

**KELLEY DRYE & WARREN LLP**

A LIMITED LIABILITY PARTNERSHIP

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BRUSSELS, BELGIUM

AFFILIATE OFFICES  
BANGKOK, THAILAND  
JAKARTA, INDONESIA  
MUMBAI, INDIA  
TOKYO, JAPAN

January 30, 2004

**VIA UPS**

The Honorable Dale Hardy Roberts, Secretary  
Missouri Public Service Commission  
Governor Office Building  
200 Madison Street  
Jefferson City, MO 65102-0360

**FILED<sup>4</sup>**

FEB 02 2004

Missouri Public  
Service Commission

Re: Case No. TA-2000-335: Tariff Filing and Name Change

Dear Judge Hardy:

Please find attached for filing with the Missouri Public Service Commission an original and eight (8) copies of the initial tariff of AboveNet Communications, Inc. ("AboveNet"). This tariff filing reflects the name change of Metromedia Fiber Network Services, Inc. to AboveNet Communications, Inc., which was the subject of a notification filed with the Commission on September 29, 2003 and attached hereto as Exhibit A. AboveNet's new tariff is attached hereto as Exhibit B.

Also enclosed, please date-stamp the duplicate upon receipt and return it in the envelope provided. Please feel free to contact the undersigned counsel at (202) 887-1284 if you have any questions regarding this filing.

Respectfully submitted,

  
Heather T. Hendrickson

Enclosures

## **EXHIBIT A**

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

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AFFILIATE OFFICES  
BANGKOK, THAILAND  
JAKARTA, INDONESIA  
MUMBAI, INDIA  
TOKYO, JAPAN

September 29, 2003

FILED<sup>2</sup>

SEP 30 2003

Missouri Public  
Service Commission

VIA UPS

The Honorable Dale Hardy Roberts, Secretary  
Missouri Public Service Commission  
Governor Office Building  
200 Madison Street  
Jefferson City, MO 65102-0360

Re: Notification of Consummation of Transaction, Emergence from  
Bankruptcy and Name Change of Metromedia Fiber Network Services,  
Inc. to AboveNet Communications, Inc.

Dear Judge Hardy:

Metromedia Fiber Network Services, Inc. ("MFNS"), by its attorneys, hereby respectfully notifies the Missouri Public Service Commission ("Commission") of its emergence from Chapter 11 bankruptcy and name change to AboveNet Communications, Inc. ("AboveNet").<sup>1</sup> MFNS currently is authorized by the Commission to provide to provide local and interexchange private line services to customers within the State of Missouri.<sup>2</sup> This name change is related to the transfer of control of MFNS from its corporate parent, Metromedia Fiber Network, Inc., Debtor-In-Possession ("MFN"), to a newly reorganized Metromedia Fiber Network, Inc. (renamed, AboveNet, Inc.) that has been consummated in accordance with a plan of reorganization for the emergence of MFNS from Chapter 11 bankruptcy, approved by the bankruptcy court on August 21, 2003.<sup>3</sup> This transfer of control was the subject of the

<sup>1</sup> Copies of the amended Articles of Incorporation and the amended qualification of MFNS to transact business within the State of Missouri are appended hereto as *Exhibit A*.

<sup>2</sup> See Case No. TA-2000-335 (Feb. 25, 2000).

<sup>3</sup> See Order Confirming Second Amended Plan of Reorganization of Metromedia Fiber Network, Inc., et al., Case No. 02-22736 (ASH) through 02-22742 (ASH); 02-22744 (ASH)

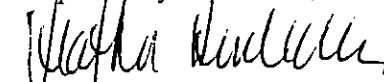
The Honorable Dale Hardy Roberts, Secretary  
Missouri Public Service Commission  
September 29, 2003  
Page Two

Notification filed with the Commission on June 4, 2003. In its Notification, MFNS noted that it would change its name to AboveNet upon emergence from bankruptcy. The name change will not result in a change in the carrier offering telecommunications services to consumers in Missouri, or in the telecommunications services, rates, terms and conditions of service that currently are offered to consumers in Missouri. The contact for Commission and customer inquiries for AboveNet is: Jill Sandford, AboveNet, Inc., 360 Hamilton Avenue, White Plains, New York 10601, (914) 421-7585. Accordingly, the name change described herein will have no adverse impact on current customers of MFNS, renamed as AboveNet, in Missouri.

All customers have been notified of the reorganization and the name change of MFNS to AboveNet. To avoid any customer confusion or inconvenience, MFNS has provided written notification of the name change described herein to all of its current customers not less than thirty (30) days prior to the name change.

This letter is provided solely for the informational purposes of the Commission, and in the interest of maintaining the accuracy of the Commission's records for MFNS, renamed AboveNet. It is our understanding that formal Commission approval is not required in this matter. Enclosed please find eight (8) copies of this filing, a duplicate and a self-addressed, postage-paid envelope. Please date-stamp the duplicate upon receipt and return it in the envelope provided. Please feel free to contact the undersigned counsel at (202) 887-1284 if you have any questions regarding this filing.

Respectfully submitted,



Heather T. Hendrickson

Counsel to Metromedia Fiber Network  
Services, Inc.

Enclosures

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through 02-22746 (ASH); 02-22749 (ASH); 02-22751 (ASH) through 02-22754 (ASH) (Bankr. S.D.N.Y.) .

## EXHIBIT A

# STATE OF MISSOURI



Matt Blunt  
Secretary of State

## AMENDED CERTIFICATE OF AUTHORITY OF A FOREIGN CORPORATION

WHEREAS,


*ABOVENET COMMUNICATIONS, INC.*  
F00474349

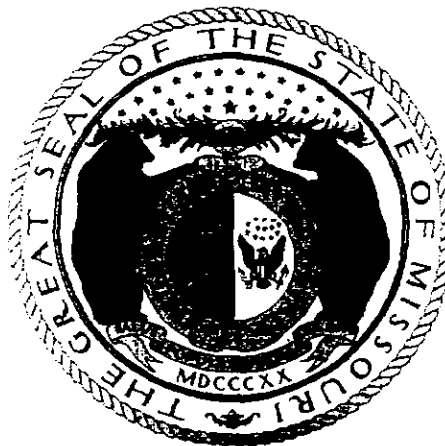
FORMERLY,

*METROMEDIA FIBER NETWORK SERVICES, INC.*

incorporated under the laws of the State of Delaware and now in existence and in good standing in said State, and qualified to transact business in Missouri has delivered to me, duly authenticated evidence of an amendment to its Articles of Incorporation as provided by law, and has, in all respects, complied with the requirements of The General and Business Corporation Law of Missouri, governing Amendments to the Articles of Incorporation of Foreign Corporations, and in accordance therewith issue this Certificate of Amendment.

IN TESTIMONY WHEREOF, I have set my hand and imprinted the GREAT SEAL of the State of Missouri, on this, the 17th day of September, 2003.

  
Secretary of State





T0326007150



File Number: 200326121105

Charter # F00474349

Date Filed: 09/17/2003 11:21 AM

Matt Blunt

Secretary of State

Corp

P.O. Box 1707000, Westwood Station, Room 302  
Jefferson City, MO 65102

**Application for an Amended Certificate of  
Authority for a Foreign Corporation**

(Submit in duplicate with filing fee of \$25.00)

The below corporation, relating to amending its certificate of authority of Foreign Corporation, does hereby state:

- (1) Its name is: Metromedia Fiber Network Services, Inc.  
and is incorporated in the State of: Delaware; and it  
was qualified in the State of Missouri on September 20, 1999  
(month/day/year)
- (2) By appropriate corporate action on: August 29, 2003, the corporation:  
(month/day/year)
- (1) Changed its corporate name to: AboveNet Communications, Inc.  
Name it will use in Missouri if new name not available: \_\_\_\_\_
- (2) Changed its period of duration to: \_\_\_\_\_
- (3) Changed the state or country of its incorporation to: \_\_\_\_\_
- (3) There is attached hereto a Certificate of the Secretary of State of the State of Delaware  
relating to the amendment(s), set forth in item 2 above and showing that the Corporation is in existence and in  
good standing in said State.
- (4) The effective date of this document is the date it is filed by the Secretary of State of Missouri, unless you indicate  
a future date, as follows: \_\_\_\_\_  
(Date may not be more than 90 days after the filing date in this office)

In affirmation thereof the facts stated above are true.

(Authorized Signature)

(Printed Name)

(Title)

(month/day/year)

Attached is an original current certificate attesting to the change, duly authenticated by the secretary of state or  
other official having custody of corporate records in the state or country of incorporation.

# Delaware

PAGE 1

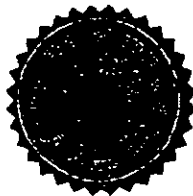
*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THAT THE SAID "METROMEDIA FIBER NETWORK SERVICES, INC.", FILED A RESTATED CERTIFICATE, CHANGING ITS NAME TO "ABOVENET COMMUNICATIONS, INC.", THE TWENTY-NINTH DAY OF AUGUST, A.D. 2003, AT 5:32 O'CLOCK P.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.

AND I DO HEREBY FURTHER CERTIFY THAT THE FRANCHISE TAXES HAVE BEEN PAID TO DATE.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL REPORTS HAVE BEEN FILED TO DATE.



*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

2842465 8320

030592732

AUTHENTICATION: 2633751

DATE: 09-15-03



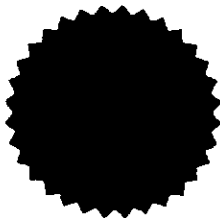
# Delaware

PAGE 1

*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 "METROMEDIA FIBER NETWORK SERVICES, INC.", CHANGING ITS NAME FROM "METROMEDIA FIBER NETWORK SERVICES, INC." TO "ABOVENET COMMUNICATIONS, INC.", FILED IN THIS OFFICE ON THE TWENTY-NINTH DAY OF AUGUST, A.D. 2003, AT 5:32 O'CLOCK P.M.

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



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

2842465 8100

030563799

AUTHENTICATION: 2610703

DATE: 09-02-03

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF

METROMEDIA FIBER NETWORK SERVICES, INC.

(pursuant to Section 245 and 303 of  
the General Corporation Law of the State of Delaware (the "GCL"))

The undersigned, being the Senior Vice President and General Counsel of Metromedia Fiber Network Services, Inc., hereby certifies and sets forth:

**FIRST:** The name of the corporation is Metromedia Fiber Network Services, Inc. (the "Corporation").

**SECOND:** The original Certificate of Incorporation of the Corporation was filed with the State of Delaware on January 6, 1998.

**THIRD:** The Certificate of Incorporation is hereby amended and restated to read in full as set forth in the attached Exhibit A.

**FOURTH:** This Amended and Restated Certificate of Incorporation was authorized and adopted pursuant to a Plan of Reorganization (the "Plan") and the decrees and orders of the court relative thereto and in accordance with Section 303 of the GCL.

**FIFTH:** The Plan was approved in the proceeding In re Metromedia Fiber Network, Inc. et al., Case Nos. 02-22736 through 02-22742 (ASH), 02-22744 (ASH) through 02-22746 (ASH), 02-22749 (ASH), 02-22751 (ASH) through 02-22754 (ASH) (Jointly Administered) currently pending in the United States Bankruptcy Court for the Southern District of New York. The Corporation filed its voluntary petition for relief under chapter 11 of title 11 of the United States Code on May 20, 2002. The Plan was submitted as of July 1, 2003 and an order confirming the Plan was entered on August 21, 2003.

IN WITNESS WHEREOF, the undersigned has executed this Amended and Restated Certificate of Incorporation as of August 22, 2003.

/s/ Robert Sokota  
Robert Sokota

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF**

**ABOVENET COMMUNICATIONS, INC.**

(pursuant to Section 245 and 303 of  
the General Corporation Law of the State of Delaware (the "GCL"))

**FIRST:** The name of the Corporation is AboveNet Communications, Inc.  
(the "Corporation").

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

**THIRD:** The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware (the "GCL").

**FOURTH:** The total number of shares of stock which the Corporation shall have authority to issue is 1,000 shares of common stock ("Common Stock"), par value \$.01 per share.

The Corporation shall be prohibited from issuing nonvoting stock.

**FIFTH:** (a) The Corporation shall, to the fullest extent permitted by the GCL, as amended from time to time, and as provided in the bylaws of the Corporation (the "Bylaws"), indemnify and hold harmless any and all directors and officers whom it shall have the power to indemnify pursuant to the GCL or the Bylaws from and against any and all liabilities (including expenses) imposed on or reasonably incurred by such directors or officers in connection with any actual or threatened action, suit or other proceeding in which any such director or officer may become involved as a defendant or otherwise or by which such director or officer may be threatened with involvement as a defendant or otherwise, or as to which the power to indemnify may exist under the GCL or Bylaws or otherwise at law or in equity, in each case as to actions brought by reason of the fact that such director or officer is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other entity or enterprise, as the case may be, and such obligation shall continue notwithstanding that any such person shall have ceased to serve as a director or officer of the Corporation.

(b) The Corporation may, to the fullest extent permitted by the GCL, as amended from time to time, and as provided in the Bylaws, indemnify and hold harmless any and all persons whom it shall have the power to indemnify pursuant to the GCL or the Bylaws from

and against any and all liabilities (including expenses) imposed on or reasonably incurred by such persons in connection with any actual or threatened action, suit or other proceeding in which any such person may become involved as a defendant or otherwise or by which such person may be threatened with involvement as a defendant or otherwise, or as to which the power to indemnify may exist under the GCL or Bylaws or otherwise at law or in equity, in each case as to actions brought by reason of the fact that such person is or was an employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other entity or enterprise, as the case may be.

(c) Expenses (including attorneys' fees) incurred by a director or officer in defending a civil or criminal action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation. Such expenses incurred by other employees and agents (including attorneys' fees) may be so paid upon such terms and conditions, if any, as the Board of Directors of the Corporation (the "Board of Directors") deems appropriate.

**SIXTH:** A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the GCL, or (iv) for any transaction from which the director derived any improper personal benefit. If the GCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of directors of the Corporation shall be eliminated or limited to the fullest extent permitted by the GCL, as so amended. No amendment or repeal of this Article SIXTH or of Article FIFTH of this Amended and Restated Certificate of Incorporation, as it may be further amended (this "Certificate") shall apply to or have any effect on the liability or alleged liability or right to indemnity of any director of the Corporation for or with respect to any acts or omissions of such director occurring at the time of or prior to such amendment or repeal.

**SEVENTH:** Whenever a compromise or arrangement is proposed between the Corporation and its creditors or any class of them and/or between the 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 the Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for the Corporation under the provisions of Section 291 of the GCL or on the application of trustees in dissolution or of any receiver or receivers appointed for the Corporation under the provisions of Section 279 of the GCL, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the 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 the

Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of the Corporation as a 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 the Corporation, as the case may be, and also on the Corporation.

**EIGHTH:** In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized and empowered to make, alter, amend or repeal the Bylaws in any manner not inconsistent with this Certificate or the laws of the State of Delaware, subject to the power of the stockholders of the Corporation having voting power to alter, amend or repeal the Bylaws.

**NINTH:** The stockholders shall be entitled to vote at any duly called meeting of the stockholders or by written consent of the stockholders in accordance with the Bylaws.

**TENTH:** Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders shall be given in the manner provided in the Bylaws or may be waived by written consent of any stockholder.

**ELEVENTH:** 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 law, and all rights and powers conferred upon stockholders are subject to this reservation.