

**ATTACHMENT C**

**QUESTION 8**

**ARTICLES OF INCORPORATION AND CERTIFICATE OF AUTHORITY TO  
TRANSACT BUSINESS IN ILLINOIS**



STATE OF ILLINOIS  
 Office of the Secretary of State  
 I hereby certify that this is a true and  
 correct copy, consisting of Two  
 pages, as taken from the original on file in  
 this office.

*Jesse White*

JESSE WHITE  
 SECRETARY OF STATE

DATED: February 27, 2002  
 BY: Jean P. Leiby, Jr.

**EXPEDITED**  
**SECRETARY OF STATE**

FEB 27 2002

EXP. FEES 25.<sup>00</sup>  
 COPY - CERT. 10.<sup>00</sup>

Form **BCA-13.15**  
(Rev. Jan. 1999)

APPLICATION FOR CERTIFICATE  
OF AUTHORITY TO  
TRANSACTION BUSINESS IN ILLINOIS

**SUBMIT IN DUPLICATE!**

Jesse White, Secretary of State  
Department of Business Services  
Springfield, IL 62756  
Telephone (217) 782-1834  
http://www.sos.state.il.us

This space for use by Secretary of State

**FILED**

FEB 21 2002

JESSE WHITE  
SECRETARY OF STATE

This space for use by  
Secretary of State

Date 02/21/02

License Fee \$ \_\_\_\_\_

Franchise Tax \$ 446.87

Filing Fee \$ 75.00

Penalties \$ \_\_\_\_\_

Approved: AW \$ 521.87

Payments must be made by  
certified check payable to the  
Illinois Secretary of State  
Department of Business Services  
600 North Dearborn Street  
Springfield, IL 62756

1. (a) CORPORATE NAME: Epana Networks, Inc.

(Complete item 1 (b) only if the corporate name is not available in this state.)

(b) ASSUMED CORPORATE NAME: \_\_\_\_\_

(By electing this assumed name, the corporation hereby agrees NOT to use its corporate name in the transaction of business in Illinois. Form BCA 4.15 is attached.)

2. (a) State or Country of Incorporation: Delaware

(b) Date of Incorporation: 9/21/00

(c) Period of Duration: Perpetual

3. (a) Address of the principal office, wherever located: 134 West 93rd Street, Apt. 7B,  
New York, NY 10025

(b) Address of principal office in Illinois:  
(If none, so state)  
None

4. Name and address of the registered agent and registered office in Illinois.

Registered Agent National Registered Agents, Inc.

First Name	Middle Name	Last Name

Registered Office 208 South LaSalle Street 1855

Number	Street	Suite #
<u>Chicago</u>	<u>60604</u>	<u>Cook</u>
City	ZIP Code	County

5. States and countries in which it is admitted or qualified to transact business: (Include state of incorporation)  
DE, MA, DC, CA, NJ, CT, MD, NY, VA, IL.

6. Names and residential addresses of officers and directors:

Name	No. & Street	City	State	ZIP
President <u>Elie Seidman</u>	<u>134 W. 93rd Street, Apt. 7B,</u>	<u>NY, NY</u>	<u>NY</u>	<u>10025</u>
Secretary <u>Meryl Ravitz</u>	<u>134 W. 93rd Street, Apt. 7B,</u>	<u>NY, NY</u>	<u>NY</u>	<u>10025</u>
Director <u>Robert J. Conrads</u>	<u>Sienna Ventures, 2330 Marinship Way, #130,</u>	<u>Sausalito, CA</u>	<u>CA</u>	<u>94965</u>
Director <u>Alex Millar</u>	<u>Bluefish Ventures, 1964 Pacific Ave., #4,</u>	<u>San Francisco, CA</u>	<u>CA</u>	<u>94109</u>
Director <u>Dev Horn</u>	<u>1604 Pheasant Lane,</u>	<u>Southlake, Texas</u>	<u>Texas</u>	<u>76092</u>

If more than 3, attach list

7. Purpose or purposes proposed to be pursued in transacting business in this state:  
 (If not sufficient space to cover this point, add one or more sheets of this size.)

EPANA PROVIDES COMMUNICATION SERVICES TO BUSINESSES IN ORDER TO ALLOW THEM TO CONNECT MULTIPLE OFFICES TOGETHER FOR VOICE VIDEO & DATA

8. Authorized and issued shares:

Class	Series	Par Value	Number of Shares Authorized	Number of Shares Issued
Common	Vtg	\$0.0001	35,000,000	5,055,000
Preferred	A	\$0.0001	4,226,572	4,226,572
Preferred	A-1	\$0.0001	14,040,956	14,943,140
Preferred	B	\$0.0001	714,285	516,575

9. Paid-in Capital: \$ \_\_\_\_\_  
 ("Paid-in Capital" replaces the terms Stated Capital & Paid-in Surplus and is equal to the total of these accounts.)

10. (a) Give an estimate of the total value of all the property\* of the corporation for the following year: \$ \_\_\_\_\_
- (b) Give an estimate of the total value of all the property\* of the corporation for the following year that will be located in Illinois: \$ \_\_\_\_\_
- (c) State the estimated total business of the corporation to be transacted by it everywhere for the following year: \$ \_\_\_\_\_
- (d) State the estimated annual business of the corporation to be transacted by it at or from places of business in the State of Illinois: \$ 0

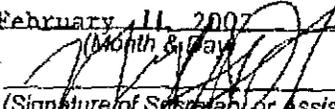
11. Interrogatories: (Important - this section must be completed.)

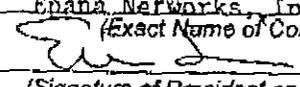
- \*\* (a) Office or offices to which all contracts with the corporation are forwarded for final acceptance: See 3A.
- (b) Number of shares of all classes owned by residents of Illinois: 0
- (c) Number of shares of all classes owned by non-residents of Illinois: 24,850,662
- (d) Is the corporation transacting business in this state at this time? No
- (e) If the answer to item 11(d) is yes, state the exact date on which it commenced to transact business in Illinois:

12. This application is accompanied by a certified copy of the articles of incorporation, as amended, duly authenticated, within the last ninety (90) days, by the proper officer of the state or country wherein the corporation is incorporated.

13. The undersigned corporation has caused this statement to be signed by its duly authorized officers, each of whom affirms, under penalties of perjury, that the facts stated herein are true. (All signatures must be in **BLACK INK**.)

Dated February 11, 2002  
 (Month & Day) (Year)

attested by   
 (Signature of Secretary or Assistant Secretary)  
Meryl Ravitz, Secretary  
 (Type or Print Name and Title)

Epana Networks, Inc  
 (Exact Name of Corporation)  
  
 (Signature of President or Vice President)  
 by Elie Seidman, President  
 (Type or Print Name and Title)

\* PROPERTY as used in this application shall apply to all property of the corporation, real, personal, tangible, intangible, or mixed without qualifications.

\*\* When the response to #11(a) lists ONLY an Illinois address, then the total business as reflected in #10(c) is also considered to be Illinois business for the purpose of computing the Illinois allocation factor. By signing this application, the corporation affirms that it is aware that the amount of paid-in capital, and consequently the amount of license fees and franchise taxes, may be proportionately higher due to the Illinois address shown under #11(a).

# Delaware

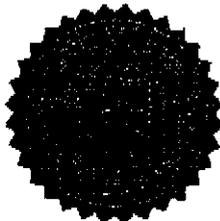
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## *The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THAT THE SAID "TSUNAMI NETWORKS, INC.", FILED A RESTATED CERTIFICATE, CHANGING ITS NAME TO "EPANA NETWORKS, INC.", THE TWENTIETH DAY OF FEBRUARY, A.D. 2002, AT 9 O'CLOCK A.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CORPORATION IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE NOT HAVING BEEN CANCELLED OR DISSOLVED SO FAR AS THE RECORDS OF THIS OFFICE SHOW AND IS DULY AUTHORIZED TO TRANSACT BUSINESS.

2002 FEB 21 A.M. 3:30



*Harriet Smith Windsor*  
Harriet Smith Windsor, Secretary of State

3288799 8320  
020112628

AUTHENTICATION: 1623137

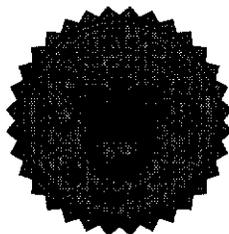
DATE: 02-20-02

# Delaware

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*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "TSUNAMI NETWORKS, INC.", CHANGING ITS NAME FROM "TSUNAMI NETWORKS, INC." TO "EPANA NETWORKS, INC.", FILED IN THIS OFFICE ON THE TWENTIETH DAY OF FEBRUARY, A.D. 2002, AT 9 O'CLOCK A.M.



*Harriet Smith Windsor*  
Harriet Smith Windsor, Secretary of State

3288799 8100

AUTHENTICATION: 1623107

020112600

DATE: 02-20-02

**SECOND AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
TSUNAMI NETWORKS, INC.**

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

Tsunami Networks, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "General Corporation Law"),

**DOES HEREBY CERTIFY:**

**FIRST:** That the name of this corporation is Tsunami Networks, Inc. and that this corporation was originally incorporated pursuant to the General Corporation Law on September 21, 2000 under the name of Tsunami Networks, Inc.

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

**RESOLVED,** that the Amended and Restated Certificate of Incorporation of this corporation be amended and restated in its entirety as follows:

**ARTICLE I**

The name of this corporation is Epana Networks, Inc.

**ARTICLE II**

The address of the registered office of this corporation in the State of Delaware is 30 Old Rudnick Road, Dover, Delaware 19901, in the City of Dover, County of Kent. The name of its registered agent at such address is Bridge Service Corp.

**ARTICLE III**

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

## ARTICLE IV

A. Classes of Stock. This corporation is authorized to issue three classes of stock to be designated, respectively, "Common Stock," "Non-Voting Common Stock" and "Preferred Stock." The total number of shares that this corporation is authorized to issue is sixty-eight million nine hundred eighty-one thousand eight hundred thirteen (68,981,813) shares. Fifty million (50,000,000) shares shall be Common Stock, of which fifteen million (15,000,000) shares shall be Non-Voting Common Stock and eighteen million nine hundred eighty-one thousand eight hundred thirteen (18,981,813) shares shall be Preferred Stock, each with a par value of \$0.0001 per share.

B. Rights, Preferences and Restrictions of Preferred Stock. The Preferred Stock authorized by this Second Amended and Restated Certificate of Incorporation may be issued from time to time in one or more series. The rights, preferences, privileges, and restrictions granted to and imposed on (i) the Series A Preferred Stock, which series shall consist of 4,226,572 shares (the "Series A Preferred Stock"), (ii) the Series A-1 Preferred Stock, which series shall consist of 14,040,956 shares (the "Series A-1 Preferred Stock") and (iii) the Series B Preferred Stock, which series shall consist of 714,285 shares (the "Series B Preferred Stock" and, together with the Series A Preferred Stock and the Series A-1 Preferred Stock, the "Preferred Stock"), are as set forth below in this Article IV(B).

1. Dividend Provisions. The holders of shares of Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of this corporation) on the Common Stock of this corporation, at the rate of \$0.0315 per share per annum for the Series A Preferred Stock, \$0.0396 per share per annum for the Series A-1 Preferred Stock and \$0.063 per share per annum for the Series B Preferred Stock (each as adjusted for any stock splits, stock dividends, recapitalizations or the like), payable when declared by the Board of Directors. Such dividends shall be cumulative. The holders of the outstanding Series A Preferred Stock, Series A-1 Preferred Stock and Series B Preferred Stock can waive any dividend preference that such holders shall be entitled to receive under this Section 1 upon the affirmative vote or written consent of the holders of at least a majority of the Preferred Stock, respectively then outstanding.

2. Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of this corporation, either voluntary or involuntary, the holders of Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of this corporation to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to \$0.35 for each outstanding share of Series A Preferred Stock (the "Original Series A Issue Price"), \$0.44 for each outstanding share of Series A-1 Preferred Stock (the "Original Series A-1 Issue Price") and \$0.70 for each share of Series B Preferred Stock (the "Original Series B Issue Price," and, together with the Original Series A Issue Price and the Original Series A-1 Issue Price, each an "Original Issue Price"), plus in each case accrued but unpaid dividends on such share (subject to adjustment of such fixed dollar amounts for any stock splits, stock dividends,

combinations, recapitalizations or the like). If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of this corporation legally available for distribution shall be distributed ratably among the holders of the Preferred Stock in proportion to the full preferential amount each such holder is otherwise entitled to receive under this subsection (a).

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

(c)

(i) For purposes of this Section 2, a liquidation, dissolution or winding up of this corporation shall be deemed to be occasioned by, or to include (A) the acquisition of this corporation by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation) that results in the transfer of fifty percent (50%) or more of the outstanding voting power of this corporation; or (B) a sale of all or substantially all of the assets of this corporation.

(ii) In any of such events, if the consideration received by this corporation is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability covered by (B) below:

(1) If traded on a securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange or system over the ten (10) day period ending three (3) days prior to the closing;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the ten (10) day period ending three (3) days prior to the closing; and

(3) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by this corporation and the holders of at least a majority of the voting power of all then outstanding shares of Preferred Stock.

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (A) (1), (2) or (3) to reflect the approximate fair market value thereof, as mutually determined by this corporation and the holders of at least a majority of the voting power of all then outstanding shares of such Preferred Stock.

(iii) In the event the requirements of this subsection 2(c) are not complied with, this corporation shall forthwith either:

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

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

(iv) This corporation shall give each holder of record of Preferred Stock written notice of such impending transaction not later than twenty (20) days prior to the stockholders' meeting called to approve such transaction, or twenty (20) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 2, and this corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than twenty (20) days after this corporation has given the first notice provided for herein or sooner than ten (10) days after this corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of Preferred Stock that are entitled to such notice rights or similar notice rights and that represent at least a majority of the voting power of all then outstanding shares of such Preferred Stock.

3. Conversion. The holders of the Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of this corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by:

(i) in the case of the Series A Preferred Stock, dividing the Original Series A Issue Price by the Series A Conversion Price applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion;

(ii) in the case of the Series A-1 Preferred Stock, dividing the Original Series A-1 Issue Price by the Series A-1 Conversion Price applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion; and

(iii) in the case of the Series B Preferred Stock, dividing the original Series B Issue Price by the Series B Conversion Price applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion.

The initial "Series A Conversion Price" per share for the Series A Preferred Stock shall be the Original Series A Issue Price, the initial "Series A-1 Conversion Price" per share for the Series A-1 Preferred Stock shall be the Original Series A-1 Issue Price

and the initial "Series B Conversion Price" (together with the Series A Conversion Price and the Series A-1 Conversion Price, each a "Conversion Price") per share for the Series B Preferred Stock shall be the Original Series B Issue Price; provided, however, that each such Conversion Price for the Preferred Stock shall be subject to adjustment as set forth in subsection 3(d).

(b) Automatic Conversion. Each share of Series A Preferred Stock, Series A-1 Preferred Stock and Series B Preferred Stock shall automatically be converted into shares of Common Stock at the Series A Conversion Price, Series A-1 Conversion Price or Series B Conversion Price, as the case may be, at the time in effect immediately upon the earlier of (i) this corporation's sale of at least 20% of its Common Stock (on a fully-diluted basis) in a firm commitment underwritten public offering pursuant to a registration statement on Form S-1 or Form SB-2 under the Securities Act of 1933, as amended, the public offering price of which was not less than \$30,000,000 in the aggregate or (ii) the date specified by written consent or agreement of the holders of a majority of the then outstanding shares of Preferred Stock.

(c) Mechanics of Conversion. Before any holder of Preferred Stock shall be entitled to convert the same into shares of Common Stock, he or she shall surrender the certificate or certificates therefor, duly endorsed, at the office of this corporation or of any transfer agent for the Preferred Stock, and shall give written notice to this corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. This corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act of 1933, the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the persons entitled to receive the Common Stock upon conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(d) Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations. The Series A Conversion Price, Series A-1 Conversion Price and Series B Conversion Price shall be subject to adjustment from time to time as follows:

(i) (A) If this corporation shall issue, after February \_\_, 2002 (the "Purchase Date"), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Series A Conversion Price, the Series A-1 Conversion Price or the Series B Conversion Price, as the case may be, in effect immediately prior to the issuance of such Additional Stock, then the Conversion Price for such series in effect immediately prior to each such issuance shall forthwith (except as otherwise provided in this clause (i)) be adjusted to a price determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance

(including shares of Common Stock deemed to be issued pursuant to subsection 3(d)(i)(E)(1) or (2)) plus the number of shares of Common Stock that the aggregate consideration received by this corporation for such issuance would purchase at such Conversion Price; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (including shares of Common Stock deemed to be issued pursuant to subsection 3(d)(i)(E)(1) or (2)) plus the number of shares of such Additional Stock.

However, the foregoing calculation shall not take into account shares deemed issued pursuant to Section 3(d)(i)(E) on account of options, rights or convertible or exchangeable securities (or the actual or deemed consideration therefor), except to the extent the consideration to be paid upon such exercise, conversion or exchange per share of underlying Common Stock is less than or equal to the per share consideration for the Additional Stock that has given rise to the Conversion Price adjustment being calculated.

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

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

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

(E) In the case of the issuance of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this subsection 3(d)(i) and subsection 3(d)(ii):

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in subsections

3(d)(i)(C) and (d)(i)(D)), if any, received by this corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of, or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for, any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by this corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by this corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in subsections 3(d)(i)(C) and (d)(i)(D)).

(3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to this corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof (unless such options or rights or convertible or exchangeable securities were merely deemed to be included in the numerator and denominator for purposes of determining the number of shares of Common Stock outstanding for purposes of subsection 3(d)(i)(A)), the Conversion Price of any series of Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price of the Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities (unless such options or rights were merely deemed to be included in the numerator and denominator for purposes of determining the number of shares of Common Stock outstanding for purposes of subsection 3(d)(i)(A)), shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities that remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(5) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to subsections 3(d)(i)(E)(1) and (2)

shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either subsection 3(d)(i)(E)(3) or (4).

(ii) "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to subsection 3(d)(i)(E)) by this corporation after the Purchase Date other than:

(A) Common Stock issued pursuant to a transaction described in subsection 3(d)(iii) hereof; or

(B) up to 700,000 shares of Common Stock (excluding shares repurchased at cost by this corporation in connection with the termination of service) issuable or issued to employees, consultants, directors or vendors (if in transactions with primarily non-financing purposes) of this corporation directly or pursuant to a stock option plan or restricted stock plan approved by the Board of Directors of this corporation.

(C) Common Stock issued upon conversion of any shares of Preferred Stock.

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

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

(e) Other Distributions. In the event this corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by this corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in subsection 3(d)(iii), then, in each such case for the purpose of this subsection 3(e), the holders of Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of this corporation into

which their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of this corporation entitled to receive such distribution.

(f) Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 3 or Section 2) provision shall be made so that the holders of Preferred Stock shall thereafter be entitled to receive upon conversion of Preferred Stock the number of shares of stock or other securities or property of this corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 3 with respect to the rights of the holders of Preferred Stock after the recapitalization to the end that the provisions of this Section 3 (including adjustment of each Conversion Price then in effect and the number of shares purchasable upon conversion of the Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(g) No Impairment. This corporation will not, by amendment of its Second Amended and Restated Certificate of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by this corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 3 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of Preferred Stock against impairment.

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

(i) No fractional shares shall be issued upon conversion of the Preferred Stock. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion. If the conversion would result in any fractional share, this corporation shall, in lieu of issuing any fractional share, pay the holder an amount in cash equal to the fair market value of such fractional share on the date of conversion, as determined in good faith by the Board of Directors.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of any series of Preferred Stock pursuant to this Section 3, this corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Preferred Stock so affected a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. This corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price for such series of Preferred Stock at the time in effect, and (C) the number of shares of Common Stock and the

amount, if any, of other property that at the time would be received upon the conversion of a share of such series of Preferred Stock.

(i) Notices of Record Date. In the event of any taking by this corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, this corporation shall mail to each holder of Preferred Stock, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

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

(k) Notices. Any notice required by the provisions of this Section 3 to be given to the holders of shares of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of this corporation.

#### 4. Voting Rights.

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

#### 5. Protective Provisions.

(a) So long as at least (i) 1,000,000 shares of Series A Preferred Stock, (ii) 1,750,000 shares of Series A-1 Preferred Stock or (iii) 150,000 shares of Series B Preferred Stock are outstanding (in each case, subject to adjustment for any stock splits, stock dividends, combinations, recapitalizations or the like), this corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least two-thirds of the then outstanding shares of Preferred Stock (voting on an as-converted basis):

(i) sell, convey, or otherwise dispose of all or substantially all of its property or business or merge into or consolidate with any other corporation (other than a wholly-owned subsidiary corporation) or effect any transaction or series of related transactions in which more than fifty percent (50%) of the voting power of this corporation is disposed of;

(ii) authorize or issue, or obligate itself to issue, any other equity security (including any other security convertible into or exercisable for any such equity security) having a preference over, or being on a parity with, the Series B Preferred Stock with respect to dividends, liquidation, redemption or voting;

(iii) redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any share or shares of Preferred Stock, Common Stock or Non-Voting Common Stock; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for this corporation or any subsidiary pursuant to agreements under which this corporation has the option to repurchase such shares at cost or at cost upon the occurrence of certain events, such as the termination of employment;

(iv) amend this corporation's Second Amended and Restated Certificate of Incorporation or bylaws;

(v) change the authorized number of directors of this corporation;

(vi) authorize the issuance (other than any issuance to employees, officers, directors, consultants or other persons performing services for this corporation directly or pursuant to a stock option plan or restricted stock plan) of any equity security at a per share price less than \$0.70;

(vii) authorize a reclassification or recapitalization of the outstanding capital stock of this corporation;

(viii) merge or consolidate with or into another entity (except for a merger or consolidation (A) the sole purpose of which is to change the jurisdiction of incorporation of this corporation or (B) in which the equity ownership of the surviving entity is substantially identical to that of this corporation immediately prior thereto);

(ix) file (or consent to the filing against it of) a petition in bankruptcy or for similar relief pursuant to present or future federal bankruptcy, insolvency or similar law or the law of any other jurisdiction; consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) for all or any substantial part of its property; make a general assignment for the benefit of creditors; admit

in writing its inability to pay its debts generally as they become due; or commence any proceeding for its voluntary or involuntary dissolution, liquidation or winding up of its affairs;

(x) declare or pay any dividend or distribution on any shares of capital stock junior to the Series B Preferred Stock;

(xi) authorize the issuance of any options to acquire shares of Common Stock to employees at an exercise price less than the fair market value of the Common Stock as of the date of grant as determined in good faith by the Board of Directors of this corporation or the compensation committee thereof;

(xii) amend in any material respect its stock option plan or restricted stock plan;

(xiii) adopt a stock option plan other than the Tsunami Networks, Inc. 2001 Stock Option Plan or the Epana Networks, Inc. 2002 Stock Plan; or

(xiv) agree to any of the foregoing.

(b) So long as at least 1,000,000 shares of Series A Preferred Stock are outstanding (subject to adjustment for any stock splits, stock dividends, combinations, recapitalizations or the like), this corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock:

(i) alter or change the rights, preferences or privileges of the shares of Series A Preferred Stock so as to affect adversely the shares; or

(ii) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series A Preferred Stock.

(c) So long as at least 1,750,000 shares of Series A-1 Preferred Stock are outstanding (subject to adjustment for any stock splits, stock dividends, combinations, recapitalizations or the like), this corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series A-1 Preferred Stock:

(i) alter or change the rights, preferences or privileges of the shares of Series A-1 Preferred Stock so as to affect adversely the shares; or

(ii) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series A-1 Preferred Stock.

(d) So long as at least 150,000 shares of Series B Preferred Stock are outstanding (subject to adjustment for any stock splits, stock dividends, combinations, recapitalizations or the like), this corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series B Preferred Stock:

(i) alter or change the rights, preferences or privileges of the shares of Series B Preferred Stock so as to affect adversely the shares; or

(ii) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series B Preferred Stock.

6. Status of Converted Stock. In the event any shares of Preferred Stock shall be converted pursuant to Section 3 hereof, the shares so converted shall be cancelled and shall not be issuable by this corporation. The Second Amended and Restated Certificate of Incorporation of this corporation shall be appropriately amended to effect the corresponding reduction in this corporation's authorized capital stock.

C. Common Stock; Non-Voting Common Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Common Stock and the Non-Voting Common Stock are as set forth below in this Article IV(C). Except as set forth in this Section C, the Common Stock and the Non-Voting Common Stock shall have the same rights, powers and privileges and shall rank equally, share ratably and be identical in all respects as to all matters.

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

2. Liquidation Rights. Upon the liquidation, dissolution or winding up of this corporation, the assets of this corporation shall be distributed as provided in Section 2 of Section (B) of Article IV hereof.

3. Redemption. Neither the Common Stock nor the Non-Voting Common Stock is redeemable at the option of the holder.

4. Voting Rights.

(a) The holder of each share of Common Stock shall have the right to one vote for each such share, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of this corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

(b) The holders of shares of Non-Voting Common Stock shall not be entitled to any voting rights in respect of such shares, except (i) as required by law and (ii) that none of the rights, powers or privileges of the Non-Voting Common Stock shall be amended, altered or changed so as to adversely affect the holders of Non-Voting Common Stock without the affirmative vote of the holders of a majority of the outstanding shares of Non-Voting Common Stock, voting as a single class.

(c) Notwithstanding anything stated herein to the contrary, the number of authorized shares of Common Stock, Non-Voting Common Stock or both may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote

of the holders of a majority of the stock of this corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

#### ARTICLE V

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

#### ARTICLE VI

The number of directors of this corporation shall be fixed from time to time by a bylaw or amendment thereof duly adopted by the Board of Directors or by the stockholders.

#### ARTICLE VII

Elections of directors need not be by written ballot unless the bylaws of this corporation shall so provide.

#### ARTICLE VIII

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

#### ARTICLE IX

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

Any amendment, repeal or modification of this Article IX, or the adoption of any provision of this Second Amended and Restated Certificate of Incorporation inconsistent with this Article IX, by the stockholders of this corporation shall not apply to or adversely affect any right or protection of a director of this corporation existing at the time of such amendment, repeal, modification or adoption.

## ARTICLE X

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

## ARTICLE XI

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

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

\* \* \*

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

**FOURTH:** That said amendment and restatement was duly adopted in accordance with the provisions of Section 242 and 245 of the General Corporation Law.

IN WITNESS WHEREOF, this Second Amended and Restated Certificate of Incorporation has been executed by the President of this corporation on this 19 day of February, 2002.



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Elie Seidman, President