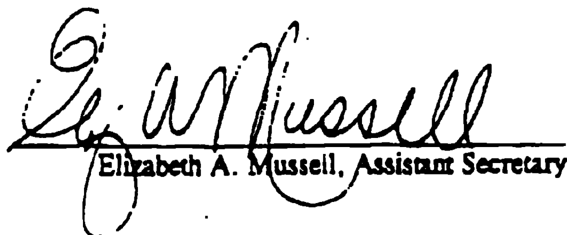
1. The name of the corporation (hereinafter called the "corporation") is CINGULAR WIRELESS CORPORATION.

2. The registered office of the corporation within the State of Delaware is hereby changed to 2711 Centerville Road, Suite 400, City of Wilmington 19808, County of New Castle.

3. The registered agent of the corporation within the State of Delaware is hereby changed to Corporation Service Company, the business office of which is identical with the registered office of the corporation as hereby changed.

4. The corporation has authorized the changes hereinbefore set forth by resolution of its Board of Directors.

Signed on May 31, 2001.



Elizabeth A. Mussell, Assistant Secretary

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 09:00 AM 06/12/2001
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AMENDED AND RESTATED

BY-LAWS

OF

ALLOY MANAGEMENT CORP.

Adopted as of October 2, 2000

AMENDED AND RESTATAED

BY-LAWS

OF

ALLOY MANAGEMENT CORP.

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AMENDED AND RESTATED

BY-LAWS

OF

ALLOY MANAGEMENT CORP.

ARTICLE 1 – Stockholders

1.1 Place of Meetings. All meetings of stockholders shall be held at such place within or without the State of Delaware as may be designated from time to time by the Board of Directors (the "Board") or the Chief Executive Officer or, if not so designated, at the registered office of the Corporation in the State of Delaware.

1.2 Annual Meeting. The annual meeting of stockholders for the election of directors and for the transaction of such other business as may properly be brought before the meeting shall be held on a date to be fixed by the Board or the Chief Executive Officer (which date shall not be a legal holiday or weekend day in the place where the meeting is to be held) at the time and place to be fixed by the Board or the Chief Executive Officer and stated in the notice of the meeting. If no annual meeting is held on the date fixed by the Board, the Board shall cause the meeting to be held as soon thereafter as convenient but in no event later than 30 days after the date designated for the annual meeting. If no date for the annual meeting is designated within thirteen months after the date of the last annual meeting in accordance with the foregoing provisions, a special meeting may be held in lieu of the annual meeting, and any action taken at that special meeting shall have the same effect as if it had been taken at the annual meeting, and in such case all references in these By-Laws to the annual meeting of the stockholders shall be deemed to refer to such special meeting.

1.3 Special Meetings. Special meetings of stockholders may be called at any time by the Chief Executive Officer, any two (2) members of the Strategic Review Committee (as defined below), or by the Board pursuant to a resolution approved by a majority of the then full number of directors on the Board. Any such call must specify the matter or matters to be acted upon at such meeting and only such matter or matters shall be acted upon thereat.

1.4 Notice of Meetings. Except as otherwise provided by law, written notice of each meeting of stockholders, whether annual or special, shall be in writing, shall state the purpose or purposes of the meeting, the place, date and hour of the meeting and, unless it is an annual meeting, shall indicate that the notice is being issued by or at the direction of the person or persons calling the meeting, and a copy thereof shall be delivered or sent by mail, not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting. The notices of

all meetings shall state the place, date and hour of the meeting. The notice of a special meeting shall state, in addition, the purpose or purposes for which the meeting is called and the business conducted at the meeting shall be limited to the business set forth in such notice and other matters reasonably incidental thereto. If mailed, notice shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation, unless such stockholder shall have filed with the Secretary of the Corporation a written request that notices to such stockholder be mailed to some other address in which case it shall be directed to such stockholder at such other address.

1.5 Voting List. The officer who has charge of the stock ledger of the Corporation shall prepare, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order for each class of stock, and showing the address of each stockholder and the number of shares of the Corporation which are registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time of the meeting, and may be inspected by any stockholder who is present.

1.6 Quorum. Except as otherwise provided by law, the Certificate of Incorporation or these By-Laws, the holders of a majority of the voting power of the capital stock of the Corporation issued and outstanding and entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum for the transaction of business. Where a separate vote by a class or classes or series is required for any matter, the holders of a majority of the shares of such class or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter. In the absence of a quorum of the holders of any class of stock entitled to vote on a matter as a separate class, the holders of such class so present or represented may, by majority vote, adjourn the meeting of such class from time to time in the manner provided by Section 1.7 of these By-Laws until a quorum of such class shall be so present or represented. Shares of its own capital stock belonging on the record date for the meeting to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; *provided*, *however*, that the foregoing shall not limit the right of the Corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

1.7 Adjournments. Any meeting of stockholders, annual or special, may be adjourned to any other time and to any other place at which a meeting of stockholders may be held under these By-Laws by a majority vote of the stockholders present or represented at the meeting and entitled to vote, although less than a quorum, or, if no stockholder is present, by any officer entitled to preside at or to act as Secretary of such meeting. It shall not be necessary to notify any stockholder of any adjournment of less than 30 days if the time and place of the adjourned meeting are announced at the meeting at which adjournment is taken, unless after the adjournment a new record date is fixed for the adjourned meeting. At the adjourned meeting at which a quorum shall be present or represented by proxy, the Corporation may transact any business which might have been transacted at the original meeting called if a quorum had been present or represented by proxy thereat.

1.8 Order of Business. (a) At any annual meeting, only such business shall be conducted as shall have been brought before the annual meeting (i) by or at the direction of the Board, or (ii) by any stockholder who complies with the procedures set forth in this Section 1.8.

(b) For business properly to be brought before an annual meeting by a stockholder, the stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the Corporation not less than thirty (30) days nor more than sixty (60) days prior to the annual meeting; *provided, however*, that in the event that less than forty (40) days' notice or prior public disclosure of the date of the annual meeting is given or made to stockholders, notice by the stockholder to be timely must be delivered to or mailed and received at the principal executive offices of the Corporation not later than the close of business on the tenth day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure was made. To be in proper written form, a stockholder's notice to the Secretary of the Corporation shall set forth in writing as to each matter the stockholder purposes to bring before the annual meeting: (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting; (ii) the name and address, as they appear on the Corporation's books, of the stockholder proposing such business; (iii) the class and number of shares of the Corporation which are beneficially owned by the stockholder; and (iv) any material interest of the stockholder in such business. Notwithstanding anything in these By-laws to the contrary, no business shall be conducted at an annual meeting except in accordance with the procedures and other matters set forth in this Section 1.8. The chairman of an annual meeting shall, if the facts warrant, determine and declare to the annual meeting that business was not properly brought before the annual meeting in accordance with the provisions of this Section 1.8 and, if he should so determine, he shall so declare to the annual meeting and any such business not properly brought before the annual meeting shall not be transacted.

1.9 Organization. Meetings of stockholders shall be presided over by the Chairman of the Board, if any, or in the absence of the Chairman of the Board by the Vice Chairman of the Board, if any, or in the absence of the Vice Chairman of the Board by the Chief Executive Officer, or in the absence of the Chief Executive Officer by a Vice President, or in the absence of the foregoing persons by a chairman designated by the Board, or in the absence of such designation by a chairman chosen at the meeting. The Secretary, or in the absence of the Secretary an Assistant Secretary, shall act as secretary of the meeting, but in the absence of the Secretary and any Assistant Secretary the chairman of the meeting may appoint any person to act as secretary of the meeting.

1.10 Voting and Proxies. Except as otherwise provided in the certificate of incorporation of the Corporation (the "Certificate of Incorporation"), at each meeting of stockholders, each holder of shares of the Corporation's Class A Common Stock, par value $.01 per share ("Class A Common Stock"), shall be entitled to one (1) vote for each such share which has voting power upon the matter in question, and each holder of the Corporation's Class B Common Stock, par value $.01 per share ("Class B Common Stock," and together with the Class A Common Stock, the "Common Stock"), shall be entitled to the respective number of votes on matters upon which such shares have voting power as set forth in the Certificate of Incorporation, in each case determined with reference to the number of shares of Common Stock standing in such holder's name on the stock records of the Corporation maintained in accordance with Section 1.5 hereof (i) at the time fixed pursuant to Section 1.11 of these By-laws as the record date for the determination of stockholders entitled to vote at such meeting, or (ii) if no such record date shall have been fixed, then at the close of business on the day next preceding the day on which notice thereof shall be given. Each stockholder of record entitled to vote at a meeting of stockholders, or to express consent or dissent to corporate action in writing without a meeting, may vote or express such consent or dissent in person or may authorize another person or persons to vote or act for such stockholder by proxy executed or authorized by the stockholder in accordance with applicable law or such stockholder's authorized agent and delivered to the Secretary of the Corporation. No such proxy shall be voted or acted upon after three years from the date of its execution, unless the proxy expressly provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power, regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or another duly executed proxy bearing a later date with the Secretary of the Corporation. All voting, including on the election of directors by excepting where otherwise required by law, may be by a voice vote, unless the holders of a majority of the voting power of the capital stock of the Corporation entitled to vote thereon present in person or represented by proxy at such meeting shall so determine. Every stock vote shall be taken

by written ballots, each of which shall state the name of the stockholder or proxy voting and such other information as may be required under the procedure established for the meeting.

1.11 Fixing Date for Determination of Stockholders of Record. (a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than sixty (60) nor less than ten days before the date of such meeting. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board may fix a new record date for the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which date shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the Board. If no record date has been fixed by the Board, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board is required by law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board and prior action by the Board is required by law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board adopts the resolution taking such prior action.

(c) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record-date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for

determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

1.12 Inspectors. For each election of directors by the stockholders and in any other case in which it shall be advisable, in the opinion of the Board, that the voting upon any matter shall be conducted by inspectors of election, the Board shall appoint an inspector or inspectors of election. If, for any such election of directors or the voting upon any such other matter, any inspector appointed by the Board shall be unwilling or unable to serve, or if the Board shall fail to appoint inspectors, the chairman of the meeting shall appoint the necessary inspector or inspectors. The inspector(s) so appointed, before entering upon the discharge of their duties, shall be sworn faithfully to execute the duties of inspectors with strict impartiality, and according to the best of their ability, and the oath so taken shall be subscribed by them. Such inspectors shall determine the number of shares of capital stock of the Corporation outstanding and the voting power of each of the shares represented at the meeting, the existence of a quorum, and the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all stockholders. The inspectors may appoint or retain other persons to assist them in the performance of their duties. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting. No ballot, proxy or vote, nor any revocation thereof or change thereto, shall be accepted by the inspectors after the closing of the polls. In determining the validity and counting of proxies and ballots, the inspectors shall be limited to an examination of the proxies, any envelopes submitted therewith, any information provided by a stockholder who submits a proxy by telegram, cablegram or other electronic transmission from which it can be determined that the proxy was authorized by the stockholder, ballots and the regular books and records of the corporation, and they may also consider other reliable information for the limited purpose of reconciling proxies and ballots submitted by or on behalf of banks, brokers, their nominees or similar persons which represent more votes than the holder of a proxy is authorized by the record owner to cast or more votes than the stockholder holds of record. If the inspectors consider other reliable information for such purpose, they shall, at the time they make their certification, specify the precise information considered by them, including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained and the basis for the inspectors' belief that such information is accurate and reliable. On request of the chairman of the meeting or any stockholder entitled to vote thereat, the inspectors shall make a report in writing of any challenge, question or matter determined by them and shall execute a certificate of any fact found by them. No director or candidate for the office of director shall act as an inspector of election of directors. Inspectors need not be stockholders.

1.13 Action at Meeting. When a quorum is present at any meeting, all matters shall be decided by a majority of the votes cast at such meeting by the holders of shares of capital stock present or represented by proxy and entitled to vote thereon, except when a different vote is required by express provision of law, the Certificate of Incorporation or these By-Laws.

ARTICLE 2 – Directors

2.1 Powers; Number; Qualifications. The business and affairs of the Corporation shall be managed by or under the direction of the Board, except as may be otherwise provided by law or in the Certificate of Incorporation. The Board shall consist of one or more members, as is set forth in the Certificate of Incorporation. Directors need not be stockholders.

2.2 Nominations; Election. Nominations for the election of directors may be made by the Strategic Review Committee, or by any stockholder entitled to vote generally in the election of directors who complies with the procedures set forth in this Section 2.2, except for any Class B Directors (as defined in the Certificate of Incorporation), who are nominated and elected solely by the holders of Class B Common Stock. Directors shall be at least 21 years of age. Directors need not be stockholders. At each meeting of stockholders for the election of Class A Directors (as defined in the Certificate of Incorporation) at which a quorum is present, the persons receiving a plurality of the votes cast shall be elected Class A Directors. All nominations by stockholders for Class A Directors shall be made pursuant to timely notice in proper written form to the Secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to or mailed and received at the principal executive offices of the Corporation not less than thirty (30) days nor more than sixty (60) days prior to the meeting; *provided, however*, that in the event that less than forty (40) days' notice or prior public disclosure of the date of the meeting is given or made to stockholders, notice by the stockholder to be timely must be so received not later than the close of business on the tenth day following the day on which such notice of the date of the meeting was mailed or such public disclosure was made. To be in proper written form, such stockholder's notice shall set forth in writing: (a) as to each person whom the stockholder proposes to nominate for election or reelection as director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended, including, without limitation, such person's written consent to being a nominee and to serving as a director if elected; and (b) as to the stockholder giving the notice, the (i) name and address, as they appear on the Corporation's books, of such stockholder and (ii) the class and number of shares of the Corporation which are beneficially owned by such stockholder. At the request of the

Board, any person nominated by the Board for election as a director shall furnish to the Secretary of the Corporation the information required to be set forth in a stockholder's notice of nomination which pertains to the nominee.

2.3 Tenure. Each director shall hold office until the next annual meeting and until his successor is elected and qualified, or until such director's earlier death, resignation or removal or until his term otherwise terminates, subject to the provisions of the Certificate of Incorporation.

2.4 Vacancies. Any vacancies on the Board resulting from death, resignation, disqualification, removal or other reasons shall be filled in the manner provided in the Certificate of Incorporation.

2.5 Resignation. Any director may resign by delivering his written resignation to the Corporation at its principal office or to the Chief Executive Officer or Secretary, except that a Class B Director shall also deliver his written resignation to the Strategic Review Committee. Such resignation shall be effective at the time the vacancy created by such resignation shall have been filled.

2.6 Regular Meetings. Regular meetings of the Board shall be held at such time and place, either within or without the State of Delaware, in accordance with a yearly meeting schedule as determined by the Board; or such meetings may be held on such other days and at such other times as the Board may from time to time determine; *provided* that any director who is absent when such a determination is made shall be given notice of the determination.

2.7 Special Meetings. Special meetings of the Board may be held at any time and place, within or without the State of Delaware, designated in a call by the Chairman of the Board, Chief Executive Officer, a majority of the directors then in office, two (2) members of the Strategic Review Committee or by one director in the event that there is only a single director in office.

2.8 Notice of Special Meetings. Notice of any special meeting of the Board stating the time, place and expected purposes thereof shall be given to each director by the Secretary of the Corporation (the "Secretary") or by the Chief Executive Officer or one of the directors calling the meeting. Notice shall be duly given to each director (i) by giving notice to such director in person or by telephone at least forty-eight (48) hours in advance of the meeting, (ii) by sending a telegram or telex, or delivering written notice by hand, to his last known business or home address at least 48 hours in advance of the meeting, or (iii) by mailing written notice to his last known business or home address at least five (5) days in advance of the meeting.

2.9 Meetings by Telephone or Video Conference Calls. Directors or any members of any committee designated by the directors may participate in a meeting of the Board or such committee by means of conference telephone, video or similar communications equipment or any other forms of communication as may be authorized from time to time under the Delaware General Corporation Law (the "DGCL"), by means of which all persons participating in the meeting can hear each other, and participation by such means shall constitute presence in person at such meeting.

2.10 Quorum; Acts of the Board. A majority of the entire Board (including at least (i) one Class B Director appointed by SBC (as defined in the Certificate of Incorporation) for so long as SBC beneficially owns any Class B Common Stock, and (ii) one Class B Director appointed by BellSouth (as defined in the Certificate of Incorporation), for so long as BellSouth beneficially owns any Class B Common Stock) shall constitute a quorum for action by the Board. Decisions of a majority of the Directors present shall be the acts of the Board; *provided that* Strategic Decisions (as defined in the Certificate of Incorporation) must be approved by the Strategic Review Committee (as defined in the Certificate of Incorporation) to be the valid acts of the Corporation. In the event one or more of the directors shall be disqualified to vote at any meeting, then the required quorum shall be reduced by one for each such director so disqualified; *provided, however*, that in no case shall less than one-third (1/3) of the number so fixed constitute a quorum. In the absence of a quorum at any such meeting, a majority of the directors present may adjourn the meeting from time to time without further notice other than announcement at the meeting, until a quorum shall be present.

2.11 Action at Meeting. At any meeting of the Board at which a quorum is present, the vote of a majority of those present shall be sufficient to take any action, unless a different vote is specified by law, the Certificate of Incorporation or these By-Laws.

2.12 Action by Consent. Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board, or of any committee thereof, may be taken without a meeting, if all members of the Board or of such committee, as the case may be, consent to the action in writing, and the written consents are filed with the minutes of proceedings of the Board or committee.

2.13 Removal. Subject to the rights of the holders of Preferred Stock to elect directors under circumstances specified in a resolution of the Board, adopted pursuant to the provisions of the Certificate of Incorporation or these By-Laws establishing such series, directors may only be removed in accordance with the provisions of the Certificate of Incorporation.

ARTICLE 3 – Committees of the Board

3.1 Committees. In addition to the Strategic Review Committee provided for in the Certificate of Incorporation, the Board may, by resolution passed by a majority of the whole Board, designate one or more other committees of the Board as the Board may determine, including a Compensation Committee and an Audit Committee, each such committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any such committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of any such committee, the member or members of the committee present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board and subject to the provisions of the DGCL and the Certificate of Incorporation, shall have and may exercise such powers as the Board may delegate to it in the resolutions appointing it.

3.2 Committee Rules. (a) Each committee designated by the Board in accordance with this Article 3 shall contain at least one Class B Director nominated by (i) SBC for so long as SBC is entitled to a Class B Director on the Strategic Review Committee and (ii) BellSouth for so long as BellSouth is entitled to a Class B Director on the Strategic Review Committee.

(b) Unless the Board otherwise provides or as otherwise provided in the Certificate of Incorporation, each committee designated by the Board may adopt, amend and repeal rules for the conduct of its business. In the absence of a provision by the Board, the inclusion of any rules in the Certificate of Incorporation or a provision in the rules of such committee to the contrary, a majority of the entire number of members comprising such committee, which majority must include at least one Class B Director selected by each of BellSouth and SBC for so long as each such party is entitled to nominate a member of such committee pursuant to clause (a) above, shall constitute a quorum for the transaction of business, the vote of a majority of the members present at a meeting at the time of such vote if a quorum is then present shall be the act of such committee, and in other respects each committee shall conduct its business in the same manner as the Board conducts its business pursuant to Article 2 of these By-Laws.

3.3 Appointment and Powers of Audit Committee. The Board may, by resolution adopted by the affirmative vote of a majority of the authorized number of directors comprising the Board, designate an Audit Committee of the Board, which shall consist of such number of members as the Board shall determine. The Audit Committee shall: (i) make recommendations to the Strategic Review Committee as to the independent accountants to be appointed by the Strategic Review Committee; (ii) review with the independent accountants the scope of their examinations; (iii) receive the reports

of the independent accountants and meet with representatives of such accountants for the purpose of reviewing and considering questions relating to their examination and such reports; (iv) review, either directly or through the independent accountants, the internal accounting and auditing procedures of the Corporation; (v) review related party transactions; and (vi) perform such other functions as may be assigned to it from time to time by the Board. The Audit Committee may determine its manner of acting and fix the time and place of its meetings, unless the Board shall otherwise provide. A majority of the members of the Audit Committee shall constitute a quorum for the transaction of business by the committee and the act of a majority of the members of the committee present at a meeting at which a quorum shall be present shall be the act of the committee.

3.4 Resignations; Removals. Any member of any committee may resign at any time by giving notice to the Corporation; *provided*, *however*, that notice to the Board, the Chairman of the Board, the Chief Executive Officer of the Corporation, the chairman of such committee or the Secretary shall be deemed to constitute notice to the Corporation. Such resignation shall take effect upon receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective. Any member of any such committee may be removed at any time, either with or without cause, by the affirmative vote of a majority of the authorized number of directors at any meeting of the Board called for that purpose; except that any member of the Strategic Review Committee elected by the Class B Directors may be removed in the manner specified in the Certificate of Incorporation. Any vacancies on any committee of the Board shall be filled in the manner set forth above in respect of the appointment of such committee; provided that vacancies on the Strategic Review Committee may only be filled in the manner specified in the Certificate of Incorporation.

ARTICLE 4 – Officers

4.1 Enumeration. The officers of the Corporation shall consist of a Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, a Secretary and a Treasurer, all of whom shall be appointed by the Board, or if the Certificate of Incorporation so provides, the Strategic Review Committee, and such other officers with such other titles as the Board shall determine, including a Chairman of the Board (subject to the approval procedures of Article FIFTH, clause (j)(i) of the Certificate of Incorporation), a Vice-Chairman of the Board, and one or more Vice Presidents, Assistant Treasurers, and Assistant Secretaries and such other officers as the Board may from time to time appoint, provided that all officers directly reporting to the Chief Executive Officer and Chief Financial Officer (each, together with the Chief Executive Officer and the Chief Financial Officer, the Secretary and the Treasurer, an "Executive Officer") shall be appointed and removed only by the Strategic Review Committee. The

Board may appoint such other officers as it may deem appropriate; *provided that* the duties of such other officers may not conflict with the duties of the officers appointed by the Strategic Review Committee.

4.2 Election. Subject to the approval procedures of Article FIFTH, clause (j)(i) of the Certificate of Incorporation, the Executive Officers, shall be elected annually by the Strategic Review Committee at its first meeting following the annual meeting of stockholders. Other officers may be appointed by the Board or the Strategic Review Committee, as the case may be, at such meeting or at any other meeting.

4.3 Qualification. No officer need be a stockholder. Any number of offices may be held by the same person unless the Certificate of Incorporation or these By-Laws otherwise provide.

4.4 Tenure. Except as otherwise provided by law, by the Certificate of Incorporation, the resolution of the Strategic Review Committee or the Board, as the case may be, each officer shall hold office until his successor is elected and qualified, unless a different term is specified in the vote choosing or appointing him, or until his earlier death, resignation or removal; provided that the Board may not specify a term for any officer whose appointment requires approval of the Strategic Review Committee without the approval of the Strategic Review Committee.

4.5 Resignation and Removal. (a) Any officer may resign at any time by delivering his written resignation to the Corporation at its principal office, to the Strategic Review Committee or the Board, as the case may be, or to the Chief Executive Officer or Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

(b) The Strategic Review Committee may remove any officer appointed by it at any time, with or without cause, by vote of at least two-thirds (2/3) of the directors on the Strategic Review Committee. The Board may remove any officer appointed by it at any time, with or without cause, by vote of a majority of the directors then in office; provided that such approval did not require the approval of the Strategic Review Committee.

(c) Except as the Board, with respect to officers appointed solely by it, or the Strategic Review Committee, with respect to the officers appointed by it, may otherwise determine, no officer who resigns or is removed shall have any right to any compensation as an officer for any period following his resignation or removal, or any right to damages on account of such removal, whether his compensation be by the month or by the year or otherwise, unless such compensation is expressly provided in a duly authorized written agreement with the Corporation.

4.6 Vacancies. The Board may fill any vacancy occurring in any office for any reason and may, in its discretion, leave unfilled for such period as it may determine any offices; *provided* that the Strategic Review Committee shall have sole authority to appoint the Executive Officers, and to fill any vacancy occurring in any such office in its discretion, except that there may be no vacancy in the offices of Chief Executive Officer, Chief Financial Officer, Treasurer and Secretary. Each such successor shall hold office for the unexpired term of his predecessor and until his successor is elected and qualified, or until his earlier death, resignation or removal.

4.7 Chairman of the Board and Vice-Chairman of the Board. Subject to the approval procedures of Article FIFTH, clause (j)(i) of the Certificate of Incorporation, the Board shall appoint a Chairman of the Board. The Chairman of the Board shall perform such duties and possess such powers as are assigned to him by the Board. If the Board appoints a Vice-Chairman of the Board, he shall, in the absence or disability of the Chairman of the Board, perform the duties and exercise the powers of the Chairman of the Board and shall perform such other duties and possess such other powers as may from time to time be vested in him by the Board.

4.8 Chief Executive Officer. The Chief Executive Officer shall, subject to the direction of the Strategic Review Committee, have general charge and supervision of the business of the Corporation and shall report to the Chairman of the Board unless they are the same person. Unless otherwise provided by the Strategic Review Committee, he or she shall preside at all meetings of the stockholders and, if he is a director, at all meetings of the Board. The Chief Executive Officer shall perform such other duties and shall have such other powers as the Strategic Review Committee may from time to time prescribe. He or she shall have power to sign all stock certificates, contracts and other instruments of the Corporation which are authorized and shall have general supervision and direction of all of the other officers, employees and agents of the Corporation.

4.9 Vice Presidents. Any Vice President shall perform such duties and possess such powers as the Board or the Chief Executive Officer may from time to time prescribe. In the event of the absence, inability or refusal to act of the Chief Executive Officer, the Vice President (or if there shall be more than one, the Vice Presidents in the order determined by the Board) shall perform the duties of the Chief Executive Officer and when so performing shall have all the powers of and be subject to all the restrictions upon the Chief Executive Officer. The Board or the Strategic Review Committee, as the case may be, may assign to any Vice President the title of Strategic Review Vice President, Senior Vice President or any other title selected by the Board or the Strategic Review Committee, as the case may be.

4.10 Secretary and Assistant Secretaries. The Secretary shall perform such duties and shall have such powers as the Strategic Review Committee or the Chief

Executive Officer may from time to time prescribe. In addition, the Secretary shall perform such duties and have such powers as are incident to the office of the secretary, including without limitation the duty and power to give notices of all meetings of stockholders and special meetings of the Board, to attend all meetings of stockholders and the Board and keep a record of the proceedings, to maintain a stock ledger and prepare lists of stockholders and their addresses as required, to be custodian of corporate records and the corporate seal and to affix and attest to the same on documents.

Any Assistant Secretary shall perform such duties and possess such powers as the Board, the Chief Executive Officer or the Secretary may from time to time prescribe. In the event of the absence, inability or refusal to act of the Secretary, the Assistant Secretary (or if there shall be more than one, the Assistant Secretaries in the order determined by the Board) shall perform the duties and exercise the powers of the Secretary.

In the absence of the Secretary or any Assistant Secretary at any meeting of stockholders or directors, the person presiding at the meeting shall designate a temporary secretary to keep a record of the meeting.

4.11 Treasurer and Assistant Treasurers. The Treasurer shall perform such duties and shall have such powers as may from time to time be assigned to the Treasurer by the Strategic Review Committee, the Chief Executive Officer or the Chief Financial Officer. In addition, the Treasurer shall perform such duties and have such powers as are incident to the office of treasurer, including, without limitation, the duty and power to keep and be responsible for all funds and securities of the Corporation, to deposit funds of the Corporation in depositories selected in accordance with these By-Laws, to disburse such funds as ordered by the Board, to make proper accounts of such funds, and to render as required by the Board statements of all such transactions and of the financial condition of the Corporation.

The Assistant Treasurers shall perform such duties and possess such powers as the Board, the Chief Executive Officer, the Chief Financial Officer or the Treasurer may from time to time prescribe. In the event of the absence, inability or refusal to act of the Treasurer, the Assistant Treasurer (or if there shall be more than one, the Assistant Treasurers in the order determined by the Board), shall perform the duties and exercise the powers of the Treasurer.

4.12 Salaries. Officers of the Corporation shall be entitled to such salaries, compensation or reimbursement as shall be fixed or allowed from time to time by the Board or, when appointed, a Compensation Committee, *provided* that any officer appointed by the Strategic Review Committee shall be entitled to such salaries, compensation or reimbursement as shall be determined by the Strategic Review Committee.

4.13 Action with Respect to Securities of Other Corporations. Unless otherwise directed by the Board, the Chairman of the Board or any officer of the Corporation authorized by the Chairman of the Board shall have the power to vote and otherwise act on behalf of the Corporation, in person or by proxy, at any meeting of stockholders of or with respect to any action of stockholders of any other Corporation in which this Corporation may hold securities and otherwise to exercise any and all rights and powers which this Corporation may possess by reason of its ownership of securities in such other Corporation; *provided* that with respect to any Membership Units held in the Operating Company (each as defined in the Certificate of Incorporation), the Strategic Review Committee shall have such power to direct the vote and otherwise act on behalf of the Corporation and exercise any and all such rights and powers.

4.14 Officers of Operating Companies or Divisions. The Chairman of the Board shall have the power to appoint, remove and prescribe the terms of office, responsibilities, duties and salaries of, the officers of the operating companies or divisions, other than those who are officers of the Corporation, *provided* that with respect to the Operating Company, such power shall be vested in the Strategic Review Committee.

ARTICLE 5 – Contracts, Checks, Loans, Deposits, Etc.

5.1 Contracts. Subject to any special approval procedures provided in these By-laws or the Certificate of Incorporation, the Board may authorize any officer or officers, agent or agents, in the name and on behalf of the Corporation, to enter into any contract or to execute and deliver any instrument, which authorization may be general or confined to specific instances; and, unless so authorized by the Board, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable pecuniarily for any purpose or for any amount.

5.2 Checks, Etc. Subject to the approval procedures provided in these By-laws or the Certificate of Incorporation, all checks, drafts, bills of exchange or other orders for the payment of money out of the funds of the Corporation, and all notes or other evidences of indebtedness of the Corporation, shall be signed in the name and on behalf of the Corporation in such manner as shall from time to time be authorized by the Board, which authorization may be general or confined to specific circumstances.

5.3 Loans. Subject to any special approval procedures provided in these By-laws or the Certificate of Incorporation, no loan shall be contracted on behalf of the Corporation, and no negotiable paper shall be issued in its name, unless authorized by the Board, which authorization may be general or confined to specific instances, and bonds, debentures, notes and other obligations or evidences of indebtedness of the

Corporation issued for such loans shall be made, executed and delivered as the Board shall authorize.

5.4 Deposits. Subject to any special approval procedures provided in these By-laws or the Certificate of Incorporation, all funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositors as may be selected by or in the manner designated by the Board. The Board or its designees may make such special rules and regulations with respect to such bank accounts, not inconsistent with the provisions of the Certificate of Incorporation or these By-laws, as they may deem advisable.

ARTICLE 6 – Capital Stock

6.1 Issuance of Stock. Subject to the approval procedures of Article FIFTH, clause (j)(i) of the Certificate of Incorporation, the whole or any part of any unissued balance of the authorized capital stock of the Corporation or the whole or any part of any unissued balance of the authorized capital stock of the Corporation held in its treasury may be issued, sold, transferred or otherwise disposed of by vote of the Board in such manner, for such consideration and on such terms as the Board may determine.

6.2 Certificates. (a) Every holder of stock in the Corporation shall be entitled to have a certificate signed by or in the name of the Corporation by the Chairman or Vice Chairman of the Board, if any, or the Chief Executive Officer or a Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary, of the Corporation, representing the number of shares of stock in the Corporation owned by such holder. If such certificate is manually signed by one officer or manually countersigned by a transfer agent or by a registrar, any other signature on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

(b) Each certificate for shares of stock which are subject to any restriction on transfer pursuant to the Certificate of Incorporation, the By-Laws, applicable securities laws or any agreement among any number of shareholders or among such holders and the Corporation shall have conspicuously noted on the face or back of the certificate either the full text of the restriction or a statement of the existence of such restriction.

(c) If the Corporation is authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences

and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock, *provided* that, except as otherwise provided by law, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

6.3 Transfers. Except as otherwise established by rules and regulations adopted by the Board, subject to applicable law, and subject to any restrictions on transfers agreed upon between and among any stockholders, shares of stock may be transferred on the books of the Corporation by the surrender to the Corporation or its transfer agent of the certificate representing such shares properly endorsed or accompanied by a written assignment or power of attorney properly executed, and with such proof of authority or the authenticity of signature as the Corporation or its transfer agent may reasonably require. Except as may be otherwise required by law, by the Certificate of Incorporation or by these By-Laws, the Corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to vote with respect to such stock, regardless of any transfer, pledge or other disposition of such stock until the shares have been transferred on the books of the Corporation in with the requirements of these By-Laws.

6.4 Lost, Stolen or Destroyed Certificates. The Corporation may issue a new certificate of stock in place of any previously issued certificate alleged to have been lost, stolen, or destroyed, upon such terms and conditions as the Board may prescribe, including the presentation of reasonable evidence of such loss, theft or destruction and the giving of such indemnity as the Board may require for the protection of the Corporation or any transfer agent or registrar.

6.5 Regulations. The issue, transfer, conversion and registration of certificates of stock shall be governed by such other regulations as the Board may establish.

ARTICLE 7 – Notices

7.1 Notices. Except as otherwise specifically provided herein or required by law, all notices required to be given to any stockholder, director, officer, employee or agent shall be in writing and may in every instance be effectively given by

hand delivery to the recipient thereof, by depositing such notice in the mails, postage paid, or with a recognized overnight delivery service or by sending such notice by prepaid telegram, mailgram or by facsimile transmission. Any such notice shall be addressed to such stockholder, director, officer, employee or agent at such person's last known address as the same appears on the books of the Corporation. The time when such notice is received, if hand delivered, or dispatched, if delivered through the mails or by overnight delivery service, or by telegram, mailgram or facsimile, shall be the time of the giving of the notice.

7.2 Waiver of Notice. Whenever any notice whatsoever is required to be given by law, by the Certificate of Incorporation or by these By-Laws, a waiver of such notice either in writing signed by the person entitled to such notice or such person's duly authorized attorney, or by telegraph, cable or any other available method, whether before, at or after the time stated in such waiver, or the appearance of such person or persons at such meeting in person or by proxy, shall be deemed equivalent to such notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors or members of a committee of directors need be specified in any written waiver of notice unless so required by the Certificate of Incorporation or these By-Laws.

ARTICLE 8 – General Provisions

8.1 Fiscal Year. Except as from time to time otherwise designated by the Board, the fiscal year of the Corporation shall begin on the first day of January in each year and end on the last day of December in each year.

8.2 Corporate Seal. The Corporation may have a corporate seal which shall have the name of the Corporation inscribed thereon and shall be in such form as may be approved from time to time by the Board. The corporate seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

8.3 Evidence of Authority. A certificate by the Secretary, or an Assistant Secretary, or a temporary Secretary, as to any action taken by the stockholders, directors, a committee or any officer or representative of the Corporation shall as to all persons who rely on the certificate in good faith be conclusive evidence of such action.

8.4 Certificate of Incorporation. All references in these By-Laws to the Certificate of Incorporation shall be deemed to refer to the Certificate of Incorporation of the Corporation, as amended and restated and in effect from time to time.

8.5 Severability. Any determination that any provision of these By-Laws is for any reason inapplicable, illegal or ineffective shall not affect or invalidate any other provision of these By-Laws.

8.6 Pronouns. All pronouns used in these By-Laws shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons may require.

8.7 Facsimile Signatures. In addition to the provisions for use of facsimile signatures elsewhere specifically authorized in these By-laws, facsimile signatures of any officer or officers of the Corporation may be used whenever and as authorized by the Board or a committee thereof.

8.8 Form of Records. Any records maintained by the Corporation in the regular course of its business, including its stock ledger, books of account and minute books, may be kept on, or be in the form of, punch cards, magnetic tape, photographs, microphotographs or any other information storage device, *provided* that the records so kept can be converted into clearly legible form within a reasonable time. The Corporation shall so convert any records so kept upon the request of any person entitled to inspect the same.

8.9 Reliance Upon Books, Reports and Records. Each director, each member of any committee designated by the Board, and each officer of the Corporation shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board so designated, or by any other person as to matters which such director or committee member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

8.10 Indemnification of Directors, Officers and Employees. The Corporation shall indemnify to the full extent permitted by law any person made or threatened to be made a party to any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person or such person's testator or intestate is or was a director, officer or employee of the Corporation, including, without limitation, any member of the Strategic Review Committee, is or was a director, officer, member, stockholder, partner, incorporator or liquidator of a Subsidiary (as defined in the Certificate of Incorporation) of the Corporation, or serves or served at the

request of the Corporation any other enterprise as a director, officer, employee, member, stockholder, partner, incorporator or liquidator or in any other capacity. Expenses, including attorneys' fees, incurred by any such person in defending any such action, suit or proceeding shall be paid or reimbursed by the Corporation promptly upon demand by such person and, if any such demand is made in advance of the final disposition of any such action, suit or proceeding, promptly upon receipt by the Corporation of an undertaking of such person to repay such expenses if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation. The rights provided to any person by this by-law shall be enforceable against the Corporation by such person, who shall be presumed to have relied upon it in serving or continuing to serve as a director or officer or in such other capacity as provided above. In addition, the rights provided to any person by this by-law shall survive the termination of such person as any such director, officer, member, stockholder, partner, incorporator or liquidator and, insofar as such person served at the request of the Corporation as a director, officer, member, stockholder, partner, incorporator or liquidator of or in any other capacity for any other enterprise, shall survive the termination of such request as to service prior to termination of such request. No amendment of this by-law shall impair the rights of any person arising at any time with respect to events occurring prior to such amendment.

Notwithstanding anything contained in this Section 8.10, except for proceedings to enforce rights provided in this Section 8.10, the Corporation shall not be obligated under this Section 8.10 to provide any indemnification or any payment or reimbursement of expenses to any director, officer or other person in connection with a proceeding (or part thereof) initiated by such person (which shall not include counterclaims or crossclaims initiated by others) unless the Board has authorized or consented to such proceeding (or part thereof) in a resolution adopted by the Board.

For purposes of this by-law, the term "Corporation" shall include any predecessor of the Corporation and any constituent corporation (including any constituent of a constituent) absorbed by the Corporation in a consolidation or merger; the term "other enterprise" shall include any corporation, partnership, limited liability company, joint venture, trust, association or other unincorporated organization or other entity and any employee benefit plan; the term "officer," when used with respect to the Corporation, shall refer to any officer elected by or appointed pursuant to authority granted by the Board pursuant to Section 4.2 hereof, when used with respect to a Subsidiary or other enterprise that is a corporation, shall refer to any person elected or appointed pursuant to the by-laws of such Subsidiary or other enterprise or chosen in such manner as is prescribed by the by-laws of such Subsidiary or other enterprise or determined by the Board of Directors of such Subsidiary or other enterprise, and when used with respect to a Subsidiary or other enterprise that is not a corporation or is organized in a foreign jurisdiction, the term "officer" shall include in addition to any officer of such entity, any person serving in a similar capacity or as the manager of such entity; service "at the

request of the Corporation" shall include service as a director, officer or employee of the Corporation which imposes duties on, or involves services by, such director, officer or employee with respect to an employee benefit plan, its participants or beneficiaries; any excise taxes assessed on a person with respect to an employee benefit plan shall be deemed to be indemnifiable expenses; and action by a person with respect to an employee benefit plan which such person reasonably believes to be in the interest of the participants and beneficiaries of such plan shall be deemed to be action not opposed to the best interests of the Corporation.

Nothing in this Section 8.10 shall limit the power of the Corporation or the Board to provide rights of indemnification and to make payment and reimbursement of expenses, including attorneys' fees, to directors, officers, employees, agents or other persons otherwise than pursuant to this Section 8.10.

8.11 Insurance. The Corporation may purchase and maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan) against any expense, liability or loss incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

8.12 Interested Directors; Quorum. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, limited liability company, joint venture, trust, association or other unincorporated organization or other entity in which one or more of its directors or officers serve as directors, officers, trustees or in a similar capacity or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board or committee thereof which authorizes the contract or transaction, or solely because his or her or their votes are counted for such purpose, if: (1) the material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or (2) the material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (3) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified, by the Board, a committee thereof or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board or of a committee which authorizes the contract or transaction.

8.13 Amendment of By-Laws. Subject to the approval procedures in Article FIFTH, clause (j)(i) of the Certificate of Incorporation, the Board may from time to time make, amend, supplement or repeal these By-Laws by vote of a majority of the Board; *provided, however*, that the stockholders may change or amend or repeal any provision of these By-Laws by each of: (a) the affirmative vote of the holders of at least two-thirds (2/3) of the Voting Stock, voting as a single class; and (b) if any Class B Directors are then entitled to be members of the Strategic Review Committee, by the affirmative vote of the holders of all of the outstanding shares of Class B Common Stock, voting separately as a class. In addition to and not in limitation of the foregoing, these By-Laws or any of them may be amended or supplemented in any respect at any time, either: (i) at any meeting of stockholders, *provided* that any amendment or supplement proposed to be acted upon at any such meeting shall have been described or referred to in the notice of such meeting; or (ii) at any meeting of the Board, *provided* that any amendment or supplement proposed to be acted upon at any such meeting shall have been described or referred to in the notice of such meeting or an announcement with respect thereto shall have been made at the last previous Board meeting, and provided further that no amendment or supplement adopted by the Board shall vary or conflict with any amendment or supplement adopted by the stockholders.

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EXECUTION COPY

STOCKHOLDERS' AGREEMENT

by and among

SBC COMMUNICATIONS INC.,

BELLSOUTH CORPORATION

and

ALLOY MANAGEMENT CORP.

Dated as of October 2, 2000

THIS STOCKHOLDERS' AGREEMENT (this "Agreement") is dated as of October 2, 2000, by and among SBC Communications Inc. ("SBC"), BellSouth Corporation ("BellSouth") and Alloy Management Corp., a Delaware corporation (the "Company"). SBC and BellSouth are sometimes referred to herein collectively as the "Stockholders" and individually as a "Stockholder" of the Company.

WHEREAS, as of the date hereof, the Company has authorized capital, including 6,000,000,002 shares of common stock, consisting of 6,000,000,000 shares of Class A Common Stock, $.01 par value per share (the "Class A Common Stock") and two shares of Class B Common Stock, $.01 par value per share (the "Class B Common Stock", and together with the Class A Common Stock, the "Shares").

WHEREAS, as of the date hereof, SBC owns approximately sixty percent of the Total Outstanding Shares and BellSouth owns approximately forty percent of the Total Outstanding Shares;

WHEREAS, as of the date hereof, SBC, BellSouth and the Company are the sole Members of Alloy LLC, a Delaware limited liability company ("Newco"), with each owning an interest in Newco through the ownership of membership units in Newco ("LLC Units") pursuant to the Limited Liability Company Agreement among SBC, BellSouth and the Company, dated as of October 2, 2000 (the "LLC Agreement"); and

WHEREAS, the Stockholders desire to promote their mutual interests by imposing certain restrictions and obligations on each other and on the Shares and, further, to provide for matters pertaining to the management and governance of the Company.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
Definitions

Section 1.1. <u>Certain Definitions</u>. (a) Capitalized terms that are used but not otherwise defined herein shall have the meanings given to them in the LLC Agreement.

(b) For the purposes of this Agreement, the following terms shall have the following meanings:

"Ancillary Agreement" shall mean, collectively, the Agency Agreements, the Intellectual Property License Agreement, the Registration Rights Agreement, the

Resale Agreements, the Management Agreement, the Transition Marks Agreement, the Transition Services Agreement and the LLC Agreement.

"BellSouth" shall mean BellSouth Corporation, a Georgia corporation, or any Permitted Transferee of BellSouth Corporation that may from time to time become a party to a counterpart of this Agreement.

"BellSouth Directors" shall mean, collectively, the Class B Directors (as defined in the Certificate of Incorporation) nominated by BellSouth.

A Person shall be deemed the "Beneficial Owner", and to have "Beneficial Ownership" of, and to "Beneficially Own," any securities as to which such Person is or may be deemed to be the beneficial owner pursuant to Rule 13d-3 and 13d-5 under the Exchange Act, as such rules are in effect on the date of this Agreement, as well as any securities as to which such Person has the right to become Beneficial Owner (whether such right is exercisable immediately or only after the passage of time or the occurrence of conditions) pursuant to any agreement, arrangement or understanding (other than customary agreements with and between underwriters and selling group members with respect to a bona fide public offering of securities), or upon the exercise of conversion rights, exchange rights, rights, warrants or options, or otherwise; provided, however, that no Stockholder shall be deemed the "Beneficial Owner" or to have "Beneficial Ownership" of, or to "Beneficially Own," any LLC Units or Shares of the other Stockholder solely by virtue of the rights set forth in this Agreement. For purposes of this Agreement, in determining any Person's percentage of Beneficial Ownership of the Total Outstanding Shares, any shares of Public Common Stock which are not actually outstanding, but which may be acquired upon exchange of outstanding LLC Units shall be excluded from the determination.

"Board" shall mean the Board of Directors of the Company.

"Certificate of Incorporation" shall mean the Certificate of Incorporation of the Company filed pursuant to the DGCL with the Secretary of State of the State of Delaware, as the same may hereafter be amended and/or restated from time to time.

"Class A Common Stock" shall have the meaning set forth in the Recitals.

"Class B Common Stock" shall have the meaning set forth in the Recitals.

"Class B Triggering Event" shall have the meaning set forth in the Certificate of Incorporation.

"Company" shall have the meaning set forth in the Recitals.

"Deadlock" shall mean, with respect to any matter considered by the Strategic Review Committee, after due consideration of such matter at a meeting held (or upon the failure to hold a meeting duly called in accordance with the Certificate of Incorporation and the By-laws of the Corporation within 60 days after a matter is first noticed for consideration at a meeting), (i) the requisite two-thirds (2/3) vote of the full Strategic Review Committee for approval of such matter is not obtained and (ii) the Directors seeking approval of such matter provide notice, at any time after such approval is not obtained, to all of the members of the Strategic Review Committee stating that they desire to have the matter designated as a "Deadlock".

"Departing Class B Stockholder" shall have the meaning set forth in the Certificate of Incorporation.

"DGCL" shall mean the Delaware General Corporation Law, as amended.

"Directors" shall mean, collectively, the BellSouth Directors and the SBC Directors.

"LLC Agreement" shall have the meaning set forth in the Recitals.

"LLC Units" shall have the meaning set forth in the Recitals.

"Newco" shall have the meaning set forth in the Recitals.

"SBC" shall mean SBC Communications Inc., a Delaware corporation.

"SBC Directors" shall mean, collectively, the Class B Directors (as defined in the Certificate of Incorporation) nominated by SBC.

"Shares" shall have the meaning set forth in the Recitals.

"Stockholders" shall have the meaning set forth in the Recitals.

"Strategic Review Committee" shall mean the Strategic Review Committee of the Board.

"Subsidiary" shall mean, as to any Person, any Person (i) of which such Person directly or indirectly owns securities or other equity interests representing fifty percent or more of the aggregate voting power, (ii) of which such Person possesses the right to elect fifty percent or more of the directors or Persons holding similar positions, or (iii) which such Person Controls directly or indirectly through one or more intermediaries. The term Subsidiary shall be deemed to include Newco with respect to the Company.

"Total Outstanding Shares" shall mean from time to time the sum of (i) the total number of Shares excluding any treasury shares, and (ii) the total number of LLC Units outstanding, excluding any LLC Units Beneficially Owned by the Company.

"Total Voting Power" shall mean the aggregate votes that are entitled to be cast by all Shares.

"Transfer" shall mean any direct or indirect sale, transfer, assignment, pledge, hypothecation, mortgage, or other disposition or encumbrance, of any beneficial or economic interest in any LLC Units or Shares, including those by operation or succession of law, merger or otherwise, but a Change in Control of SBC or BellSouth shall not be deemed to be a Transfer.

"Ultimate Parent Entity" shall mean, with respect to any Person that is a Subsidiary of a Person, the Person that, directly or indirectly, Beneficially Owns at least fifty percent (50%) of the Voting Securities of such Subsidiary and is not a Subsidiary of any Person who is not a natural person.

(c) Except as expressly provided herein, whenever in this Agreement there shall be a reference to any Ancillary Agreement or this Agreement, such reference shall be deemed to refer to such agreement as it may be amended from time to time.

ARTICLE 2
Representations and Warranties

Each Stockholder represents and warrants to the other Stockholder and the Company that (a) it Beneficially Owns one issued and outstanding share of Class B Common Stock free and clear of all Liens (except for any such Liens created by this Agreement or the LLC Agreement) and, except for this Agreement and the LLC Agreement, there are no options, warrants or other rights, agreements, arrangements or commitments of any character to which such Stockholder is a party relating to the pledge, disposition or voting of any Shares of the Company and there are no voting trusts or voting agreements with respect to such Shares; (b) such Stockholder has full corporate power and authority, and has taken all corporate actions necessary, to enter into, execute and deliver this Agreement and to perform fully its obligations hereunder; (c) this Agreement has been duly executed and delivered and constitutes the legal, valid and binding obligation of such Stockholder, enforceable against it in accordance with its terms, subject to the Bankruptcy and Equity Exception; (d) no notices, reports or other filings are required to be made by such Stockholder with, nor are any consents, registrations, approvals, permits or authorizations required to be obtained by such Stockholder or the Company from, any Governmental Entity, in connection with the execution and delivery of this Agreement by such Stockholder; and (e) the execution,

delivery and performance of this Agreement by such Stockholder does not, and the consummation by such Stockholder of the transactions contemplated hereby will not, violate, conflict with or constitute a breach of, or a default under, the certificate of incorporation or by-laws of such Stockholder (or any comparable governing instruments) or result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default, or give rise to any right of termination, cancellation, modification or acceleration, whether after the giving of notice or the passage of time of both, under any contract to which such Stockholder is a party or which is binding on it or its assets, and will not result in the creation of any Lien on any of the assets or properties of such Stockholder.

ARTICLE 3
Voting

Section 3.1. Voting Agreements. Each of the Stockholders agrees to vote or cause the voting, whether in person, by proxy or written consent, of all Shares Beneficially Owned by it (where such Shares have the power to vote) so as to cause the following:

(a) the election of two Class B Directors nominated by SBC (if SBC is then entitled to have its nominees elected as Class B Directors) and two Class B Directors nominated by BellSouth (if BellSouth is then entitled to have its nominees elected as Class B Directors);

(b) following the issuance of Class A Common Stock, the election of one independent director to the Board selected by SBC (if SBC is then entitled to have its nominees elected as Class B Directors), and the election of one independent director to the Board selected by BellSouth (if BellSouth is then entitled to have its nominees elected as Class B Directors);

(c) the removal of any Class B Director, as determined by the Stockholder who nominated such Class B Director;

(d) the appointment of a new Class B Director upon any vacancy of a Class B Director on the Board or any committee thereof, as determined by the Stockholder who nominated the Class B Director whose departure has caused the vacancy; and

(e) approval of any matter submitted to the stockholders of the Company which has been previously approved by the Strategic Review Committee.

Section 3.2. Voting Agreement of the Company. The Company agrees that, in its capacity as Manager of Newco, it will not take any actions that are subject to

the approval of the Strategic Review Committee, as set forth in the Certificate of Incorporation, without prior approval from the Strategic Review Committee.

ARTICLE 4
Further Agreements

Section 4.1. Independent Directors. (a) The Company agrees to use its best efforts to cause the holders of Class A Common Stock to vote in favor of the nomination as independent directors on the Board of the Persons nominated by SBC and BellSouth, in accordance with this Section 4.1.

(b) Following the issuance of Class A Common Stock, each of SBC and BellSouth shall be entitled to nominate one Person to serve as an independent director on the Board. Prior to making such selection, each of SBC and BellSouth shall have obtained the consent of the respective other Stockholder (for so long as each of SBC and BellSouth shall not be a Departing Class B Stockholder), such consent not to be unreasonably withheld.

Section 4.2. Limitation on Directors' Duties. SBC agrees that it shall not, in relation to any BellSouth Directors, and BellSouth agrees that shall not, in relation to any SBC Directors, take any action against such director for negligence, default or breach of fiduciary duty on the grounds that such negligence, default, or breach of fiduciary duty arose by virtue of the director acting in accordance with the instructions of the Stockholder designating such director. SBC, BellSouth and the Company agree that, in the event of any director acting in accordance with the instructions of, or in the interest of, the Stockholder designating such director, then any resultant dispute shall be considered to be a Deadlock to be resolved exclusively in accordance with the provisions of Section 4.4 hereof.

Section 4.3. Resignation of Directors. Each Stockholder agrees that upon the occurrence of a Class B Triggering Event it will use its best efforts to cause each Class B Director appointed by it to resign from the Board and from all committees of the Board upon which such director serves, including resignation from the Strategic Review Committee in accordance with Section 4.6(b) hereof, in compliance with the By-laws and applicable provisions of the DGCL.

Section 4.4. Deadlock. The Stockholders agree that if there is Deadlock of the Strategic Review Committee on any issue, then such matter shall be promptly referred to the Chief Executive Officer (or comparable position) at each of SBC and BellSouth who shall, in a timely manner, (i) resolve the Deadlock in a manner that is mutually satisfactory to such Chief Executive Officers or (ii) determine a procedure or method to resolve the Deadlock that is mutually satisfactory to such Chief Executive

Officers. Each Stockholder agrees to use its best efforts to cause the Class B Directors nominated by it to take such actions in their capacity as directors as shall be necessary to implement the resolution of any Deadlock.

Section 4.5. Chairman of the Board. The Chairman of the Board of the Company shall, so long as the aggregate number of votes generally entitled to be cast by SBC and BellSouth in matters before the stockholders of the Company (other than the election of directors) equals at least fifty percent (50%) of the Total Voting Power, be elected from among the Class B Directors nominated by SBC and BellSouth.

Section 4.6. Organizational Documents of Subsidiaries. The Company agrees that it will not amend, modify, waive or repeal any provisions of any organizational documents for any of its Subsidiaries, except as mutually agreed upon by both Stockholders, and as to the Company, the Stockholders agree that they will vote in favor of any such changes to the Company's organizational documents approved by the Strategic Review Committee.

Section 4.7. Conversion. (a) Each Stockholder agrees that prior to the Transfer by it of Class B Shares it will, in accordance with the procedures set forth in the Certificate of Incorporation, convert each such share into a Class A Share except for any Transfer (as defined in the LLC Agreement) permitted under the LLC Agreement and this Agreement which shall not require such conversion.

(b) Each Stockholder agrees that, upon a Class B Triggering Event the Departing Class B Stockholder shall convert each share of Class B Common Stock then Beneficially Owned by it (and all of its Affiliates) into a Class A Share in accordance with the procedures set forth in the Certificate of Incorporation. Effective upon such conversion of such shares of Class B Common Stock, the Class B Directors appointed by the holder of Class B Common Stock whose shares are converted shall resign from the Board and all committees of the Board upon which they serve (and the Departing Class B Stockholder shall procure such resignations, with such resignations to be brought about in compliance with the By-laws and any applicable provisions of the DGCL).

(c) The Company agrees to instruct the Transfer Agent not to convert a share of Class B Common Stock until and unless the Transfer Agent shall have received a canceled certificate for such share of Class B Common Stock.

Section 4.8. Ownership of Class B Common Stock. Each Stockholder agrees that all of the Shares Beneficially Owned by its Ultimate Parent Entity shall be held by only one holder of record.

ARTICLE 5
Transfer Restrictions

Section 5.1. Transfers. Each Stockholder severally agrees that it shall not Transfer or permit any Transfer, in any single transaction or series of related transactions, of Shares that are Beneficially Owned by it, except (i) with the written consent of each Stockholder that Beneficially Owns in excess of ten percent (10%) of the Total Outstanding Shares or (ii) a Transfer by SBC or BellSouth that complies with any of the following subsections:

(a) a Transfer of all or any such Shares to one or more wholly owned Subsidiaries (but in no event may (i) more than one Subsidiary own Class B Common Stock at the same time and (ii) more than five such Subsidiaries own Class A Common Stock at the same time) of all of the Shares which are Beneficially Owned, directly or indirectly, by it; provided that (x) contemporaneously with any such Transfer any such wholly owned Subsidiary becomes a party to a counterpart of this Agreement and SBC or BellSouth, as the case may be, guarantees the performance of all obligations of any such wholly owned Subsidiary under this Agreement; (y) such wholly owned Subsidiary agrees that it shall be bound by the obligations of a Stockholder under this Agreement (but shall not have any of the rights of a Stockholder under this Agreement, except as otherwise provided herein) and (z) such wholly owned Subsidiary, unless the only Shares owned by it are Class A Common Stock, and SBC or BellSouth, as the case may be, shall prior to such Transfer covenant and agree with Manager and SBC or BellSouth, as the case may be, that, for so long as the wholly owned Subsidiary Beneficially Owns Shares, it shall continue to be a wholly owned Subsidiary of SBC or BellSouth, as the case may be;

(b) a Transfer of Class A Common Stock to underwriters in connection with an underwritten public offering of such Class A Common Stock that (i) is on a firm commitment basis registered under the Securities Act and (ii) is sold in a manner that results in a broad distribution of such Class A Common Stock, with such distribution certified to the Company by the lead or managing underwriter or underwriters in any such offering;

(c) a Transfer of all or any of such Shares to the Company or any Subsidiary of the Company;

(d) a Transfer of all or any of such Shares (other than Class B Common Stock) in a bona fide pledge of such Shares to a financial institution to secure borrowings as permitted by applicable Law, including, but not limited to the Communications Act; provided that contemporaneously with such pledge such financial institution agrees with the Company that upon any foreclosure on such pledge it shall be bound by the obligations of SBC or BellSouth, as the case may be, under this Agreement (but shall not have any of the rights of SBC or BellSouth, as the case may be, under this

Agreement except as provided in this Section 5) pursuant to an assignment effectuated in accordance with the terms hereof;

(e) (x) at any time after the earliest of (i) an IPO Date, (ii) the first anniversary of the Closing Date, if Newco, the Company, or a Subsidiary of Newco or the Company at such first anniversary does not hold licenses from the FCC to provide Cellular Services or PCS Services covering at least 90% of the U.S. population, or (iii) the fourth anniversary of the Closing Date, or (y) pursuant to Section 4.1(e)(y) of the LLC Agreement, a Transfer of, in the case of clause (x), any or all, or, in the case of clause (y), all of the Class A Common Stock Beneficially Owned by such Stockholder by way of (i) a distribution of such Class A Common Stock or of all of the Voting Securities and other equity securities of a Subsidiary of such Stockholder that owns Class A Common Stock to all of the common shareholders of a series or class of securities (in each case registered under the Exchange Act) of such Stockholder or its Ultimate Parent Entity or (ii) a split-off pursuant to which each common shareholder of a series or class of securities (in each case registered under the Exchange Act) such Stockholder or its Ultimate Parent Entity is offered on the same terms the right to exchange common shares of such Stockholder or its Ultimate Parent Entity for the Class A Common Stock (provided, that neither SBC nor BellSouth may effect Transfers pursuant to this Section 5.1(e) and Section 4.1(e)(y) of the LLC Agreement in the aggregate more than two times); or

(f) (x) at any time after the earliest of (i) an IPO Date, (ii) the first anniversary of the Closing Date, if Newco, the Company, or a Subsidiary of Newco or the Company at such first anniversary does not hold licenses from the FCC to provide Cellular Services or PCS Services covering at least 90% of the U.S. population, or (iii) the fourth anniversary of the Closing Date, or (y) pursuant to Section 4.1(f)(y) of the LLC Agreement, a Transfer, not otherwise complying with paragraphs (a) - (e) above, of all (but not less than all) of such Shares Beneficially Owned by such Stockholder and its Ultimate Parent Entity to any Person and after complying with all of the provisions set forth in Section 4.2 of the LLC Agreement; and provided that contemporaneously with such Transfer (i) such Person or, if such Person is a Subsidiary of any other Person, the Ultimate Parent Entity of such Person, becomes a party to this Agreement as SBC or BellSouth, as the case may be (whereupon any reference to SBC or BellSouth, as the case may be, herein shall be deemed to be a reference to such Person or, if applicable, its Ultimate Parent Entity), and (ii) such Person causes to be delivered to Newco a legal opinion of counsel of national standing, in form and substance reasonably acceptable to Newco and the non-Transferring Stockholder), to the effect set forth in Article 2.

(g) At the election of a Stockholder (i) the Company shall take and cause its Subsidiaries to take all reasonable actions as may be reasonably necessary to approve (including, without limitation, by convening a special meeting of the holders of Shares) and complete the merger or any wholly owned Subsidiary of such Stockholder,

with and into Manager, and (ii) the other Stockholder agrees to vote all Shares Beneficially Owned by it in favor of such merger; provided that (a) the Company is the surviving corporation in such merger, (b) all of the Class A Common Stock owned of record and held by the wholly owned Subsidiary of such Stockholder to be merged into the Company are so owned and held free and clear of all Encumbrances, (c) the wholly owned Subsidiary of such Stockholder to be merged into the Company has no liabilities, other than (i) those incident to this Agreement and (ii) those for which the Stockholder provides full indemnification to the Company and that do not exceed five percent of the then current total assets of such Subsidiary, (d) the merger consideration paid to such Stockholder is identical to the number of shares of Class A Common Stock owned of record and held by such Subsidiary, and (e) such merger will not be otherwise adverse to the Company or Newco except in any immaterial respect (taking into account any efforts by such Stockholder to mitigate any adverse effects on Newco); provided that for such purposes the termination of Newco for federal, state or local tax purposes and any adverse consequences therefrom shall be deemed to be immaterial. No such merger shall be consummated until all necessary regulatory approvals have been obtained. The Company will use commercially reasonable efforts to cause such merger to qualify as a reorganization within the meaning of Section 368(a) of the Code.

Section 5.2. Conversion Not a Transfer. Notwithstanding anything set forth in this Agreement to the contrary, the provisions of this Article 5 shall not apply to conversions of Class B Stock into Class A Common Stock in accordance with the Manager Certificate.

Section 5.3. Party Hereto. Each Stockholder agrees that upon any Transfer of any shares of Class B Common Stock in accordance with the terms hereof, the transferee of the Class B Common Stock shall execute and become a party to this Agreement in the same capacity as the Stockholders transferring the Shares. Any such Transfer shall be void unless such Transfer complies with the provisions of this Section.

Section 5.4. Class B Common Stock. Notwithstanding anything set forth in this Agreement to the contrary, no Stockholder shall Transfer any Class B Common Stock unless all of the shares of Class B Common Stock Beneficially Owned by it are Transferred to the same Person.

ARTICLE 6
Certificates

Section 6.1. Certificates. Any Shares held by a Stockholder shall be represented by a certificate or certificates, setting forth upon the face thereof that the Company is a corporation organized under the laws of the State of Delaware, the name of the Person to which it is issued and the number of Shares which such certificate represents. Such certificates shall be entered in the books of the Company as they are issued, and shall be signed by the Chairman or the Chief Executive Officer of the Company. Upon any Transfer permitted under this Agreement and the LLC Agreement, the transferring Stockholder shall (i) issue to the transferee a certificate representing the number of Shares so transferred and (ii) surrender to the Company and the Company shall issue to the transferring Stockholder certificates representing the remaining Shares, if any, held by such transferring Stockholder after taking into account such Transfer. All certificates representing Shares (unless registered under the Securities Act of 1933, as amended (the "Securities Act")), shall bear the following legend:

> THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY SECURITIES REGULATORY AUTHORITY OF ANY STATE, AND MAY NOT BE SOLD, ASSIGNED, PLEDGED, ENCUMBERED, TRANSFERRED, GRANTED AN OPTION WITH RESPECT TO OR OTHERWISE DISPOSED OF, (I) UNLESS AND UNTIL THEY HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OR SUCH SALE, ASSIGNMENT, PLEDGE, ENCUMBRANCE, TRANSFER, OPTION GRANT OR OTHER DISPOSITION IS EXEMPT FROM REGISTRATION UNDER THE SECURITIES ACT AND (II) UNLESS IN ACCORDANCE WITH THE PROVISIONS OF THE LIMITED LIABILITY COMPANY AGREEMENT OF ALLOY LLC AND THE STOCKHOLDERS AGREEMENT (IN EACH CASE AS AMENDED FROM TIME TO TIME), COPIES OF WHICH ARE AVAILABLE FOR INSPECTION AT THE OFFICES OF THE COMPANY.

Section 6.2. Lost or Destroyed Certificates. The Company may issue a new certificate for Shares in place of any certificate or certificates theretofore issued by it, alleged to have been lost or destroyed, upon the making of an affidavit of that fact, and providing an indemnity in form and subject reasonably satisfactory to the Board by the Person claiming the certificate to be lost or destroyed.

ARTICLE 7
Termination

Section 7.1. Termination Events. This Agreement shall terminate upon the occurrence of any of the following events:

(a) the written agreement of the parties hereto;

(b) a Class B Triggering Event and the conversion of all shares of Class B Common Stock of the Departing Class B Stockholder and its Affiliates into Class A Common Stock; or

(c) the dissolution of the Company.

Section 7.2. Effect of Termination; Survival. In the event of a termination, this Agreement (other than Article 1, Article 2, Section 4.2, Section 4.6, Section 6.1 and Article 8) shall terminate automatically without any action by any party and the terminated provisions of this Agreement shall not survive such termination.

ARTICLE 8
Miscellaneous

Section 8.1. Governing Law. **THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH AND SUBJECT TO THE LAWS OF THE STATE OF DELAWARE, WITHOUT REFERENCE TO CONFLICTS OF LAWS PRINCIPLES.**

Section 8.2. VENUE; WAIVER OF JURY TRIAL. THE PARTIES HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF THE COURTS OF THE STATE OF DELAWARE AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE STATE OF DELAWARE SOLELY IN RESPECT OF THE INTERPRETATION AND ENFORCEMENT OF THE PROVISIONS OF THIS AGREEMENT AND OF THE DOCUMENTS REFERRED TO IN THIS AGREEMENT, AND IN RESPECT OF THE TRANSACTIONS CONTEMPLATED HEREBY, AND HEREBY WAIVE, AND AGREE NOT TO ASSERT, AS A DEFENSE IN ANY ACTION, SUIT OR PROCEEDING FOR THE INTERPRETATION OR ENFORCEMENT HEREOF OR OF ANY SUCH DOCUMENT, THAT IT IS NOT SUBJECT THERETO OR THAT SUCH ACTION, SUIT OR PROCEEDING MAY NOT BE BROUGHT OR IS NOT MAINTAINABLE IN SAID COURTS OR THAT THE VENUE THEREOF MAY NOT BE APPROPRIATE OR THAT THIS AGREEMENT OR ANY SUCH DOCUMENT MAY

NOT BE ENFORCED IN OR BY SUCH COURTS, AND THE PARTIES HERETO IRREVOCABLY AGREE THAT ALL CLAIMS WITH RESPECT TO SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN SUCH A DELAWARE STATE OR FEDERAL COURT. THE PARTIES HEREBY CONSENT TO AND GRANT ANY SUCH COURT JURISDICTION OVER THE PERSON OF SUCH PARTIES AND OVER THE SUBJECT MATTER OF SUCH DISPUTE AND AGREE THAT MAILING OF PROCESS OR OTHER PAPERS IN CONNECTION WITH ANY SUCH ACTION OR PROCEEDING IN THE MANNER PROVIDED IN PARAGRAPH (C) OF THIS SECTION OR IN SUCH OTHER MANNER AS MAY BE PERMITTED BY LAW SHALL BE VALID AND SUFFICIENT SERVICE THEREOF.

EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) EACH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (iv) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.2.

Section 8.3. Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be deemed given (i) on the first business day following the date of delivery in person or by telecopy (in each case, with telephonic confirmation of receipt by the addressee), (ii) on the first business day following timely deposit with an overnight courier service, if sent by overnight courier specifying next day delivery or (iii) on the first business day that is at least five days following deposit in the mails, if sent by first class mail, to the Parties at the following addresses (or at such other address for a party as shall be specified by like notice):

If to SBC, to:

SBC Communications Inc.
175 E. Houston
San Antonio, TX 78205
Attention: Chairman and Chief Executive Officer
Facsimile: 210-351-3553

with a copy to:

SBC Communications Inc.
175 E. Houston
San Antonio, TX 78205
Attention: Senior Executive Vice President and General Counsel
Facsimile: 210-351-2298

If to BellSouth, to:

BellSouth Corporation
1155 Peachtree Street N.E.
Suite 2000
Atlanta, Georgia 30309
Attention: Chief Executive Officer
Facsimile: 404-249-5110

with a copy to:

BellSouth Corporation
1155 Peachtree Street N.E.
Suite 2000
Atlanta, Georgia 30309
Attention: General Counsel
Facsimile: 404-249-5948

If to the Company to:

Alloy Management Corp.
1100 Peachtree Street
Suite 1000
Atlanta, GA 30309
Attention: Chief Executive Officer
Facsimile: 404-249-4488

with a copy to:

SBC Communications Inc.
175 E. Houston
San Antonio, TX 78205
Attention: Senior Executive Vice President and General Counsel
Facsimile: 210-351-2298

and

BellSouth Corporation
1155 Peachtree Street N.E.
Suite 2000
Atlanta, Georgia 30309
Attention: General Counsel
Facsimile: 404-249-5948

Section 8.4. Severability. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (i) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (ii) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

Section 8.5. Counterparts. For the convenience of the parties hereto, this Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall together constitute the same agreement.

Section 8.6. Headings; Recitals. All Section headings and the recitals herein are for convenience of reference only and are not part of this Agreement, and no construction or reference shall be derived therefrom.

Section 8.7. Specific Performance. Each party hereto acknowledges that it will be impossible to measure in money the damage to the other party if a party hereto fails to comply with any of the obligations imposed by this Agreement, that every such obligation is material and that, in the event of any such failure, the other party will not have an adequate remedy at law or damages. Accordingly, each party hereto agrees that injunctive relief or other equitable remedy, in addition to remedies at law or damages, is

the appropriate remedy for any such failure and will not oppose the granting of such relief on the basis that the other party has an adequate remedy at law. Each party hereto agrees that it shall not seek, and agrees to waive any requirement for, the securing or posting of a bond in connection with any other party's seeking or obtaining such equitable relief.

Section 8.8. Filing Actions. Prior to filing or referring any matter to a court of law or equity, the parties agree to provide the other parties at least ten Business Days' notice of the intention to so refer a matter, provided that the foregoing shall not apply to any request for a preliminary injunction or temporary restraining order.

Section 8.9. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns and shall not be assignable except to the extent expressly permitted hereby and any purported assignment of this Agreement or of any Shares in violation of this Agreement shall be void. In the case of a merger or other business combination or reorganization transaction involving the Company where securities other than those of the Company are issued to the holders of Shares, this Agreement shall be assigned to and shall inure to the benefit of and be binding upon the Person issuing securities in such transaction and any reference herein to the Company shall be deemed to be a reference to such Person. The rights and obligations under this Agreement shall be assigned by SBC and BellSouth to a Permitted Transferee in connection with the Transfer to such Permitted Transferee pursuant to Section 4.1 of the LLC Agreement to the extent of a Transfer to any such Permitted Transferee.

Section 8.10. Entire Agreement; Amendment; Waiver. This Agreement supersedes all prior agreements, written or oral, among the parties hereto with respect to the subject matter hereof and contains the entire agreement among the parties with respect to the subject matter hereof. This Agreement may not be amended, supplemented or modified, and no provisions hereof may be modified or waived, except by an instrument in writing signed by the party or parties affected or to be affected thereby. No waiver of any provisions hereof by any party shall be deemed a waiver of any other provisions hereof by any such party, nor shall any such waiver be deemed a continuing waiver of any provision hereof by such party.

Section 8.11. No Relief of Liabilities. No Transfer by SBC or BellSouth of Beneficial Ownership of any Securities shall relieve such Person of any liabilities or obligations to the Company or SBC or BellSouth, as the case may be, that arose or accrued prior to the date of such Transfer.

Section 8.12. Further Assurances. Each party hereto shall at any time, and from time to time, execute and deliver such additional instruments and other documents and shall at any time, and from time to time, take such further actions as may be necessary or appropriate to effectuate, carry out and comply with all of the terms of this Agreement and the transactions contemplated hereby.

Section 8.13. THIRD PARTY BENEFICIARIES. NOTHING IN THIS AGREEMENT, EXPRESS OR IMPLIED, IS INTENDED TO CONFER UPON ANY THIRD PARTY ANY RIGHTS OR REMEDIES OF ANY NATURE WHATSOEVER UNDER OR BY REASON OF THIS AGREEMENT.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

SBC COMMUNICATIONS INC.

By:____________________________
Name: James S. Kahan
Title: Senior Executive Vice President, Corporate Development

BELLSOUTH CORPORATION

By:____________________________
Name: Keith O. Cowan
Title: Vice President, Corporate Development

ALLOY MANAGEMENT CORP.

By:____________________________
Name: Mark L. Feidler
Title: Chief Operating Officer

4

REDACTED

LIMITED LIABILITY COMPANY AGREEMENT

OF ALLOY LLC

by and among

SBC COMMUNICATIONS INC.,
SBC ALLOY HOLDINGS, INC.,
BELLSOUTH CORPORATION,
BELLSOUTH MOBILE DATA, INC.,
BSCC OF HOUSTON, INC.,
ACCC OF LOS ANGELES, INC.,
BELLSOUTH CELLULAR CORP.,
RAM BROADCASTING CORPORATION

and

ALLOY MANAGEMENT CORP.

Dated as of October 2, 2000

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THIS LIMITED LIABILITY COMPANY AGREEMENT OF ALLOY LLC (this "Agreement") is entered into as of October 2, 2000, by and among SBC, SBC Holdings, BellSouth, BellSouth Mobile Data, BSCC of Houston, ACCC, BellSouth Cellular, RAM and Manager.

WHEREAS, SBC, BellSouth and Newco have entered into an Amended and Restated Contribution and Formation Agreement dated as of April 4, 2000 (as such agreement may be amended and restated from time to time, the "Contribution Agreement") providing for, among other things, the contribution of certain assets to Newco and the conditions to such contributions;

WHEREAS, the respective boards of directors of each of Manager, SBC, SBC Holdings, BellSouth and the BellSouth Members have approved this Agreement;

WHEREAS, upon consummation of the transactions pursuant to the Contribution Agreement, SBC Holdings, the BellSouth Members and Manager will Beneficially Own Percentage Interests constituting all of the LLC Units in Alloy LLC, a limited liability company organized under the laws of Delaware ("Newco");

WHEREAS, the continued effectiveness of this Agreement is a condition to the consummation of the Contribution Closing; and

WHEREAS, the Parties hereto desire to make certain representations, warranties, covenants and agreements as provided in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I
Definitions

1.1. Certain Definitions. (a) For the purposes of this Agreement, the following terms shall have the following meanings:

"ACCC" shall mean ACCC of Los Angeles, Inc., a California corporation.

"Acquired Wireless Business" shall have the meaning set forth in Section 11.2.

"Acquiring Entity" shall mean the Entity acquiring voting securities of SBC or BellSouth, as the case may be in a transaction or series of transactions which constitute a Change of Control.

"Acquiring Initial Member" shall have the meaning set forth in Section 11.2(a).

"Acquisition Agreement" shall have the meaning set forth in Section 15.3(d)(ii).

"Act" shall mean the Delaware Limited Liability Company Act, as amended.

"Additional Member" shall have the meaning set forth in Section 7.1.

"Advanced Services" shall mean high speed services, such as ADSL (but not cable modems), which enable users to originate and receive high quality voice and data services.

"Affiliate" shall mean with respect to any Person, any Person directly or indirectly Controlling, Controlled by, or under Common Control with such other Person at any time during the period for which the determination of affiliation is being made.

"Agency Agreements" shall mean collectively, the Wireline Agency Agreements and the Wireless Agency Agreements.

"Agent" or "Agency" shall mean a relationship in which a Person sells, directly or indirectly, any Telecom Services on behalf of another Person (the "Principal") to a third-party customer on a commission or other fee basis where the Principal is the provider of the Telecom Services being sold and establishes the retail price for such services.

"Agreement" shall have the meaning set forth in the Preamble.

"Ancillary Agreements" shall mean, collectively, the Agency Agreements, Intellectual Property License Agreement, Registration Rights Agreement, the Resale Agreements, the Stockholders' Agreement, the Management Agreement, Transition Marks Agreement and Transition Services Agreement, in each case substantially in the form attached as an Exhibit to the Contribution Agreement.

"Auction" shall have the meaning set forth in Section 11.4(a).

"Auction Notice" shall have the meaning set forth in Section 11.4(a).

"Bank of America Debt" shall mean the debt issued under the Credit Agreement.

"Bank of America Repayment Notice" shall have the meaning set forth in Section 12.12(c).

"Bankruptcy and Equity Exception" shall have the meaning set forth in Section 3.1(b).

A Person shall be deemed the "Beneficial Owner", and to have "Beneficial Ownership" of, and to "Beneficially Own," any securities as to which such Person is or may be deemed to be the beneficial owner pursuant to Rule 13d-3 and 13d-5 under the Exchange Act, as

such rules are in effect on the date of this Agreement, as well as any securities as to which such Person has the right to become Beneficial Owner (whether such right is exercisable immediately or only after the passage of time or the occurrence of conditions) pursuant to any agreement, arrangement or understanding (other than customary agreements with and between underwriters and selling group members with respect to a bona fide public offering of securities), or upon the exercise of conversion rights, exchange rights, rights, warrants or options, or otherwise; provided, however, that no Initial Member shall be deemed the "Beneficial Owner" or to have "Beneficial Ownership" of, or to "Beneficially Own," any LLC Units or Shares owned by the other Initial Member solely by virtue of the rights set forth in this Agreement. For purposes of this Agreement, in determining any Person's percentage Beneficial Ownership of the Total Outstanding Shares, any shares of Public Common Stock which are not actually outstanding but which may be acquired upon exchange of outstanding LLC Units shall be excluded from the determination.

"BellSouth" shall mean BellSouth Corporation, a Georgia corporation.

"BellSouth Additional Subsidiary" shall have the meaning set forth in the Contribution Agreement.

"BellSouth Additional Subsidiary Towers" shall mean the lease space used by the BellSouth Additional Subsidiary for its antennas, microwave dishes and related equipment and any other wireless equipment located together with the land surrounding such towers other than any such leases, and/or equipment subject to the BellSouth Transaction (as defined in Schedule 4.2 to the Contribution Agreement).

"BellSouth Affiliate" shall have the meaning set forth in Section 12.12(d).

"BellSouth Carolina" shall mean BellSouth Carolinas PCS, L.P., a Delaware limited partnership.

"BellSouth Cellular" shall mean BellSouth Cellular Corp., a Georgia corporation.

"BellSouth Debt" shall have the meaning set forth in Section 12.11.

"BellSouth Marks" shall mean the trademarks, trade names, service marks, logos, brands, domain names and other marks of BellSouth set forth on Exhibit A hereto, and all variants and derivatives thereof.

"BellSouth Members" shall mean, collectively, BellSouth Mobile Data, BSCC of Houston, ACCC, BellSouth Cellular and RAM, and their respective successor companies.

"BellSouth Mobile Data" shall mean BellSouth Mobile Data, Inc., a Georgia corporation.

"BellSouth Obligations" shall have the meaning set forth in Section 18.3(p)(ii).

"Bid" shall have the meaning set forth in Section 15.3(d)(iii).

"Book Value," with respect to any asset, shall mean its adjusted basis for U.S. federal income tax purposes, except that the initial Book Value of any asset contributed by a Member to Newco shall be an amount equal to the fair market value of such asset, as determined by the Manager, and the Book Value of any asset shall thereafter be adjusted in a manner consistent with Treasury Regulations Section 1.704-1(b)(2)(iv)(g) for Revaluations and for the Depreciation taken into account with respect to such asset.

"BSCC of Houston" shall mean BSCC of Houston, Inc., a Texas Corporation.

"Budget" shall have the meaning set forth in the definition of Business Plan.

"Built-in Gain or Loss" shall mean the difference between the fair market value and tax basis of any property contributed to Newco at the time of such contribution.

"Business" shall mean (a) the acquisition, development, ownership and operation of businesses engaged in the Domestic provision of mobile wireless voice and data services utilizing radio frequencies licensed by the FCC for the provision of Cellular Service, PCS Service, Wireless Data Service, Satellite Services, Part 27 Service and Paging Services in Puerto Rico and the U.S. Virgin Islands, (b) business activities customarily ancillary to the provision of any of the foregoing services, and (c) the provision of a Package.

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

"Business Plan" shall mean the set of detailed one-year and more general five-year plans and projections with respect to Newco. Each Business Plan shall contemplate, among other matters: (a) the markets to be covered; (b) the activities of Newco; (c) amounts that must be invested or otherwise contributed to Newco by its members, whether as capital contributions or loans, during the calendar year following that of the approval of the Business Plan, as well as the estimate for the four years immediately following; and (d) the rates of return and profitability that are expected to be obtained by Newco. The Business Plan shall include, among other matters: (i) market and feasibility studies; (ii) financial and market projections and schedules; (iii) projected balance sheets and financial statements; (iv) projected cash flow; (v) human resources plan; (vi) projected rates of return; (vii) timetables of additional investments and other contributions and (viii) an annual budget including, among other things, anticipated revenues, expenditures (capital and operating) and cash requirements of Newco for the following year (the "Budget"). The initial Business Plan is attached as Exhibit C.

"Capital Account" when used with respect to any Member shall mean the capital account maintained for such Member in accordance with Section 8.4, as said capital account may

be increased or decreased from time to time pursuant to the terms of Section 8.4(a). The initial Capital Accounts shall be determined in accordance with Section 8.1(a).

"Capital Contribution," when used with respect to any Member, shall mean the amount of capital contributed by such Member to Newco in accordance with this Agreement.

"Cellular Service" shall mean mobile wireless voice and data service provided pursuant to licenses issued by the FCC pursuant to Subpart H of Part 22 of the FCC Rules and all mobile voice and data services reasonably ancillary thereto.

"Certificate of Formation" shall mean the Certificate of Formation of Newco filed pursuant to the Act with the Secretary of State of the State of Delaware, as the same may hereafter be amended and/or restated from time to time.

"Change of Control" shall mean, with respect to any Initial Member, any transaction or series of transactions, occurring after the date that it becomes subject to this Agreement, pursuant to which any Person becomes the Beneficial Owner of Voting Securities of such Initial Member resulting in such Person having the power to cast at least 50% of the votes entitled to be cast in elections of directors (or similar officials) of such Initial Member.

"Class B Triggering Event" shall have the meaning set forth in the Manager Certificate.

"Closing Date" shall mean the date of the Contribution Closing.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Communications Act" shall mean the Communications Act of 1934, as amended or any successor statute thereto.

"Contracts" shall mean all agreements, contracts, leases and subleases, purchase orders, arrangements, commitments, non-governmental licenses, notes, mortgages, indentures or other obligations.

"Contribution Agreement" shall have the meaning set forth in the Recitals.

"Contribution Closing" shall mean the Closing (as defined in the Contribution Agreement).

"Control" (including the correlative meanings of the terms "Controlled by" and "under Common Control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"CPE" shall mean customer-provided equipment.

"Credit Agreement" shall mean the Credit Agreement dated as of April 30, 1998 among BellSouth Carolina, Bank of America, N.A. and the other agents and lenders named therein.

"Crown Castle Stock" shall mean the shares of common stock of Crown Castle International Corp., a Delaware corporation, held by Subsidiaries of the BellSouth Companies (as defined in the Contribution Agreement).

"Dedicated Line" shall mean an unswitched line providing user-defined. point-to-point connections or service.

"De Minimis Wireless Interest" shall mean an Initial Member's direct or indirect interest in a Wireless Business if (A)(i) the Initial Member does not own, directly or indirectly, more than 20% of the equity securities or more than 20% of the voting power of the outstanding Voting Securities of the Entity that includes the Wireless Business or have the right to elect or cause the election or nomination of 20% or more of the directors or persons performing similar functions in such Entity, (ii) such Entity derived more than 80% of its total consolidated revenues, in its latest four fiscal quarters, from sources other than the Wireless Business and (iii) the Initial Member has no active involvement in the management of the Wireless Business of such Entity, or (B) the Initial Member does not have Control of the Entity that includes the Wireless Business and the Wireless Business accounts for less than 5% of the total consolidated revenues of such Entity or (C) the Initial Member has an investment at cost of not more than $20 million and an equity interest of not more than 5% in such Wireless Business.

"Departing Member" shall have the meaning set forth in Section 16.1.

"Depreciation" shall mean all non-cash deductions allowable under the Code attributable to depreciation or cost recovery with respect to the assets of Newco, including any improvements made thereto and any tangible personal property located therein, or amortization of the cost of any intangible property or other assets acquired by Newco, which have a useful life exceeding one year, provided, however, that with respect to any asset of Newco whose tax basis differs from its Book Value at the beginning of any fiscal year or other period, Depreciation shall be an amount which bears the same ratio to such beginning Book Value as the depreciation, amortization or other cost recovery deduction for such period with respect to such asset for Federal income tax purposes bears to its adjusted tax basis as of the beginning of such year; provided, further, that if the Federal income tax depreciation, amortization or other cost recovery deduction for such fiscal year is zero, depreciation shall be determined by the Tax Matters Member using any method permitted by the Code.

"Disposition Group" shall have the meaning set forth in Section 15.3(d)(i).

"Distributable Cash" shall mean, with respect to any Fiscal Year, the excess, if any, of (A) the sum of (x) the amount of all cash received by Newco (including any amounts allocated to its Subsidiaries) during such Fiscal Year and (y) any cash and cash equivalents held by Newco at the start of such Fiscal Year over (B) the sum of (x) all cash amounts paid or payable (without duplication) in such Fiscal Year incurred by Newco (including any amounts allocated to its Subsidiaries) and (y) the net amount of cash needs for Newco set forth in the Budget for the following Fiscal Year.

"Domestic" shall mean the fifty states comprising the United States of America, the District of Columbia, the U.S. Virgin Islands and the Commonwealth of Puerto Rico, but excluding all other territories and possessions of the United States of America.

"Election Notice" shall have the meaning set forth in Section 4.2(b).

"Entity" shall mean any corporation, firm, unincorporated organization, association, partnership, limited liability company, business trust, joint stock company, joint venture organization, entity or business.

"Excepted Cash Issuances" shall have the meaning set forth in Section 17.4(d).

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Executive Officer" shall mean the chief executive officer and chief financial officer, and individuals whose job requires them to report directly to any of the foregoing Persons.

"Exiting Initial Member" shall have the meaning set forth in Section 4.1(f).

"Fair Market Value" shall mean, with respect to any asset, as of the date of determination, the cash price at which a willing seller would sell, and a willing buyer would buy, each being apprised of all relevant facts and neither acting under compulsion, such asset in an arm's length, negotiated transaction with an unaffiliated third party without time constraints, determined in accordance with Section 11.3, treating the asset to be valued as if it were "Securities" as set forth in Section 11.3 and the parties disputing the Fair Market Value as the Initial Members.

"FCC" shall mean the Federal Communications Commission or the successor agency thereof.

"FCC Rules" shall mean any applicable rules and regulations of the FCC.

"Fiscal Year" shall mean the fiscal year of Newco, which shall be the period commencing on January 1 in any year and ending on December 31 in such year, or such other fiscal year that the Manager shall determine is required under the Code.

"GAAP" shall mean United States generally accepted accounting principles.

"Governmental Entity" shall mean any governmental or regulatory authority, court, agency, commission, body or other similar entity.

"ILEC" shall have the meaning set forth in Section 12.9.

"Indebtedness" shall mean, with respect to any Person, (i) all indebtedness and obligations of or assumed by such Person in respect of money borrowed (including any indebtedness which is non-recourse to the credit of such Person, but which is secured by a Lien on any asset of such Person) or evidenced by a promissory note, bond, debenture, letter of credit reimbursement agreement or other written obligations to pay money for money borrowed; (ii) any indebtedness or obligation of others secured by a Lien on any asset of such Person, whether or not such indebtedness or obligation is assumed by such Person; (iii) any guaranty, endorsement, suretyship or other undertaking pursuant to which such Person may be liable on account of any obligation of any third party other than a Subsidiary of such Person; (iv) indebtedness for the deferred purchase price of property or services; (v) obligations of such Person incurred in connection with entering into a lease which, in accordance with GAAP, should be capitalized; (vi) payments to be made pursuant to Section 2.11 of the Contribution Agreement; and (vii) the similar indebtedness or obligations of a partnership or joint venture in which such Person is a general partner or joint venturer.

"Indemnified Parties" shall have the meaning set forth in Section 6.13.

"Initial Member" shall mean each of SBC or BellSouth and their respective successors to all of their respective rights and obligations hereunder who are admitted as a Member of Newco pursuant to Section 4.1(f) of this Agreement.

"Intellectual Property" shall have the meaning set forth in Section 14.3.

"IPO" shall mean a Transfer of Public Common Stock to underwriters in connection with an underwritten public offering of such Public Common Stock that (i) is on a firm commitment basis registered under the Securities Act and (ii) is sold in a manner that results in a broad distribution of such Public Common Stock, with such distribution certified to Newco by the lead or managing underwriter or underwriters in any such offering.

"IPO Date" shall mean the date on which the IPO is consummated.

"ISP Service" shall mean a service that provides user access to the Internet.

"JLL Member" shall have the meaning set forth in Section 12.12(b).

"JLL Repayment Notice" shall have the meaning set forth in Section 12.12(b).

"Joint Billing Customers" shall mean customers of Initial Member's Wireless Services who are billed for such Wireless Services together with any other products or services offered by such Initial Member or its Affiliates.

"Law" shall mean any federal, state, local or foreign law, statute, ordinance, rule, regulation, judgment, order, injunction, decree, arbitration award, agency requirement, franchise, license or permit of any Governmental Entity.

"Lien" shall mean any mortgage, pledge, lien, deed of trust, hypothecation, claim, security interest, title defect, encumbrance, burden, tax lien (as used in Section 6321 of the Code, and the rules and regulations promulgated thereunder or similarly by any state, local, or foreign tax authority), charge, or other similar restriction, title retention agreement, option, easement, covenant, encroachment or other adverse claim.

"LLC Interest" shall mean a Member's entire limited liability company interest in Newco at any particular time, including such Member's share of the profits and losses of Newco and right to receive distributions of Newco's assets, and all other benefits to which a Member may be entitled, all in accordance with the provisions of this Agreement and the Act, together with the obligations of such Member to comply with all the terms and provisions of this Agreement. The LLC Interests constitute one class of limited liability company interest in Newco.

"LLC Unit" means a fractional, undivided share of the LLC Interests of all Members issued pursuant hereto. As of the Contribution Closing, there shall be 2,000,000,010 LLC Units outstanding.

"Manager" shall mean Alloy Management Corp., a Delaware corporation, and any other successor Manager selected in accordance with the terms hereof. Manager shall be a "manager" of Newco within the meaning of Section 18-101(10) of the Act.

"Manager Certificate" shall mean the Certificate of Incorporation of Manager, as in effect from time to time.

"Member" shall initially mean each of SBC, SBC Holdings, BellSouth, the BellSouth Members and Manager, and shall include thereafter their respective successors and permitted assigns, and any other members admitted to Newco in accordance with Section 7.1.

"Member-Funded Debt" shall mean any non-recourse debt of Newco which is loaned or guaranteed by any Member and/or is treated as "partner non-recourse debt" under Section 1.704-2(b)(4) of the Treasury Regulations.

"Member Common Stock" shall mean the Class B Common Stock, par value $0.01 per share, of Manager.

"Members' Meeting" shall have the meaning set forth in Section 6.3.

"Minimum Gain" shall mean an amount equal to the excess of the principal amount of debt, for which no Member is liable ("non-recourse debt"), secured by Newco Assets, over the adjusted basis of such Newco Assets which represents the minimum taxable gain which would be recognized by Newco if the non-recourse debt were foreclosed upon and the Newco Assets were transferred to the creditor in satisfaction thereof, and which is referred to as "minimum gain" in Treasury Regulations Section 1.704-1(b)(4)(iv). A Member's share of Minimum Gain shall be determined pursuant to the above-cited Treasury Regulations.

"Network Services" shall mean Telephone Exchange Service, Exchange Access Service, Private Line Service, ISP Service, InterLATA Services and Dedicated Lines. For the purpose of this definition, the term Exchange Access Service shall have the meaning set forth in Section 3 of the Communications Act.

"Newco" shall have the meaning set forth in the Recitals.

"Newco Assets" shall mean all right, title and interest of Newco in and to all or any portion of the assets of Newco and any property (real or personal) or estate acquired in exchange therefor or in connection therewith.

"Newco Marks" shall have the meaning set forth in Section 13.2.

"Newco Products and Services" shall mean the creation and provision by Newco of Wireless Services, including wireless voice and data services in a Package with Network Services and products, on the local, regional and national level and any activities related thereto.

"Non-Exiting Initial Member" shall have the meaning set forth in Section 4.1(f).

"Objection Date" shall have the meaning set forth in Section 12.6.

"Officers" shall mean the Executive Officers of Newco and such other officers of Newco as shall from time to time be appointed by the Manager until such time as any such Officer is removed in accordance with the terms of his or her appointment.

"Order" shall have the meaning set forth in Section 12.9.

"Original Appraisers" shall have the meaning set forth in Section 11.3(a).

"Package" shall mean the marketing, sale, resale, or any other mode of selling a package of services, comprised of (x) one or more of Cellular Service, PCS Service, Wireless Data Service and/or Part 27 Service, and business activities customarily ancillary to the provision of any of the foregoing services, in combination, whether for a single price or otherwise, with (y)

any other Telecom Service (or other product or service) of a third party (which may be provided by SBC, BellSouth or their respective Subsidiaries and Affiliates).

"Paging Service" shall mean the provision of Domestic one and two-way paging and radiotelephone service pursuant to licenses issued by the FCC pursuant to Subpart E of Part 22 of the FCC Rules and Subpart P of Part 90 of the FCC Rules and all one- and two-way paging and radiotelephone services reasonably ancillary thereto.

"Part 27 Service" shall mean mobile wireless voice and data service provided pursuant to licenses issued by the FCC pursuant to Part 27 of the FCC Rules and all mobile voice and data services reasonably ancillary thereto, other than with respect to the provision of multi-channel video programming service and data services reasonably ancillary thereto.

"Parties" shall initially mean SBC, BellSouth and Manager and shall thereafter include any other Person executing a counterpart of this Agreement.

"PCS Service" shall mean mobile wireless voice and data service provided pursuant to licenses issued by the FCC pursuant to Part 24 of the FCC Rules regardless of the frequency block designated by the FCC under 47 C.F.R. § 24.229 and all mobile voice and data services reasonably ancillary thereto.

"Percentage Interest" shall mean a Member's aggregate economic percentage interest in Newco as determined by dividing the number of LLC Units owned by such Member by the number of LLC Units then owned by all Members. The Percentage Interests Beneficially Owned by the Initial Members as of the date hereof are set forth in Section 8.5. Both SBC and BellSouth will be deemed to directly have a zero (0) Percentage Interest as of the Contribution Closing.

"Permitted Transferee" shall mean a permitted transferee under Section 4.1(a) or Section 4.1(f).

"Person" shall mean any natural person or Entity.

"Private Line Service" shall mean a leased line between customer specified points that does not include any switched service.

"Profits" and "Losses" shall mean, for each Fiscal Year, the net income or net loss (including capital gains and losses), respectively, of Newco determined for each Fiscal Year in accordance with the accounting method followed for Federal income tax purposes provided that for purposes of computing Profits and Losses, (i) depreciation, amortization and cost recovery deductions shall be deemed equal to Depreciation and gains or losses shall be determined by reference to Book Value rather than tax basis; (ii) there shall be taken into account any tax-exempt income of Newco; (iii) any expenditures of Newco which are described in Section 705(a)(2)(B) of the Code or which are deemed to be described in Section 705(a)(2)(B) of the

Code pursuant to the Treasury Regulations under Section 704(b) of the Code shall be treated as deductible expenses; (iv) items of gross income or deductions allocated pursuant to Section 9.1(d) shall be excluded from the computation of Profits and Losses; (v) there shall be taken into account any separately computed items under Section 702(a) of the Code; and (vi) if the Book Value of any Newco Asset is adjusted pursuant to the definition thereof, the amount of such adjustment shall be taken into account in the taxable year of adjustment as gain or loss from the disposition of such asset for purposes of computing Profit and Loss.

"Proprietary Rights" shall mean all patent rights, copyright rights, trademark rights, trade secret rights and other intellectual property or proprietary rights in the United States.

"PSTN" shall mean public switched telephone network.

"Public Common Stock" shall mean the Class A common stock, par value $0.01 per share, of Manager.

"Qualified Investment Banking Firm" means any firm engaged in providing corporate finance, merger and acquisition, and business valuation services and deriving revenues therefrom of at least $100 million during its last completed fiscal year, but excluding, however, any firms which received more than $1,000,000 in fees during the preceding twenty-four (24) calendar months from any Initial Member or their respective Affiliates and any firms selected by any Initial Member.

"Qualified Issuance" shall have the meaning set forth in Section 17.4(a).

"RAM" shall mean RAM Broadcasting Corporation, a New York corporation.

"Registration Rights Agreement" shall mean the Registration Rights Agreement among SBC, BellSouth and Manager, substantially in the form to be entered into in accordance with the Contribution Agreement.

"Resale" shall have the meaning specified in the Resale Agreements.

"Resale Agreements" shall mean the agreements between Newco and each of SBC and BellSouth, as Resellers of Wireless Services outside of their respective Service Territories to be entered into in accordance with the terms of the Contribution Agreement.

"Reseller" shall mean any Person that purchases Telecom Services from another Person to be sold directly or indirectly on its own account to a customer where the Person from which such services are purchased holds FCC Licenses (as defined in the Contribution Agreement) relating to the services being sold.

"Resolving Appraiser" shall have the meaning set forth in Section 11.3(b).

"Revaluation" shall have the meaning set forth in Section 8.4(a).

"ROFR Termination Date" shall have the meaning set forth in Section 4.2(c).

"Satellite Services" shall mean mobile wireless voice and data services (other than multi-channel video services and data services reasonably ancillary thereto) provided via fixed or non-geostationary satellite, directly or indirectly pursuant to licenses issued by the FCC pursuant to Part 25 of the FCC Rules and all mobile wireless voice and data services reasonably ancillary thereto that are also provided via fixed or non-geostationary satellite.

"SBC" shall mean SBC Communications Inc., a Delaware corporation.

"SBC Debt" shall have the meaning set forth in Section 12.11.

"SBC Debt Threshold" shall have the meaning set forth in Section 12.11.

"SBC Holdings" shall mean SBC Alloy Holdings, Inc., a Delaware corporation.

"SBC Marks" shall mean the trademarks, trade names, service marks, logos, brands, domain names and other marks of SBC set forth on Exhibit B hereto, and all variants and derivatives thereof.

"SBC Obligations" shall have the meaning set forth in Section 18.3(p)(i).

"Securities" shall mean the LLC Units and the Shares.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Service Territory" shall mean, in the case of SBC, the states of California, Nevada, Connecticut, Texas, Missouri, Arkansas, Oklahoma, Kansas, Illinois, Indiana, Ohio. Michigan and Wisconsin and shall mean, in the case of BellSouth, the states of Georgia, Florida. South Carolina, North Carolina, Alabama, Mississippi, Kentucky, Louisiana and Tennessee. together, in each case, with such additional Service Territories determined in accordance with Section 12.9.

"Shares" shall mean shares of all classes or series of common stock of the Manager, including the Public Common Stock and the Member Common Stock.

"Specified Auctions" shall have the meaning set forth in Section 11.4(a).

"SpectraSite Agreement" shall have the meaning set forth in Section 12.13(a).

"Stockholders Agreement" shall have the meaning set forth in the Contribution Agreement.

"Subsidiary" shall mean, as to any Person, any Person (i) of which such Person directly or indirectly owns securities or other equity interests representing fifty percent or more of the aggregate voting power, (ii) of which such Person possesses fifty percent or more of the right to elect directors or Persons holding similar positions or (iii) which such Person Controls directly or indirectly through one or more intermediaries.

"Tax Matters Member" shall have the meaning set forth in Section 6.14.

"Telecom Services" shall mean any of the following products or services: (a) Advanced Services, Information Service, InterLATA Service, Telephone Exchange Service, Electronic Publishing Service, or any other Telecommunications Service (other than Cellular Service, Paging Service, PCS Service, Wireless Data Services and/or Part 27 Service); (b) all current and future ancillary services offered in conjunction with any of the services listed in (a), including, but not limited to, voice mail, caller ID, call waiting, directory listing services, calling card services, toll calling plans and associated CPE and any successors thereto; (c) security services, virtual private networks and associated CPE; and (d) any product or service that emulates or replicates the foregoing utilizing an IP protocol and the PSTN (including IP telephony, IP fax, unified messaging and Internet call waiting and associated CPE). For the purpose of this definition, the terms Information Service, InterLATA Service, Telephone Exchange Service and Telecommunications Service each have the meaning set forth in Section 3 of the Communications Act and the term Electronic Publishing Service has the meaning set forth in Section 274(h) of the Communications Act.

"Third Party" shall mean any Person other than BellSouth, Newco, SBC, Manager or any of their respective Affiliates.

"Total Outstanding Shares" shall mean, from time to time, the sum of (i) the total number of Shares issued and outstanding, excluding any treasury shares and (ii) the total number of LLC Units outstanding, excluding any LLC Units Beneficially Owned by Manager.

"Transfer" shall mean any direct or indirect sale, transfer, assignment, pledge, hypothecation, mortgage, or other disposition or encumbrance, of any beneficial or economic interest in any LLC Units or Shares, including those by operation or succession of law, merger or otherwise, but a Change in Control of an Initial Member shall not be deemed to be a Transfer.

"Transfer Agent" shall have the meaning specified in the Manager Certificate.

"Transfer Notice" shall have the meaning set forth in Section 4.2(a).

"Transferred Securities" shall have the meaning set forth in Section 4.2(a).

"Treasury Regulations" shall mean the regulations promulgated under the Code, as such regulations are in effect on the date hereof.

"Ultimate Parent Entity" shall mean, with respect to any Entity that is a Subsidiary of a Person, the Person that, directly or indirectly, Beneficially Owns at least 50% of the Voting Securities of such Subsidiary and is not a Subsidiary of any Person.

"Voting Securities" shall mean any securities entitled to vote in the ordinary course in the election of directors or of Persons serving in a similar governing capacity of any partnership, limited liability company or other Entity, including the voting rights attached to such securities.

"Winning Bidder" shall have the meaning set forth in Section 15.3(d)(iii).

"Wireless Agency Agreements" shall mean the Agency agreements between Newco and each of BellSouth and SBC or their respective Subsidiaries, as agents, relating to Wireless Services to be entered into at the Contribution Closing in accordance with the terms of the Contribution Agreement.

"Wireless Business" shall mean a business engaged in the provision of mobile wireless voice and data services utilizing radio frequencies licensed by the FCC for the provision of Cellular Service, PCS Service, Wireless Data Service, Paging Service in Puerto Rico and the U.S. Virgin Islands, Satellite Services and Part 27 Service.

"Wireless Business Offer Notice" shall have the meaning set forth in Section 11.2(a).

"Wireless Data Service" shall mean the provision of Domestic Wireless data service pursuant to licenses issued by the FCC pursuant to Subpart E and H of Part 22 of the FCC Rules and Subpart S of Part 90 of the FCC Rules and all messaging and data services customarily ancillary thereto.

"Wireless Services" shall mean the mobile wireless and data products offered by a Wireless Business.

"Wireline Agency Agreements" shall mean the Agency agreements between Newco, as agent, and each of BellSouth and SBC, or their respective Subsidiaries, relating to Telecom Services entered into at the Contribution Closing in accordance with the terms of the Contribution Agreement.

"Withdrawal Event" shall have the meaning set forth in Section 16.1.

(b) Except as expressly provided herein, whenever in this Agreement there shall be a reference to any Law or Governmental Entity, such reference shall be deemed to also refer to any successor thereof, and whenever in this Agreement there shall be a reference to any Ancillary Agreement or this Agreement, such reference shall be deemed to refer to such agreement as it may be amended from time to time.

ARTICLE 2
Newco and its Business

2.1. Formation; Effectiveness. Newco has been formed as a limited liability company under the provisions of the Act by the filing of the Certificate of Formation with the Secretary of State of the State of Delaware. Pursuant to Section 18-201(d) of the Act, this Agreement shall become effective upon execution by all of the Parties hereto.

2.2. Company Name. The business of Newco initially shall be conducted in the State of Delaware under the name Alloy LLC and under such name or such assumed names as the Manager deems necessary or appropriate to comply with the requirements of any other jurisdiction in which Newco may be required to qualify.

2.3. Term. The term of Newco shall continue in full force and effect until it is dissolved, wound up and terminated as hereinafter provided. The existence of Newco as a separate legal entity shall continue until the cancellation of the Certificate of Formation as provided in the Act.

2.4. Filing of Certificate and Amendments. Subject to the restrictions set forth in the Manager Certificate, the Manager shall (and shall have the power and authority to) execute and file or cause to be executed and filed any required amendments to the Certificate of Formation and do all other acts requisite for the constitution of Newco as a limited liability company pursuant to the laws of the State of Delaware or any other applicable law and for enabling Newco or its Subsidiaries to conduct business in each applicable jurisdiction.

2.5. Purpose and Business; Powers; Scope of Members' Authority. (a) Newco shall be organized primarily for the purpose of conducting the Business, including the provision and development of the Newco Products and Services. Subject to the restrictions set forth in the Manager Certificate, Newco is empowered, subject to the specified terms of this Agreement, to do any and all acts and things necessary, appropriate, proper, advisable, incidental to or convenient for the furtherance and accomplishment of the purposes and business described herein and for the protection and benefit of Newco and its Subsidiaries, including, without limitation, full power and authority, directly or through its Subsidiaries or Affiliates, to enter into, perform and carry out contracts of any kind, borrow money and issue evidences of indebtedness whether or not secured by mortgage, deed of trust, pledge or other lien, acquire, own, manage, improve and develop any property, and lease, sell, transfer and dispose of any property.

(b) Except as otherwise expressly provided in this Agreement with respect to its capacity as a Manager and notwithstanding the last sentence of Section 18-402 of the Act, no Member shall have any authority to bind or act for, or assume any obligations or responsibility on behalf of, any other Member. No Member shall, by virtue of executing this Agreement, be responsible or liable for any Indebtedness or obligation of the other Members or otherwise

relating to any property or assets incurred or arising either before or after the execution of this Agreement, except as to those joint responsibilities, liabilities, indebtedness, or obligations expressly assumed by Newco as of the date of this Agreement or incurred thereafter pursuant to and as limited by the terms of this Agreement.

2.6. Principal Office; Registered Agent. The principal office of Newco shall be as determined from time to time by Manager. Subject to the terms hereof, Newco may change its place of business to such location or locations as may at any time or from time to time be determined by the Manager. The mailing address of Newco shall be such address as may be selected from time to time by the Manager. Newco shall maintain a registered office at The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801. The name and address of Newco's registered agent for service of process is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801.

2.7. Names and Addresses of Members. The names and addresses of the initial Members are as follows:

SBC Communications Inc.
175 East Houston
San Antonio, Texas 78205

Attention: Chairman and Chief Executive Officer

SBC Alloy Holdings, Inc.
c/o SBC Communications Inc.
175 E. Houston
San Antonio, Texas 78205

Attention: Chairman and Chief Executive Officer

BellSouth Corporation
1155 Peachtree Street
Suite 2000
Atlanta, Georgia 30309

Attention: Chief Executive Officer

BellSouth Mobile Data, Inc.,
BSCC of Houston, Inc.,
ACCC of Los Angeles, Inc.,
BellSouth Cellular Corp. and
RAM Broadcasting Corporation
c/o BellSouth Corporation
1155 Peachtree Street, Suite 2000
Atlanta, Georgia 30309

Attention: Chief Executive Officer

Alloy Management Corp.
1100 Peachtree Street
Suite 1000
Atlanta, Georgia 30309

Attention: Chief Executive Officer

2.8. Partnership Treatment. (a) It is intended that Newco will be treated, solely for tax purposes, as a partnership for United States federal and, to the extent permitted by applicable law, state and local income tax purposes. The Members agree to take any action requested by Newco that may be desirable to ensure that Newco is so treated. No Member shall take any action that is inconsistent with such treatment.

(b) As of the Contribution Closing, SBC and BellSouth are parties to this Agreement and Members solely for the purposes of making certain representations and agreements relating to the formation and operation of Newco's business and to govern certain rights and obligations between SBC and BellSouth relating to Newco and their respective indirect ownership of LLC Interests in Newco. As of the Contribution Closing, SBC and BellSouth will not have a direct interest in Newco's capital and will not have a direct interest in Newco's Profits and Losses. Accordingly, neither SBC nor BellSouth will be treated as a partner for any tax purpose as of the Contribution Closing.

ARTICLE 3
Representations and Warranties

3.1. Representations of SBC, SBC Holdings, BellSouth, the BellSouth Members and Manager. As of the date hereof, each of SBC, SBC Holdings, BellSouth, each of the BellSouth Members and Manager, severally and not jointly, represents and warrants to the others that:

(a) it has all requisite corporate or limited liability company power and authority and has taken all corporate or limited liability company action necessary in order to execute and deliver this Agreement;

(b) this Agreement has been duly executed and delivered by it and is a valid and binding agreement of it enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles (the "Bankruptcy and Equity Exception");

(c) no notices, reports or other filings are required to be made by it with, nor are any consents, registrations, approvals, permits or authorizations required to be obtained by it from, any Governmental Entity, in connection with its execution and delivery of this Agreement, except those that have been made or obtained or that the failure to make or obtain are not, individually or in the aggregate, reasonably likely to (x) result in a Material Adverse Effect (as defined in the Contribution Agreement) on Newco or (y) prevent, materially delay or materially impair its ability to perform its obligations under this Agreement; and

(d) the execution, delivery and performance of this Agreement by it does not, and the consummation by it of the transactions contemplated hereby will not, constitute or result in (i) a breach or violation of, or a default under, its certificate of incorporation or by-laws, (ii) a breach of or violation of or a default under, or the acceleration of any obligations of or the creation of a Lien on its assets (with or without notice, lapse of time or both) pursuant to, any Contracts binding upon it or any Law or governmental or non-governmental permit or license to which it is subject or (iii) any change in the rights or obligations of any party under any of such Contracts to which it is a party, except, in the case of clause (ii) or (iii) above, for any breach, violation, default, acceleration, creation or change that, individually or in the aggregate, is not reasonably likely to (x) result in a Material Adverse Effect (as defined in the Contribution Agreement) on Newco or (y) prevent, materially delay or materially impair its ability to perform its obligations under this Agreement.

ARTICLE 4
Transfer Restrictions

4.1. Transfers. Each Member severally agrees that it shall not Transfer or permit any Transfer, in any single transaction or series of related transactions, of Securities that are Beneficially Owned by it, except (i) with the written consent of each Member that Beneficially Owns in excess of 10% of the Total Outstanding Shares or (ii) a Transfer by SBC or BellSouth that complies with any of the following subsections:

(a) a Transfer of all or any such Securities to its Ultimate Parent Entity or one or more of its or its Ultimate Parent Entity's wholly owned Subsidiaries (but in no event may more than five Subsidiaries of any Ultimate Parent Entity own Securities at the same time) all of

the Voting Securities and all of the equity securities of which are Beneficially Owned, directly or indirectly, by it; provided that (i) contemporaneously with any such Transfer involving LLC Units any such wholly owned Subsidiary becomes a party to a counterpart of this Agreement and SBC or BellSouth, as the case may be, guarantees the performance of all obligations of any such wholly owned Subsidiary under this Agreement; (ii) such wholly owned Subsidiary agrees that it shall be bound by the obligations of SBC or BellSouth, as the case may be, under this Agreement (but shall not have any of the rights of SBC or BellSouth, as the case may be, under this Agreement except as provided in this Section 4.1 pursuant to an assignment effected in accordance with the terms hereof); and (iii) such transfer will not result in a termination of Newco for United States Federal Income Tax purposes; provided, further, that any such wholly owned Subsidiary and SBC or BellSouth, as the case may be, shall prior to such Transfer covenant and agree with Newco and SBC or BellSouth, as the case may be, that, for so long as the wholly owned Subsidiary Beneficially Owns Securities, it shall continue to be a wholly owned Subsidiary of SBC or BellSouth, as the case may be, unless the only Securities owned by such Subsidiary are Public Common Stock;

(b) a Transfer of Public Common Stock to underwriters in connection with an underwritten public offering of such Public Common Stock that (i) is on a firm commitment basis registered under the Securities Act and (ii) is sold in a manner that results in a broad distribution of such Public Common Stock, with such distribution certified to Newco by the lead or managing underwriter or underwriters in any such offering;

(c) a Transfer of all or any of such Securities to Newco or Manager or any Subsidiary of Newco or Manager;

(d) a Transfer of all or any of such Securities in a bona fide pledge of such Securities to a financial institution to secure borrowings as permitted by applicable Law, including, but not limited to the Communications Act; provided that contemporaneously with such pledge such financial institution agrees with Newco that upon any foreclosure on such pledge it shall be bound by the obligations of SBC or BellSouth, as the case may be, under this Agreement (but shall not have any of the rights of SBC or BellSouth, as the case may be, under this Agreement except as provided in this Section 4.1 pursuant to an assignment effected in accordance with the terms hereof);

(e) (x) at any time after the earliest of (i) an IPO Date, (ii) the first anniversary of the Closing Date if Newco, Manager, or a Subsidiary of Newco or Manager at such first anniversary does not hold licenses from the FCC to provide Cellular Services or PCS Services covering at least 90% of the U.S. population or (iii) the fourth anniversary of the Contribution Closing; or (y) as provided in Section 11.1(c), a Transfer of, in the case of clause (x), any or all, or, in the case of clause (y), all of the LLC Units or Public Common Stock Beneficially Owned by such Initial Member by way of (A) a distribution of such Public Common Stock or of all of the Voting Securities and other equity securities of a Subsidiary of such Initial Member that owns LLC Units or Public Common Stock to all of the common shareholders of a series or class (in each case widely distributed and registered under the Exchange Act) of such Initial Member or its

Ultimate Parent Entity or (B) a split-off pursuant to which each common shareholder of a series or class (in each case widely distributed and registered under the Exchange Act) of such Initial Member or its Ultimate Parent Entity is offered on the same terms the right to exchange common shares of such Initial Member or its Ultimate Parent Entity for the Public Common Stock or the stock of a Subsidiary of such Initial Member that owns LLC Units and Public Common Stock being Transferred (provided, that neither SBC nor BellSouth may effect Transfers pursuant to this Section 4.1(e) and Section 5.1(e) of the Stockholders' Agreement in the aggregate more than two times);

(f) (x) at any time after the earliest of (i) an IPO Date, (ii) the first anniversary of the Closing Date if Newco, Manager, or a Subsidiary of Newco or Manager at such first anniversary does not hold licenses from the FCC to provide Cellular Services or PCS Services covering at least 90% of the U.S. population or (iii) the fourth anniversary of the Contribution Closing; or (y) as provided in Section 11.1(c), a Transfer, not otherwise complying with paragraphs (a) - (e) above, of all (but not less than all) of such Securities Beneficially Owned by such Initial Member and its Ultimate Parent Entity (the "Exiting Initial Member") to any Person, after complying with all of the provisions set forth in Section 4.2; provided that contemporaneously with such Transfer (i) such Person or, if such Person is a Subsidiary of any other Person, the Ultimate Parent Entity of such Person, becomes a party to this Agreement and the Stockholders' Agreement as SBC or BellSouth, as the case may be (whereupon any reference to SBC or BellSouth, as the case may be, herein or in the Stockholders' Agreement shall be deemed to be a reference to such Person or, if applicable, its Ultimate Parent Entity), and (ii) such Person causes to be delivered to Newco a legal opinion of counsel of national standing, in form and substance reasonably acceptable to Newco and the non-Exiting Initial Member (the "Non-Exiting Initial Member"), to the effect set forth in Sections 3.1(b) and 3.1(c) that such Transfer does not result in Newco being treated as a "publicly traded partnership" for such purposes; provided, however, that if such Transfer causes a termination of Newco for United States federal income tax purposes, the Exiting Initial Member and the Non-Exiting Initial Member shall bear any cost of such termination in proportion to the amount of such Initial Member's prior Transfers pursuant to §§ 4.1(a), 4.1(e) and 4.1(f) of this Agreement (but only to the extent such prior Transfers contributed towards causing such termination); provided further, however, that the obligation of any party to make a payment pursuant to the preceding proviso shall continue to apply only with respect to Transfers that occur at a time when both SBC and BellSouth continue to Beneficially Own at least one share of Class B Common Stock. In no event may LLC Units be Transferred pursuant to this Section 4.1(f) by any Initial Member that does not Beneficially Own at least 10% of the Total Outstanding Shares and at least one share of Class B Common Stock;

(g) (i) Manager shall take and cause its Subsidiaries to take all reasonable actions as may be reasonably necessary to approve (including, without limitation, by convening a special meeting of the holders of Shares) and complete the merger of any wholly owned Subsidiary of such Initial Member, with and into Manager, and (ii) the other Initial Member agrees to vote all Shares Beneficially Owned by it in favor of such merger; provided that (a) Manager is the surviving corporation in such merger, (b) all of the LLC Units owned of record

and held by the wholly owned Subsidiary of such Initial Member to be merged into Manager are free and clear of all Encumbrances, (c) the wholly owned Subsidiary of such Initial Member to be merged into Manager has no liabilities, other than (i) those incident to this Agreement and (ii) those for which the Initial Member provides full indemnification to Manager and that do not exceed five percent of the then current total assets of such Subsidiary, (d) the merger consideration paid to such Initial Member is identical to the consideration that would have been received if each of the LLC Units owned of record and held by such Subsidiary were exchanged pursuant to Section 17.1; (e) such merger will not be otherwise adverse to Newco except in an immaterial respect (taking into account any efforts by such Initial Member to mitigate any adverse effects on Newco); provided that for such purposes the termination of Newco for federal, state or local Tax purposes and any adverse consequences therefrom shall be deemed to be immaterial; and (f) no such merger shall be consummated until all necessary regulatory approvals have been obtained; provided, however, that if such transfer causes a termination of Newco for United States federal income tax purposes, the Exiting Initial Member and the Non-Exiting Initial Member shall bear any cost of such termination in proportion to the amount of such Initial Member's prior Transfers pursuant to §§ 4.1(a), 4.1(e) and 4.1(f) of this Agreement (but only to the extent such prior Transfers contributed towards causing such termination); provided further, however, that the obligation of any party to make a payment pursuant to the preceding proviso shall continue to apply only with respect to Transfers that occur at a time when both SBC and BellSouth continue to Beneficially Own at least one share of Class B Common Stock. In no event may LLC Units be Transferred pursuant to this Section 4.1(g) by any Initial Member that does not Beneficially Own at least 10% of the Total Outstanding Shares and at least one share of Class B Common Stock. Manager will use commercially reasonable efforts to cause such merger to qualify as a reorganization within the meaning of Section 368(a) of the Code; or

(h) Upon a Transfer of all of the LLC Units held by an Initial Member, pursuant to Sections 4.1(c), (e), (f) or (g) such Initial Member, shall have no continuing rights or obligations under this Agreement (other than its rights under Section 12.8, in respect of books and records of Newco relating to all periods prior to the transfer of all LLC Units), but will remain subject to the terms of Ancillary Agreements to the extent provided by, and in accordance with, the express terms thereof; and provided, that the foregoing shall not relieve such Initial Member from liability for any breach of this Agreement prior to the time of such Transfer.

4.2. Right of First Refusal.

(a) In the event that the Exiting Initial Member proposes to Transfer all of its Securities, to a specified Person on agreed terms, pursuant to Section 4.1(f) above, then, prior to Transferring such Securities (the "Transferred Securities"), the Exiting Initial Member shall promptly deliver a written notice (the "Transfer Notice") to Newco and the Non-Exiting Initial Member stating that the Exiting Initial Member proposes to Transfer the Transferred Securities. The Transfer Notice shall (i) specify the purchase price for and other material terms with respect to the sale of the Transferred Securities, (ii) identify the proposed purchaser, (iii) specify the date scheduled for the Transfer (which date shall not be less than ninety (90) days after the date the Transfer Notice is delivered), and (iv) have attached thereto a copy of such offer, and any

ancillary agreements or documents, containing all of the terms and conditions on which the Transferred Securities are to be sold.

(b) By written notice (an "Election Notice") delivered to Newco and the Exiting Initial Member within thirty (30) days after receipt of a Transfer Notice, the Non-Exiting Initial Member shall have the right to elect to purchase all (but not less than all) of the Transferred Securities on terms and conditions no less favorable to the Exiting Initial Member than, and at the same price, set forth in the Transfer Notice, provided, that if such terms and conditions include in any material respect any non-cash assets or include any non-financial requirements which would be impracticable for the Non-Exiting Initial Member to satisfy, then the Non-Exiting Initial Member shall not be required to satisfy such terms, conditions and requirements and the purchase price for the Transferred Units will be equal to the Fair Market Value of such non-cash assets in cash; provided further, however, that if the Existing Initial Member proposes to transfer the Transferred Securities in a transaction that would qualify in whole or in part as a tax-free exchange, then the Exiting Initial Member and the Non-Exiting Initial Member shall use commercially reasonable efforts to structure the acquisition by the Non-Exiting Initial Member of the Transferred Securities to receive similar tax-free treatment.

(c) If the Non-Exiting Initial Member shall have duly elected to purchase the Transferred Securities, the Exiting Initial Member and the Non-Exiting Initial Member shall use reasonable efforts, including reasonable efforts to obtain all regulatory approvals and consents to consummate the closing of the purchase of the Transferred Securities as soon as practicable and in any event within one year after receipt of the Transfer Notice (the "ROFR Termination Date"), provided that, if the closing does not by then occur due to the failure to receive any required regulatory approvals or consents, the ROFR Termination Date may be extended by either the Exiting Initial Member or the Non-Exiting Initial Members until such approvals are received, but in no event for a period of more than an additional six (6) months.

(d) In the event that the Non-Exiting Initial Member does not elect to purchase the Transferred Securities (or fails to consummate such purchase prior to the ROFR Termination Date, as it may be extended due to failure to obtain regulatory approvals or consents), the Exiting Initial Member will be free, at any time within twelve (12) months after the ROFR Termination Date or the expiration of the time an Election Notice shall be required to be delivered without delivery thereof, as applicable, to consummate a sale of the Transferred Securities to the proposed purchaser identified in the Transfer Notice on terms not less favorable to the Exiting Initial Member than those set forth therein and at the same price; provided that the closing of the transaction contemplated by such Election Notice may be extended by the Exiting Initial Member for six (6) months in the event that any required regulatory approval or consent shall not have been obtained at such time and; provided further that the entire period from delivery of the Election Notice until closing of the transaction is not more than eighteen (18) months.

(e) The provisions of this Section 4.2 shall apply to subsequent Transfers by the purchaser of Transferred Securities.

4.3. Conversions and Exchanges. Notwithstanding anything set forth in this Agreement to the contrary, the provisions of this Article 4 shall not apply to (i) conversions of Member Common Stock or (ii) exchanges of LLC Units for Class A Common Stock in accordance with this Agreement and the Manager Certificate.

ARTICLE 5
Management of Newco

5.1. Management of Newco. (a) The management of Newco shall be vested exclusively in Manager. Manager hereby acknowledges that its powers are subject to the terms of the Manager Certificate and agrees at all times to abide by the terms and conditions set forth therein. The Members, in such capacity, shall have no part in the management of Newco notwithstanding the last sentence of Section 18-402 of the Act, and shall have no authority or right to act on behalf of or bind Newco in connection with any matter, except as expressly set forth in the Act. The Manager shall serve until the Members shall determine by a unanimous vote of the LLC Units Beneficially Owned by the Initial Members at such time, to remove the Manager, and a new Manager shall be elected by a vote of the Members by a vote of a majority of the LLC Units.

(b) Subject to subsection (c) below and the terms of the Manager Certificate, the Manager shall have the power on behalf and in the name of Newco to carry out any and all of the objects and purposes of Newco contemplated by Section 2.5 and to perform or authorize all acts which it may deem necessary or advisable in connection therewith. The Members agree that all determinations, decisions and actions made or taken by the Manager in accordance with this Agreement shall be conclusive and absolutely binding upon Newco, the Members and their respective successors, assigns and personal representatives.

(c) Without limiting the foregoing provisions of this Section 5.1, the Manager shall have the following powers which may, subject to any limitations set forth in this Agreement, be delegated to the Officers:

(i) to develop and prepare the Business Plan each year which will set forth the operating goals and plans for Newco;

(ii) to execute and deliver or to authorize the execution and delivery of Contracts, deeds, licenses, instruments of transfer and other documents in the ordinary course of business on behalf of Newco;

(iii) to employ, retain, consult with and dismiss such personnel as may be required;

(iv) to establish and enforce limits of authority and internal controls with respect to all personnel and functions;

(v) to engage attorneys, consultants, accountants and other agents and representatives of and for Newco;

(vi) to develop or cause to be developed accounting procedures for the maintenance of Newco's books of account;

(vii) to make all Tax elections in a manner which, unless the Initial Members otherwise agree, will maximize or accelerate Tax deductions or minimize or defer taxable income;

(viii) to determine the Fiscal Year of Newco; and

(ix) to do all such other acts as shall be specifically authorized in this Agreement or by the Initial Members unanimously in writing from time to time.

5.2. Compensation. Manager shall not be entitled to compensation for services rendered to Newco in its capacity as manager, but shall be entitled to receive from Newco all of its out of pocket costs and expenses (i) required in connection with managing the business of Newco, and (ii) incurred in connection with making filings and reports under the Securities Act and the Exchange Act (including registration statements).

5.3. Issuances of Additional Membership Units. Manager is hereby authorized to cause Newco from time to time to issue to Members additional LLC Units in accordance with the terms hereof, including LLC Units issued in connection with the Contribution Closing.

5.4. Officers. (a) No Officer shall, without the prior approval of Manager, take or permit to be taken any action on behalf of or in the name of Newco (whether for Newco itself or where Newco is acting in its capacity as a direct or indirect member, partner or owner of any Subsidiary), or enter into any commitment or obligation binding upon Newco, except for (i) actions authorized in accordance with the terms and conditions of this Agreement and (ii) actions authorized by the Manager in the manner set forth herein.

(b) The Executive Officers of Newco shall at all times be identical to the then corresponding Executive Officers of Manager. Any changes in the Executive Officers of Manager shall automatically and concurrently take effect with respect to then corresponding Executive Officers of Newco. Any changes in the Executive Officers of Newco shall automatically and concurrently take effect with respect to the then corresponding Executive Officers of Manager. The Members agree to take such actions as may be reasonably necessary to effect the result of the foregoing provisions.

(c) Manager shall have the full and exclusive right, power and authority to act on behalf of Newco (whether Newco is acting in its own behalf or in its capacity as a direct or

indirect member, partner or owner of any Subsidiary) except to the extent that Manager permits the Officers or any one of them to exercise such power on behalf of Manager.

5.5. Contributed Entities. (a) Anything herein to the contrary notwithstanding, during the period in which a BellSouth Member is allocated Depreciation or Built-In Gain or Loss with respect to a "Contributed Entity" pursuant to the second sentence of Section 9.1(d)(i) of this Agreement, Manager shall not, without the written consent of BellSouth (which consent shall not be unreasonably withheld), take any action, including, but not limited to, causing a dissolution of such Contributed Entity, that would cause an adjustment to the basis of the property owned by such Contributed Entity. Solely for purposes of this Section 5.5(a), a "Contributed Entity" shall mean Orlando SMSA Limited Partnership, a Delaware limited partnership, or AB Cellular Holding, LLC, a Delaware limited liability company, and this Section 5.5(a) shall apply separately to each such Contributed Entity.

(b) Without the written consent of SBC (which consent shall not be unreasonably withheld), for so long as SBC Holdings or any successor thereto shall be a Member, Newco shall not take any action which would be reasonably likely to result in a sale, transfer or other disposition of the MI-5 Assets (as defined in the Contribution Agreement), Houma-Thibodaux (as defined in the Contribution Agreement) or all or substantially all of its assets or the assets of SBC-PR (as defined in the Contribution Agreement) relating to Paging Services (as defined in the Contribution Agreement).

ARTICLE 6
Members

6.1. Powers of Members. Members shall have only such rights and powers as are granted to Members pursuant to the express terms of this Agreement and the Act. Except as otherwise expressly and specifically provided in this Agreement and notwithstanding the last sentence of Section 18-402 of the Act, no Member, in such capacity, shall have any authority to bind, to act for, to sign for or to assume any obligation or responsibility on behalf of, any other Member or Newco. Except as expressly set forth in this Agreement, no action by Newco or Members shall require the vote or approval of any Member in its capacity as a Member.

6.2. Partition. Each Member waives any and all rights that it may have to maintain an action for partition of Newco's property.

6.3. Place of Members' Meetings. Meetings of Members (each, a "Members' Meeting") shall be held at the principal office of Newco, or at such other place as Members shall mutually agree.

6.4. Meetings. A Members' Meeting may be called by any Member for any matter which is appropriate for consideration thereat. Members' Meetings shall be held from time to time, but no fewer than once in each calendar year. Meetings shall be chaired by the

Chairman of Newco, and the Secretary of the Meeting shall be appointed by the Chairman of Newco.

6.5. Telephonic Meetings. Members' Meetings may be held through the use of conference telephone or similar communications equipment so long as all Persons participating in such Members' Meetings can hear one another at the time of such Members' Meeting. Participation in a Members' Meeting via conference telephone or similar communications equipment in accordance with the preceding sentence constitutes presence in person at the Members' Meeting.

6.6. Notice of Meetings. Written notice of a Members' Meeting shall state the place, date and hour of such Members' Meeting, and the general nature of the business to be transacted. Notice shall be given in the manner prescribed in Section 18.3(c) not fewer than ten (10) days nor more than sixty (60) days before the date thereof.

6.7. Waivers. Notice of a Members' Meeting need not be given to any Member who signs a waiver of notice, in person or by proxy, whether before or after the Members' Meeting. The attendance of any Member at a Members' Meeting, in person or by proxy, without protesting prior to the conclusion of such Members' Meeting the lack of notice of such Members' Meeting, shall constitute a waiver of notice by such Member, provided that such Member has been given an adequate opportunity at the meeting to protest such lack of notice.

6.8. Quorum. The attendance of the authorized representative of the Manager and at least one authorized representative of each Initial Member with the right to vote all of the LLC Units Beneficially Owned by such Initial Member shall constitute a quorum at a Members' Meeting for the transaction of any business; provided that notice in accordance with the terms of this Agreement shall have been duly provided. If no quorum is present, holders of a majority of LLC Units present in person or by proxy may adjourn the Members' Meeting and if a quorum is present, holders of at least two-thirds of the LLC Units present in person or by proxy may adjourn the Members' Meeting. An adjournment may include notice of the date, hour and place that the Members shall reconvene. Notice of the adjournment (with the new date, time and place) shall be given to all Members who were absent at the time of the adjournment and, unless such date, hour and place are announced at the Members' Meeting, to the other Members.

6.9. Proxies. Every Member entitled to vote at a Members' Meeting may authorize another Person or Persons to act for it by proxy. Every proxy must be signed by the Member or his attorney-in-fact. Every proxy shall be revocable in writing at the pleasure of the Member executing it.

6.10. Voting Power. Each LLC Unit shall be entitled to one (1) vote on all matters to be voted on by the Members.

6.11. Written Consent. Any action required or permitted to be taken at any Members' Meeting may be taken without a meeting if all Members consent thereto in writing. Any such written consents shall be filed with the minutes of the proceedings.

6.12. Liability. Except as otherwise provided by the Act, the debts, obligations and liabilities of Newco, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of Newco, and no Member or Manager shall be obligated personally for any such debt, obligation or liability of Newco solely by reason of being a Member or Manager.

6.13. Indemnification. (a) None of the Manager nor any director, officer or employee of Manager, nor any Officer or employee of Newco (the "Indemnified Parties") shall be liable, responsible or accountable in damages or otherwise to Newco, to any third party or to any Member for (i) any act performed or omission within the scope of the authority conferred on the Indemnified Party by this Agreement or otherwise by Manager except for the gross negligence, fraud or willful misconduct (including any willful violation of the terms of the Manager Certificate or this Agreement) of any Indemnified Party, (ii) the Indemnified Party's performance of, or failure to perform, any act on the reasonable reliance on advice of legal counsel to Newco or (iii) the negligence, dishonesty or bad faith of any agent, consultant or broker of Newco selected, engaged or retained in good faith and with reasonable prudence. In any threatened, pending or completed action, suit or proceeding, each Indemnified Party shall, to the fullest extent permitted by law, be fully protected and indemnified and held harmless by Newco against all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, proceedings, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, reasonable attorneys' fees, costs of investigation, fines, judgments and amounts paid in settlement, actually incurred by such Indemnified Party in connection with such action, suit or proceeding) by virtue of his or her status as an Indemnified Party or with respect to any action or omission taken or suffered in good faith, other than liabilities and losses resulting from the gross negligence, fraud, breach of fiduciary duty or willful misconduct (including any willful violation of the terms of the Manager Certificate or this Agreement) of any Indemnified Party. The indemnification provided by this Section 6.13 shall be recoverable only out of the assets of Newco, and no Member shall have any personal liability on account thereof.

(b) To the extent that, at law or in equity, an Indemnified Party has duties (including fiduciary duties) and liabilities relating thereto to Newco, any Member or to any other Indemnified Party, an Indemnified Party acting under this Agreement shall not be liable to Newco or to any Member or to any other Indemnified Party for its good faith reliance on the provisions of this Agreement. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of an Indemnified Party otherwise existing at law or in equity, are agreed by the parties hereto to replace such other duties and liabilities of such Indemnified Party.

6.14. Designation of Tax Matters Member; Tax Matters. (a) Manager shall act as the "tax matters partner" of Newco, as provided in the regulations pursuant to Section 6231 of the Code (the "Tax Matters Member"). SBC Holdings and the BellSouth Members hereby

approve of such designation and agrees to execute, certify, acknowledge, deliver, swear to, file and record at the appropriate public offices such documents as may be deemed necessary or appropriate to evidence such approval. To the extent and in the manner provided by applicable Code sections and regulations thereunder, the Tax Matters Member (a) shall furnish the name, address, profits interest and taxpayer identification number of each Member to the IRS and (b) shall inform each Member of administrative or judicial proceedings for the adjustment of Newco items required to be taken into account by a Member for income tax purposes. The Tax Matters Member shall not enter into an agreement with the IRS or any other taxing authority to extend the limitation period for assessment of any federal, state or local income, franchise or unincorporated business tax of any Member or owner thereof nor settle with the IRS or any other taxing authority to disallow deductions or increase income from Newco with respect to any Member, unless all of the Members shall have agreed thereto. Each Member hereby reserves all rights under applicable law, including the right to retain independent counsel of its choice at its expense (which counsel shall receive the full cooperation of Manager and shall be entitled to prior review of all submissions by Newco in respect of any dispute with the relevant taxing authority).

(b) Notwithstanding the foregoing, SBC and BellSouth shall retain the right to control the portion of any audit relating to Depreciation or gain or loss with respect to any of the assets contributed at the Contribution Closing by Affiliates of SBC and BellSouth, respectively, for any taxable year.

(c) On or before May 1 of each year, Newco shall provide to each Member (i) a draft Internal Revenue Service Schedule K-1 and Form 1065, (ii) information required by such Member to allocate and apportion income for state income tax purposes and (iii) such other information concerning Newco reasonably requested by any Member. Each Member shall have the right to object to any amount or information reported on such draft Schedule or Form on or before May 15. If the Members cannot agree about the contents of such draft Schedule or Form, the tax director of Newco shall resolve the dispute in such a manner that maximizes or accelerates tax deductions or minimizes or defers taxable income.

(d) The Tax Matters Member shall not be entitled to make any material elections, including an election under Section 754 of the Code, unless all Members shall have consented thereto.

ARTICLE 7
Additional Members

7.1. Admission. Upon Transfer (other than a pledge permitted under Section 4.1(d)) of all or any of a Member's LLC Units permitted under Article 4, Newco is authorized to admit any Person who is a Transferee of such LLC Units as an additional member of Newco (each, an "Additional Member" and collectively, the "Additional Members"); provided, that no such Person shall be entitled to any rights hereunder except for rights under

Section 4 in a Transfer of LLC Units pursuant to Section 4.1(a), (e) or (f). Each such Person shall be admitted as an Additional Member at the time such Person executes this Agreement or a counterpart of this Agreement and such Transfer is effective under Article 4.

7.2. Acceptance of Prior Acts. Any Person who becomes an Additional Member, by becoming an Additional Member, accepts, ratifies and agrees to be bound by all actions duly taken pursuant to the terms and provisions of this Agreement by Newco prior to the date it became an Additional Member and, without limiting the generality of the foregoing, specifically ratifies and approves all agreements and other instruments as may have been executed and delivered on behalf of Newco prior to said date and which are in force and effect on said date.

ARTICLE 8
Capital Contributions and Capital Accounts

8.1. Capital Contributions. (a) At the time of the Contribution Closing, the Percentage Interests and LLC Units shall be as set forth in Schedule 8.1(a) hereto. SBC, SBC Holdings, BellSouth, each BellSouth Member and Manager shall determine the contributors' Capital Accounts (which shall be in proportion to the Members' Percentage Interests) as of the Contribution Closing within 90 days after the Contribution Closing and shall reflect such amounts on an amendment to Schedule 8.1(a) as promptly as practicable thereafter. Each of SBC and BellSouth agree that the contribution of additional assets to the capital of Newco pursuant to the terms and conditions of the Contribution Agreement shall not modify the Percentage Interests of SBC, SBC Holdings, BellSouth and the BellSouth Members set forth on Schedule 8.1(a) hereto.

(b) No Member shall be required to make any additional capital contribution to Newco, except as provided in this Article 8, Article 11 and Section 17.4 hereof and pursuant to the Contribution Agreement which payments pursuant to the Contribution Agreement shall be treated as described in Section 8.1(a). If the Manager takes action requiring an increase in the capital of Newco, each Member agrees to provide to Newco additional contributions of cash to capital. Such contributions shall be provided pro rata by each Member in proportion to its Percentage Interest in Newco immediately prior to the time of contribution.

8.2. LLC Units. LLC Units shall for all purposes be personal property. No Member shall have any interest in specific property of Newco.

8.3. Status of Capital Contributions. Except as provided in this Agreement, no Member shall be entitled to the return of its Capital Contributions. No return of a Member's Capital Contributions shall be made hereunder if such distribution would violate applicable state law. Under circumstances requiring a return of any Capital Contribution, no Member shall have

the right to demand or receive property other than cash, except as may be specifically provided in this Agreement.

8.4. Capital Accounts. An individual Capital Account shall be established and maintained for each Member in accordance with federal income tax accounting principles, except that neither SBC nor BellSouth will directly have a Capital Account as a result of the Capital Contributions made at the time of the Contribution Closing. The Capital Account of each Member shall be maintained in accordance with the following provisions:

(a) The Capital Account of each Member shall be increased by (i) the amount of any cash and the agreed net fair market value (as used herein, "agreed net fair market value" of property shall mean the gross fair market value of the property reduced by all liabilities encumbering the property) as of the date of contribution of any property contributed as a Capital Contribution to the capital of Newco by such Member, (ii) the amount of any Profits allocated to such Member and (iii) amounts of gain allocated pursuant to Section 9.1(d). The Capital Account of each Member shall be decreased by (i) the amount of any Losses allocated to such Member, (ii) the amount of any cash and the agreed net fair market value as of the date of distribution of any property distributed to such Member and (iii) amounts of loss allocated pursuant to Section 9.1(d). Except as provided in the preceding sentence, the Member's Capital Accounts shall be determined in accordance with the detailed capital accounting rules set forth in Treasury Regulation Section 1.704-1(b)(2)(iv) and shall be adjusted upon the occurrence of certain events (each, a "Revaluation") as provided in Treasury Regulation Section 1.704-1(b)(2)(iv)(*f*), provided that such events are not de minimis.

(b) A transferee of an LLC Unit shall succeed to the Capital Account (or portion of the Capital Account) attributable to such transferred LLC Unit.

8.5. Interest at the Contribution Closing. Immediately following the Contribution Closing, the Percentage Interest and number of LLC Units held by each Member and its wholly owned Subsidiaries in the aggregate shall be as follows:

Member	Percentage Interest	LLC Units
SBC	0%	0
SBC Holdings	59.9999999500000%	1,200,000,005
BellSouth	0%	0
BellSouth Mobile Data	0.8699999956500%	17,400,000
BSCC of Houston	0.4051819479741%	8,103,639
ACCC	1.5948180420259%	31,896,361
BellSouth Cellular	36.2499999687500%	725,000,003
RAM	0.8799999956000%	17,600,000
Manager	0.0000001000000%	2
TOTAL	100.0000000000000%	2,000,000,010

There will be no change to LLC Units from the amounts set forth above as a result of any contribution to or payment by Newco in accordance with the terms of the Contribution Agreement.

8.6. Contribution of Proceeds of Issuance of Shares. In connection with the issuance of Shares by Manager, Manager shall make a Capital Contribution to Newco of the proceeds raised in connection with such issuance, provided that if the proceeds actually received by Manager are less than the gross proceeds of such issuance as a result of any underwriter's discount, commission or fee or other expenses paid or incurred in connection with such issuance, then Manager shall contribute the net proceeds and shall be deemed to have made a Capital Contribution to Newco in the amount of the gross proceeds of such issuance and Newco shall be deemed simultaneously to have reimbursed Manager for the amount of such underwriter's discount, commission or fee or other expenses. Newco shall cause to be issued to Manager a number of LLC Units equal to the number of Shares issued by Manager in connection with a transaction referred to in this Section 8.6.

8.7. No Withdrawals. No Member shall be entitled to withdraw any part of its Capital Account or Capital Contributions or to receive any distributions from Newco except as expressly provided in this Agreement.

ARTICLE 15
Termination of Newco; Liquidation
and Distribution of Assets

15.1. No Dissolution. Newco shall not be dissolved by the admission of Additional Members in accordance with the terms of this Agreement.

15.2. Events Causing Dissolution. Newco shall be dissolved and its affairs shall be wound up upon the first to occur of the following events:

(a) the termination of the Contribution Agreement prior to the Contribution Closing;

(b) the written consent of all Members;

(c) any event which makes it unlawful for Newco to be continued; provided, that the Members shall have used their commercially reasonable efforts to cause Newco to be continued lawfully; or

(d) the issuance of a decree by any court of competent jurisdiction that Newco be dissolved and liquidated.

Upon dissolution, Newco shall, subject to the terms hereof, promptly wind up its affairs and shall promptly thereafter be liquidated and a certificate of cancellation of the Certificate of Formation, as required by law, shall be filed with the Secretary of State of the State of Delaware..

15.3. Winding Up. (a) In the event of the dissolution of Newco pursuant to Section 15.2, Newco's affairs shall be wound up by the Manager. Notwithstanding the dissolution of Newco, prior to the termination of Newco as aforesaid, the business of Newco and the affairs of the Members as such, shall continue to be governed by this Agreement. In connection with the winding up of Newco the Manager shall dispose of properties in accordance with subsection (d) below.

(b) Upon dissolution of Newco and until the filing of a certificate of cancellation as provided in Section 18-203 of the Act, the Manager may, in the name of, and for and on behalf of, Newco, prosecute and defend suits, whether civil, criminal or administrative, gradually settle and close Newco's business, dispose of and convey Newco's property, discharge or make reasonable provision for Newco's liabilities, and distribute to the Members in accordance with Section 15.4 any remaining assets of Newco, all without affecting the liability of Members and without imposing liability on the Manager.

(c) Upon the completion of the winding up of Newco, the Manager shall file a certificate of cancellation with the Secretary of State of the State of Delaware as provided in Section 18-203 of the Act.

(d) (i) Within ten (10) Business Days following the dissolution of Newco, the Manager shall provide to each of BellSouth and SBC a list of substantially all assets and properties of Newco grouped (each, a "Disposition Group") in the fewest number of groups which the Manager determines is reasonably likely to permit such assets and properties to be sold in an orderly distribution of assets. The Manager shall ensure that there shall be at least two Disposition Groups and that all Disposition Groups shall have substantially similar fair market values.

(ii) Within twenty (20) Business Days following the dissolution of Newco, the Initial Members and the Manager shall agree to a form of acquisition agreement for the disposition of each of the Disposition Groups. The Winning Bidder and the Manager (as liquidating trustee of Newco) shall enter into such an agreement (an "Acquisition Agreement"), which shall include provision for FCC approval of the transfer or assignment of licenses granted by the FCC and approvals of other Governmental Entities, as required, and a covenant to use commercially reasonable efforts to consummate the transaction, subject only to immaterial revisions and other revisions reasonably necessary to reflect the Disposition Group being purchased pursuant thereto, including, but not limited to, the price to be paid for such Disposition Group. Each Acquisition Agreement shall be entered into within five (5) Business Days after the Winning Bidder is determined.

(iii) Beginning on the twenty-fifth Business Day following the dissolution of Newco and continuing until all Disposition Groups shall have been auctioned, the Manager shall accept offers from the Initial Members to purchase the Disposition Groups. The order of the auctions of the Disposition Groups shall be by lot determined at the time the first of the Disposition Groups is to be auctioned. The Manager shall notify in writing the Initial Members of the time at which the Initial Members shall submit their respective bids (each, a "Bid") for a Disposition Group. Within two hours after receiving the Bid for a Disposition Group, the Manager shall notify in writing each Initial Member of the Bid so received. If a higher Bid is not received by the Manager from either Initial Member by 5:00 p.m., New York City time, on the following Business Day, the Disposition Group shall be awarded to the Initial Member making the highest Bid on the preceding day (the "Winning Bidder"). All Bids shall be in U.S. dollars and shall only be deemed received by Newco between the hours of 9 a.m. and 5 p.m., New York City time. In no event shall any Disposition Group be sold after the IPO Date to an Initial Member unless the aggregate sale price for all of the Disposition Groups shall be an amount equal to at least the product obtained by multiplying (x) the Total Outstanding Shares and (y) the average of the closing sales price of the Public Common Stock on its principal trading market or exchange for the twenty (20) trading days prior to dissolution of Newco.

(iv) In the event that an Acquisition Agreement shall be terminated prior to the consummation of the disposition of the Disposition Group contemplated thereby, the Initial Member that was not the Winning Bidder shall be notified within three (3) Business Days following such termination of its rights to purchase such Disposition Group at a price equal to the higher of (x) 90% of the price that the Winning Bidder had agreed to pay and (y) the highest price bid for such Disposition Group by such Initial Member. Such option shall only be exercised within five (5) Business Days after receipt of such notice.

(v) Newco may, in lieu of entering into an Acquisition Agreement with an Initial Member, that is a Winning Bidder, distribute the applicable Distribution Group to such Initial Member as part of the distribution pursuant to Section 15.4(c). If the highest Bid of such Initial Member exceeds the amount that would otherwise be distributed to such Initial Member pursuant to Section 15.4(c), such Initial Member shall contribute to Newco in cash an amount equal to such excess.

15.4. Distribution Upon Liquidation. Subject to Section 15.3, upon dissolution of Newco, a duly appointed trustee or liquidator as provided in this Agreement, shall promptly proceed with the liquidation of Newco and its Subsidiaries and the proceeds of such liquidation shall be applied and distributed in the following order of priority:

(a) to the payment of debts and liabilities of Newco, in order of priority as provided by law, other than debts or liabilities owed to Members, including the expenses of the liquidation and winding up, and to the setting up of any reserves that such trustee or liquidating trustee, as the case may be, shall determine are reasonably necessary for any contingent or unforeseen liabilities or obligations of Newco;

(b) to the payment of other debts and liabilities of Newco owed to Members; and

(c) to the Members in accordance with their respective Percentage Interests.

15.5. Claims of the Members. The Members and former Members shall look solely to Newco's assets for the return of their Capital Contributions, and if the assets of Newco remaining after payment of or due provision for all debts, liabilities and obligations of Newco are insufficient to return such Capital Contributions, the Members and former Members shall have no recourse against Newco, Manager or any other Member.

ARTICLE 16
Withdrawal of a Member

16.1. Withdrawal of a Member. Either Initial Member shall automatically cease to be a Member at the time it no longer Beneficially Owns any LLC Units (a "Withdrawal Event"). In the event the Total Outstanding Shares Beneficially Owned by an Initial Member becomes less than 10% of the Total Outstanding Shares or the Initial Member no longer Beneficially Owns any shares of Member Common Stock (a "Class B Triggering Event" and the Initial Member that ceases to Beneficially Own 10% of the Total Outstanding Shares or Member Common Stock, the "Departing Member"), the Departing Member shall no longer be deemed an Initial Member. Immediately after a Withdrawal Event or a Class B Triggering Event with respect to an Initial Member, such Initial Member and any of its Subsidiaries which are Members shall have no continuing rights or obligations under this Agreement (other than (x) its rights under Section 12.8 (in the case of a Withdrawal Event, in respect of books and records of Newco, relating to all periods prior to the date of the Withdrawal Event) and, (y) in the case of a Class B Triggering Event, its rights under Section 4.1(g)), but will remain subject to the terms of Ancillary Agreements to the extent provided by, and in accordance with, the express terms thereof. An Initial Member may voluntarily cause a Withdrawal Event and such action shall not be a breach of this Agreement.

16.2. Effect of Withdrawal. This Agreement shall continue notwithstanding any withdrawal of an Initial Member and all governance rights set forth herein with respect to the Initial Members shall be exercised by the sole remaining Initial Member. No withdrawal shall relieve a Member for any prior breach of this Agreement.

ARTICLE 17
Exchange of LLC Units; Pre-emptive Rights

17.1. Exchange of LLC Units. (a) Each Party hereto that is the holder (other than the Manager or any of its Subsidiaries) of an LLC Unit shall be entitled to surrender, at any time and from time to time, any or all of such holder's LLC Units to Newco in exchange for the distribution by Newco, on a one-for-one basis, of the same number of fully paid and non-

assessable shares of Public Common Stock. Manager agrees that upon any such surrender. Manager shall contribute to Newco that number of shares of Public Common Stock equal to the number of LLC Units such Member elected to exchange pursuant to this Section 17.1. Such right shall be exercised by the surrender to the Manager as agent for Newco of the certificate or certificates representing the LLC Units to be exchanged at any time during normal business hours at the principal executive offices of the Manager or at the office of the Transfer Agent (as defined in the Manager Certificate), accompanied by a written notice of the holder of such LLC Units stating that such holder desires to exchange such LLC Units, or a stated number of LLC Units represented by such certificate or certificates for exchange, into the relevant number of shares of Public Common Stock, and, if any such Public Common Stock certificate is to be issued in a name other than that of the holder of the LLC Unit or LLC Units exchanged, by instruments of transfer to Newco, in form satisfactory to the Manager, Newco and the Transfer Agent, duly executed by such holder or such holder's duly authorized attorney, and transfer tax stamps or funds therefor, if required pursuant to Section 17.1(e). No exchange of LLC Units shall be effective until such time as the appropriate number of fully paid non-assessable shares of Public Common Stock shall have been duly issued in exchange therefor.

(b) As promptly as practicable following the surrender for exchange of a certificate representing LLC Units in the manner provided in Section 17.1(e), and the payment in cash of any amount required by Section 17.1(e), Newco will deliver or cause to be delivered at the office of the Transfer Agent, a certificate or certificates representing the number of full shares of Public Common Stock issuable upon such exchange, issued in such name or names as such holder may direct; provided that Newco shall have no obligation to deliver Public Common Stock if Manager shall have failed to deliver such Public Common Stock to Newco. Such exchange shall be deemed to have been effected immediately prior to the close of business on the date of the surrender of the certificate or certificates representing LLC Units. Upon the date any such exchange is made or effected, all rights of the holder of such LLC Units as such holder shall cease, and the person or persons in whose name or names the certificate or certificates representing the shares of Public Common Stock are to be issued shall be treated for all purposes as having become the record holder or holders of such shares of Public Common Stock. Newco shall not be required to exchange LLC Units, and no surrender of LLC Units shall be effective for that purpose, while the stock transfer books of the Manager are closed for any purpose; but the surrender by Newco of LLC Units for exchange during any period while such books are closed shall be deemed effective for exchange immediately upon the reopening of such books, as if the exchange had been made on the date such LLC Unit was surrendered.

(c) If the shares of Public Common Stock are converted into another security pursuant to a reclassification or other similar transaction approved in accordance with Article FIFTH, clause (j)(i) of the Manager Certificate, then a holder of LLC Units shall be entitled to receive upon exchange the securities that such holder would have received if such exchange had occurred immediately prior to the record date of such reclassification or other similar transaction. No adjustments in respect of dividends shall be made upon the exchange of any LLC Unit; provided, however, that if an LLC Unit shall be exchanged subsequent to the record date for the payment of a dividend or other distribution on LLC Units but prior to such payment, then the registered holder of such LLC Units at the close of business on such record date shall be entitled

to receive the dividend or other distribution payable on such LLC Unit on such date notwithstanding the exchange thereof or the default in payment of the dividend or distribution due on such date.

(d) The Manager covenants that it will at all times reserve and keep available out of the authorized but unissued shares of Public Common Stock, solely for the purpose of issuance and contribution to Newco for use in the exchange of the outstanding LLC Units, such number of shares of Public Common Stock that shall be issuable upon the exchange of all such outstanding LLC Units. The Manager covenants that if any shares of Public Common Stock require registration with or approval of any governmental authority under any foreign, federal or state law before such shares of Public Common Stock may be issued upon exchange, the Manager will promptly cause such shares to be so registered or approved, as the case may be. The Manager will use its best efforts to list the shares of Public Common Stock required to be delivered by Newco upon exchange prior to such delivery upon each national securities exchange or other recognized trading market upon which the outstanding Public Common stock is listed at the time of such delivery. The Manager covenants that all shares of Public Common Stock that are contributed to Newco for distribution in exchange for the LLC Units will, upon issuance, be validly issued, fully paid and non-assessable.

(e) The issuance of certificates for shares of Public Common Stock upon exchange of LLC Units shall be made without charge to the holders of such LLC Units for any stamp or other similar tax in respect of such issuance; provided, however, that if any such certificate is to be issued in a name other than that of the holder of the LLC Units exchanged, then the person or persons requesting the issuance thereof shall pay to the Manager the amount of any tax that may be payable in respect of any transfer involved in such issuance or shall establish to the satisfaction of the Manager that such tax has been paid or is not payable.

17.2. Combinations and Subdivisions. Newco will not in any manner subdivide (by any split, distribution, reclassification, recapitalization or otherwise) or combine (by reverse split, reclassification, recapitalization or otherwise) the outstanding LLC Units unless an identical event is occurring with respect to the Public Common Stock, in which event the LLC Units shall be combined or subdivided concurrently with and in the same manner as the Public Common Stock.

17.3. Distributions. (a) In the case of dividends or other distributions by Manager consisting of voting securities of Manager other than Public Common Stock or Member Common Stock, or of voting securities of any corporation or other entity which is a Subsidiary of Manager, Manager shall ensure that, upon exchange of an LLC Unit, holders of LLC Units shall be entitled to receive, in addition to any other entitlements, the securities paid to the holders of Public Common Stock for each LLC Unit, upon the same terms and conditions applicable to the securities dividend or distributed to the holders of Public Common Stock, and shall have the same restrictions on ownership applicable to the ownership of LLC Units.

(b) In the case of dividends or other distributions by Manager consisting of securities convertible into, or exchangeable for, voting securities of the Manager or voting

securities of another corporation or other entity which is a subsidiary of Manager. Manager shall ensure that, upon exchange of an LLC Unit, holders of the LLC Units shall be entitled to receive, in addition to any other entitlements, securities convertible or exchangeable into the same underlying security as the holders of Public Common Stock received upon such dividend or distribution.

17.4. Preemptive Rights. (a) Except for issuances that are Excepted Cash Issuances, upon each issuance by Manager of Public Common Stock solely in exchange for cash (a "Qualified Issuance"), each Initial Member shall have the right in accordance with this Section 17.4 to purchase from Newco up to that number of LLC Units so that such Initial Member's percentage ownership of Total Outstanding Shares will not be reduced by such Qualified Issuance.

(b) In the event an Initial Member elects to exercise its rights under this Section 17.4, the purchase price per LLC Unit shall be equal to the deemed Capital Contribution to Newco per LLC Unit issued to Manager in respect of such Qualified Issuance, and the right to purchase LLC Units shall be conditioned upon the completion of the Qualified Issuance.

(c) Manager shall, if reasonably practicable, provide the Initial Members and Newco twenty (20) days' prior written notice of Manager's intention to effect a Qualified Issuance and in any event shall provide at least ten (10) Business Days prior written notice before any Qualified Issuance. Each such notice shall set forth the maximum offering price per share of Public Common Stock which Manager reasonably believes to be attainable in such offering, the maximum number of shares of Public Common Stock to be sold in such offering, together with an estimate of the number of LLC Units purchasable by each Initial Member if each Initial Member exercises its rights under this Section 17.4 and the number of LLC Units purchasable if the other Initial Member does not exercise such rights. The Initial Members shall thereafter have the preemptive right, exercisable by written notice to Manager and Newco within five (5) Business Days after receipt of the notice of proposed Qualified Issuance, to purchase up to the number of LLC Units set forth in the Initial Member's exercise notice, but in all cases limited to the maximum number that causes such Initial Member's percentage ownership of Total Outstanding Shares not to be reduced by such Issuance. If not all Initial Members exercise their preemptive rights as to a Qualified Issuance, then Manager shall promptly notify the other Initial Member of such fact and of the reduced maximum number of LLC Units that may be purchased pursuant to the exercise of preemptive rights. A notice from an Initial Member indicating its intention to exercise its rights hereunder shall be irrevocable and shall certify by an executive officer of the Ultimate Parent Entity of such Initial Member the number of Securities then Beneficially Owned by such Initial Member. Manager shall give any Initial Member that has agreed to purchase LLC Units pursuant to this Section 17.4 at least three (3) Business Days notice prior to the date on which the closing of the sale of LLC Units hereunder shall occur, which notice shall specify the final number of shares of Public Common Stock being sold in the Qualified Issuance and the per LLC Unit deemed Capital Contribution to be made in respect thereof. The closing of the purchase of LLC Units hereunder shall occur, to the extent legally practicable and consistent with the notice periods set forth above, at the same time and place as the Qualified Issuance and if not legally practicable then promptly after all necessary legal

approvals are obtained. The Initial Member exercising its right to purchase hereunder and Manager agree to take and cause to be taken all actions necessary to promptly obtain necessary legal approvals for the issuance of LLC Units pursuant to this Section 17.4. At the closing, any purchasing Initial Member shall certify by an executive officer its Beneficial Ownership of Securities and Manager shall cause Newco to issue the required number of LLC Units against delivery of the purchase price therefor under this Section 17.4. In the event that the transaction set forth in Newco's initial notice shall not be consummated within ninety (90) days after the date of Manager's original notice under this Section 17.4, Manager shall be required to provide a new notice of proposed Qualified Issuance pursuant to this Section 17.4(c).

(d) "Excepted Cash Issuances" shall mean issuances of Public Common Stock (i) pursuant to options or other rights granted under an employee stock option plan, stock purchase plan, similar benefit programs or agreements or under any dividend reinvestment plan; or (ii) in an IPO.

ARTICLE 18