

READ INSTRUCTIONS CAREFULLY  
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION  
REMITTANCE ADVICE

Approved by OMB  
3060-0589  
Page No 1 of   

(1) LOCKBOX #

SPECIAL USE  
FCC USE ONLY

SECTION A - PAYER INFORMATION

(2) PAYER NAME (if paying by credit card, enter name exactly as it appears on your card)  
ORBCOMM LLC (3) TOTAL AMOUNT PAID (U.S. Dollars and cents)  
\$100.00

(4) STREET ADDRESS LINE NO. 1  
21819 Atlantic Boulevard

(5) STREET ADDRESS LINE NO. 2

(6) CITY Dulles (7) STATE VA (8) ZIP CODE 20166

(9) DAYTIME TELEPHONE NUMBER (include area code) 301-384-5699 (10) COUNTRY CODE (if not in U.S.A.)

FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED

(11) PAYER (FRN) (12) PAYER (TIN)

IF PAYER NAME AND THE APPLICANT NAME ARE DIFFERENT, COMPLETE SECTION B  
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)

(13) APPLICANT NAME ORBCOMM License Corp.

(14) STREET ADDRESS LINE NO. 1  
21819 Atlantic Boulevard

(15) STREET ADDRESS LINE NO. 2

(16) CITY Dulles (17) STATE VA (18) ZIP CODE 20166

(19) DAYTIME TELEPHONE NUMBER (include area code) (20) COUNTRY CODE (if not in U.S.A.)

FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED

(21) APPLICANT (FRN) 0004-3792-02 (22) APPLICANT (TIN)

COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

(23A) CALL SIGN/OTHER ID WB2XDL (24A) PAYMENT TYPE CODE EAE (25A) QUANTITY 1

(26A) FEE DUE FOR (PTC) \$50.00 (27A) TOTAL FEE \$50.00 FCC USE ONLY

(28A) FCC CODE 1 (29A) FCC CODE 2

(23B) CALL SIGN/OTHER ID WB2XGL (24B) PAYMENT TYPE CODE EAE (25B) QUANTITY 1

(26B) FEE DUE FOR (PTC) \$50.00 (27B) TOTAL FEE \$50.00 FCC USE ONLY

(28B) FCC CODE 1 (29B) FCC CODE 2

SECTION D - CERTIFICATION

(30) CERTIFICATION STATEMENT  
I, Don Franco, certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief. SIGNATURE Don Franco DATE 7-25-01

SECTION E - CREDIT CARD PAYMENT INFORMATION

(31)  MASTERCARD MASTERCARD/VISA ACCOUNT NUMBER: EXPIRATION DATE:

VISA I hereby authorize the FCC to charge my VISA or MASTERCARD for the service(s)/authorization herein described. SIGNATURE DATE

**WALTER SONNENFELDT & ASSOCIATES**

14732 Jaystone Drive  
Silver Spring, Maryland 20905  
301-384-5699  
Telecopier 301-384-6603  
E-mail: WSATELECOM@compuserve.com

July 26, 2001

Ms. Magalie Roman Salas, Secretary  
Federal Communications Commission  
Room TW-A325  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: Application For Consent To Assign  
Experimental Authorizations Associated With  
the ORBCOMM NVNG MSS System

Call Signs      WB2XDL & WB2XGL

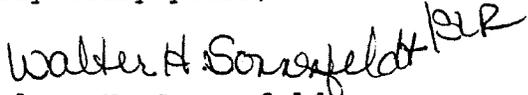
Dear Ms. Salas:

Transmitted herewith on behalf of our client, proposed Assignee ORBCOMM License Corp., and Orbital Communications Corporation, the licensee and prospective Assignor of the above-referenced NVNG MSS experimental authorizations, is an original and four copies of an Application for Consent to Assignment of License on FCC Form 702. An FCC Form 159 and a check in the amount of \$100.00, the required filing fee, are also enclosed.

The attached application, along with three other concurrently filed applications, are being submitted in connection with the resolution of the Chapter 11 bankruptcy reorganization of ORBCOMM Global, L.P., and the transfer of assets relating to the ORBCOMM NVNG MSS system relating thereto.

Kindly direct any inquiries concerning this submission to the undersigned.

Very truly yours,

  
Walter H. Sonnenfeldt  
Counsel to ORBCOMM License Corp.

WHS:slr  
Enclosures

Federal Communications Commission  
 Washington, DC 20554  
**FCC 702**

Approved by OMB  
 3060-0068  
 Est. Avg. Burden Per  
 Response: 5 Hours

FOR FCC USE ONLY	

**APPLICATION FOR CONSENT TO ASSIGNMENT OF RADIO STATION CONSTRUCTION  
 AUTHORIZATION OR LICENSE (For Stations in Services Other Than Broadcast)**

READ INSTRUCTIONS BEFORE COMPLETING

**SECTION I (FEE PORTION)**

**PART I**

Applicant Name (Last, First, Middle Initial)

ORBCOMM License Corp.

Mailing Address (Street or P. O. Box)

21819 Atlantic Boulevard

City Dulles	State or Country (if foreign address) VA	ZIP Code 20166
Call Sign or Other FCC Identifier WB2XDL; WB2XGL	Taxpayer Identification Number 	

Internet or E-Mail Address

Enter in Column (A) the correct Fee Type Code for the service you are applying for. Fee Type Codes may be found in the Wireless Telecommunications Bureau Fee Filing Guide. Enter in Column (B) the Fee Multiple, if applicable. Enter in Column (C) the result obtained by multiplying the value of the Fee Type Code in Column (A) by the number entered in Column (B), if any.

(A) FEE TYPE CODE	(B) FEE MULTIPLE (if required)	(C) FEE DUE	FOR FCC USE ONLY
(1) E A E	2	\$ 100.00	

**PART II - To be used only when you are requesting concurrent actions which result in a requirement to list more than one Fee Type Code.**

(A) FEE TYPE CODE	(B) FEE MULTIPLE (if required)	(C) FEE DUE	FOR FCC USE ONLY
(2) [ ] [ ] [ ]	[ ]	\$ [ ]	
(3) [ ] [ ] [ ]	[ ]	\$ [ ]	
(4) [ ] [ ] [ ]	[ ]	\$ [ ]	
(5) [ ] [ ] [ ]	[ ]	\$ [ ]	

ADD ALL AMOUNTS SHOWN IN COLUMN (C), LINES (1) THROUGH (5), AND ENTER THE TOTAL HERE. THIS AMOUNT SHOULD EQUAL YOUR ENCLOSED REMITTANCE.

TOTAL AMOUNT REMITTED	FOR FCC USE ONLY
\$ 100.00	

SECTION II (APPLICATION PORTION)	FOR FCC USE ONLY	
	Service	File No. and Call Sign

**INSTRUCTIONS**

Section II contains two parts:  
**PART I** is to be completed by assignor (the present permittee or licensee), whenever the legal right to construct or to control the use and operation of station is to be assigned by voluntary act, as by contract or other agreement, or by involuntary act such as death, legal disability, bankruptcy, or other legal proceedings.

**PART II** is to be completed by assignee who wishes to obtain the legal right to construct or to control the use and operation of station, as a result of voluntary act (contract or other agreement), or involuntary act (death or legal disability) of grantee of construction authorization or licensee, or by involuntary assignment of the physical property constituting the station in bankruptcy proceedings, or other court order, or by operation of law in any other manner.

Applicant is advised that if the Commission consents to request for assignment, the Commission must be notified by letter of consummation (see appropriate Rulepart for specific requirements).

**PART I - To Be Completed By Assignor**

1. Name of Assignor  
 Orbital Communications Corporation

Mailing Address (Street or P. O. Box, City, State and ZIP Code)  
 21819 Atlantic Boulevard - Dulles, VA 20166

2. Name of Assignee  
 ORBCOMM License Corp.

Mailing Address (Street or P. O. Box, City, State and ZIP Code)  
 21819 Atlantic Boulevard, Dulles, VA 20166

3. Provide the following information for the facilities authorized to assignor for which assignment is sought in this application.

a. Call Sign	b. File Number	c. Location	d. Expiration Date	e. No. of Stations	f. Service
WB2XDL	0214-EX-PL-99		11/01/2004		Experimental
WB2XGL	0024-EX-PL-2000		05/01/2003		Experimental

4. Provide below the following information for incomplete or unconstructed facilities (listed in item 3) in which assignment is sought: (a) call sign; (b) file numbers; and (c) date by which construction must be completed.

5. **CERTIFICATION:** The undersigned represents that the license will not be assigned, or that control will not be transferred until the Commission's consent has been received; that all the attached exhibits are a material part hereof and are incorporated herein as if set out in full in this application; and that all statements made in Part I of this application are true, complete and correct to the best of his (her) knowledge and belief.

I request that the Commission grant its written consent to the foregoing assignment.

**WILLFUL FALSE STATEMENTS MADE ON THIS APPLICATION ARE PUNISHABLE BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) AND/OR REVOCATION OF ANY AUTHORIZATION (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).**

Typed Name of Person Signing Kenneth H. Sunshine	Mailing Address (Street or P. O. Box, City, State and ZIP Code) 21819 Atlantic Boulevard Dulles, VA 20166
Signature of Authorized Officer or Agent (if signed by an agent other than the authorized officer or assignor, power of attorney or other authority of agent to sign must be attached). <i>Kenneth H. Sunshine</i>	Date 4-23-01

**PART II - To Be Completed By Assignee**

6. Name of Assignee (if a corporation, state corporate name; if a partnership, state names of all partners and the name under which the partnership does business; if an unincorporated association, state the name of an executive officer, the office held by him/her, and the name of the association. The same name or names should be signed in the place provided at the end of the application, except that in the case of a partnership, the application may be signed in the name of the partnership by one of the partners).

ORBCOMM License Corp.

Mailing Address (Street or P. O. Box, City, State and ZIP Code)

21819 Atlantic Boulevard, Dulles, VA 20166

7(a). Is this application made for consent to voluntary or involuntary assignment of permit or license?

VOLUNTARY

INVOLUNTARY (Complete items 7(b) and 7(c)).

(b) Name of Present Licensee and Call Sign

(c) Attach as Exhibit \_\_\_\_\_ a copy of court order or other legal instrument by which assignee has obtained the legal right to construct or control the use and operation of station as a result of involuntary act of assignor.

8. State whether assignee is:

INDIVIDUAL

PARTNERSHIP

CORPORATION

ASSOCIATION

9. Attach as Exhibit \_\_\_\_\_ a statement of assignee's principal business.

10. Attach as Exhibit \_\_\_\_\_ a statement of any other business(es) applicant is directly or indirectly interested in. If applicant is a corporation, explain in statement other business(es) the officers, directors, or principal stockholders are directly or indirectly interested in.

PLACE AN 'X' IN THE APPROPRIATE COLUMN.

	YES	NO
11. Is individual assignee, or if partnership, each member of partnership a citizen of the United States? ➤		
12. Is assignee or any party to this application a representative of an alien or of a foreign government? ➤		X
13(a) Has the assignee been finally adjudged guilty by a Federal Court of unlawfully monopolizing, or attempting to monopolize, radio communication directly or indirectly through control of manufacture or sale of radio apparatus, exclusive traffic arrangements, or any other means, or of unfair methods of competition? ➤		X
(b) Has the assignee, or any party to this application, or any person directly or indirectly controlling the assignee ever been convicted of a crime for which the penalty imposed was a fine of \$500 or more, or an imprisonment of six months or more? If "YES", attach as Exhibit _____ a statement relating the facts. ➤		X
(c) Is assignee directly or indirectly controlled by any party finally adjudged guilty as above stated? ➤		X
14(a) Is assignee directly or indirectly, through stock ownership, contract, or otherwise, interested in the ownership or have control of any other radio stations? If "YES", in Exhibit _____, give call letters and location of such stations. ➤		
(b) Has the assignee in the past fifteen years been directly or indirectly interested in the ownership or control of any radio stations other than those referred to under (a)? If "YES", in Exhibit _____, give classes of stations and exact names of licensees. ➤		X
15. If assignment involves any Multipoint Distribution Service (MDS or MMDs) authorizations, is assignee directly or indirectly interested in or affiliated with, or has leasing arrangements with a cable television company? If "YES", submit as Exhibit _____ a description of the relationship and a map showing overlap of boundaries of cable franchise area and MDS station's protected service area, if any. ➤		
16. If assignment involves any authorizations for Part 21 or Part 101 stations, answer (a) and (b) below. Part 21 applicants must also complete (c). ➤		
(a) Does authorization involve facilities that have not been constructed? If "YES", does assignee represent that it has, or has reasonable assurance that it will have, the ability to meet the expected cost of constructing any such facilities within the construction period, and the estimated operating expenses for twelve months? ➤		
(b) Were facilities authorized following a comparative hearing and have been operated less than one year; or involve facilities that have not been constructed; or involve facilities that were authorized following a random selection proceeding in which the successful applicant received a preference and that have been operated for less than one year? ➤		
(c) Does assignee acknowledge that, if Commission consents, assignment must be completed within 45 days of date of consent and Commission must be notified by assignee in writing within 10 days of consummation? ➤		
17. If assignee is a corporation or association, answer the following:		
(a) Under laws of what State or Country is it organized? ➤ Delaware		
(b) Attach as Exhibit _____ a certified copy of the Articles of Incorporation if not heretofore filed with the Commission. If previously filed, state date and FCC Division: ➤		
(c) Is more than one-fifth of capital stock owned of record or may it be voted by aliens or their representatives or by a foreign government or representatives thereof, or by any corporation organized under the laws of a foreign country? ➤	X	
(d) Is any director or officer an alien? If "YES", list in Exhibit _____ the names and position of each. ➤	X	

**PART II - To Be Completed By Assignee (continued)**

17. (continued)

In Exhibit 'C', give the names and addresses of all stockholders owning and/or voting 10% or more of assignee's stock and percentage of stock held by each.

PLACE AN 'X' IN THE APPROPRIATE COLUMN.		YES	NO
18(a)	Is assignee directly or indirectly controlled by any other corporation? If "YES", in Exhibit 'C', give name and address of such controlling corporation.	X	
(b)	Under the laws of what State or Country is the controlling corporation organized? <u>Delaware</u>		
(c)	Is more than one-fourth of capital stock of such corporation owned of record or may it be voted by aliens, their representatives, or by a foreign government or representative thereof, by any corporation organized under the laws of a foreign country?	X	
(d)	Is any director or officer of the controlling corporation an alien? If "YES", in Exhibit 'C', give name and position of each.	X	
(e)	Is the above described controlling corporate in turn a subsidiary? If "YES", attach additional sheets answering questions 18(a) to 18(e), inclusive, for each corporation to and including the organization having final control. <u>see Exhibit 'C'</u>	X	

19. If applicant is an unincorporated association, answer 19(a) to 19(c):

(a)	In Exhibit _____, describe purpose of association and provide number of members in the association.		
(b)	Attach as Exhibit _____ a certified copy of the Articles of Association if not heretofore filed with the Commission. If previously filed, state date and FCC Division: <u>&gt;</u>		
(c)	Are any members aliens? If "YES", in Exhibit _____, give names and position of each.		

20(a)	Is assignee personally familiar with the Commission's rules governing the service which are the subject of this application?	X	
(b)	Has assignee examined the subject facilities and determined that construction and operation is in compliance with current authorizations and the Commission's rules?	X	

21(a)	State assignee's relation to assignor, station or license: <input type="checkbox"/> Pro Forma Assignment <input type="checkbox"/> Manager <input type="checkbox"/> Lessee <input type="checkbox"/> Financier <input checked="" type="checkbox"/> Other <u>Purchaser</u>	(b) Identify ultimate parent corporation, if assignee is a subsidiary and give names and addresses of controlling individuals.  <u>see Exhibit 'C'</u>
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(c) Attach as Exhibit 'D' a copy of the agreement showing assignee's interest in station, if not on file with the Commission. If previously filed, state date and FCC Division: >

(d) Attach as Exhibit 'D' a statement of the nature of assignee's interest in use and control of station, if assignee is not lessee, or if this is not a pro forma assignment.

22. Will assignee have absolute control of station, both as to physical operation and service provided?  YES     NO  
If "NO", attach as Exhibit \_\_\_\_\_, a copy of any contract which may affect assignee's right to do so.

23. Attach as Exhibit 'D' a statement showing assignee's financial responsibility with respect to construction and/or operation of station.

24. Attach as Exhibit 'D' a statement indicating whether stock is to be sold for purpose of raising money to construct and/or operate station.

25. Attach as Exhibit 'E' a statement explaining how the construction and/or operation of the station will be in the public convenience, interest, or necessity.

26. The assignor's most recent applications for authorization are to be considered as part of this application, and the truth of the statements therein contained is hereby reaffirmed by the assignee, except insofar as the contrary expressly appears herein, and in the following particulars:

27. **CERTIFICATION:** The applicant waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests that written consent be granted to assign the authorizations herein mentioned to him/her). The assignee assumes all the obligations and agrees to abide by all the conditions imposed upon the assignor under the subject authorization except that he/she shall not be liable for any act done by, or any right accrued or any suit or proceeding had or commenced against, the assignor prior to said assignment. Neither the applicant nor any other party to the application is subject to a denial of Federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862, because of a conviction for possession or distribution of a controlled substance.

I certify that the statements made in PART II are true, complete, and correct to the best of my knowledge and belief.

**WILLFUL FALSE STATEMENTS MADE ON THIS APPLICATION ARE PUNISHABLE BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) AND/OR REVOCATION OF ANY AUTHORIZATION (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).**

Typed Name of Person Signing <u>Don Franco, Director</u>	<input type="checkbox"/> Individual Applicant
Signature <u>Don Franco</u>	<input type="checkbox"/> Member of Applicant Partnership
Date <u>7-25-01</u>	<input checked="" type="checkbox"/> Officer of Applicant Director Corporation or Association

**EXHIBIT A**  
**ASSIGNEE INTEREST IN OTHER FCC LICENSES**

ORBCOMM License Corp. ("OLC" or "Assignee") is a newly formed Delaware corporation, established as a wholly-owned subsidiary of ORBCOMM LLC, a newly formed Delaware limited liability company. As described more fully in Exhibits 'D' & 'E' to the instant application, Assignee was established by its parent company for the purpose of consolidating the transfer of ownership and control of the various FCC authorizations issued in connection with the development, construction, launch and operation of the ORBCOMM NVNG MSS system, (the "ORBCOMM system").

By three other concurrently filed assignment applications, OLC is seeking Commission consent to consummate its acquisition of the following FCC authorizations relating to the ORBCOMM system (identified by FCC Call Sign):

- S2103 (ORBCOMM system space segment)
- E940534 (Blanket U.S. mobile earth station license)
- E940535, E940536, E940537 & E940538 (U.S. Gateway Earth Stations)
- E9990057, E990058, E990059, E990060 & E990061 (U.S. Gateway traffic transmission C-Band earth station network)

Assignee has no interest in any other FCC licenses or FCC-regulated businesses.

**EXHIBIT B**  
**ASSIGNEE FORMATION DOCUMENTS**

ORBCOMM License Corp. ("OLC" or "Assignee") is a newly formed Delaware corporation. Attached hereto are true and correct copies of OLC's Corporate Bylaws and Certificate of Incorporation.<sup>1</sup>

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<sup>1</sup> OLC was initially incorporated on April 4, 2001 under the name "OGLP Acquisition Sub II Corp." As evidenced by the attached 'Certificate of Amendment', the name of the company was officially changed to ORBCOMM License Corp. on July 3, 2001.

BY-LAWS  
OF  
OGLP ACQUISITION SUB II CORP.  
a Delaware corporation  
(the "Corporation")

ARTICLE I

Offices

Section 1.1 Registered Office. The registered office of the Corporation in the State of Delaware shall be located at 2711 Centerville Road, Suite 400, Wilmington, New Castle County, Delaware, 19808. The name of its registered agent at such address is Corporation Service Company.

Section 1.2 Other Offices. The Corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II

Stockholders

Section 2.1 Annual Meetings. An annual meeting of stockholders shall be held each year for the election of directors at such date, time and place either within or without the State of Delaware as shall be designated by the Board of Directors. Any other proper business may be transacted at the annual meeting of stockholders.

Section 2.2 Special Meetings. Special meetings of stockholders may be called at any time by the Board of Directors, the Chairman (as hereinafter defined), if any, the Vice Chairman, if any, or the President and shall be called by the Chairman or the Secretary at the request, in writing, stating the purpose or purposes of the meeting, of stockholders who hold a majority of the outstanding shares of each class of capital stock entitled to vote at the meeting. Each special meeting shall be held at such date, time and place either within or without the State of Delaware

as shall be designated by the person or persons calling such meeting at least ten days prior to such meeting.

Section 2.3 Notice of Meeting. Unless otherwise provided by law, whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the date, time and place of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by law, the written notice of any meeting shall be given not less than ten nor more than sixty days before the date of the meeting to each stockholder entitled to vote at the meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his address as it appears on the records of the Corporation.

Section 2.4 Adjournments. Any meeting of stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 2.5 Quorum. Unless otherwise provided by law or the Certificate of Incorporation, at each meeting of stockholders, the presence in person or representation by proxy of the holders of a majority of the outstanding shares of each class of capital stock entitled to vote at the meeting shall constitute a quorum for the transaction of business. For purposes of the foregoing, two or more classes or series of capital stock shall be considered a single class if the holders thereof are entitled to vote together as a single class at the meeting. In the absence of a quorum, the stockholders so present and represented may, by vote of the holders of a majority of the shares of capital stock of the Corporation so present and represented, adjourn the meeting from time to time until a quorum shall attend, and the provisions of Section 2.4 of these By-Laws shall apply to each such adjournment. 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.

Section 2.6 Organization. Meetings of stockholders shall be presided over by the Chairman, if any, or in his absence by the Vice Chairman, if any, or in his absence by the President, or in the absence of the foregoing persons by a chairman designated by the Board of Directors, or in the absence of such designation by a chairman chosen at the meeting. The

Secretary shall act as secretary of the meeting, but in his absence the chairman of the meeting may appoint any person to act as secretary of the meeting.

**Section 2.7 Voting; Proxies.** Unless otherwise provided by the Certificate of Incorporation, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of capital stock held by him which has voting power on the subject matter submitted to a vote at the meeting. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy 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. 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 before the proxy is voted. Unless otherwise required by law, voting of stockholders for the election of directors need not be by written ballot. Voting of stockholders for all other matters need not be by written ballot unless so determined at a stockholders meeting by the vote of the holders of a majority of the outstanding shares of each class of capital sock present in person or represented by proxy at the meeting and entitled to vote on the subject matter submitted to a vote at the meeting. Unless otherwise provided by law or the Certificate of Incorporation, the vote of the holders of a majority of the shares of capital stock of the Corporation present in person or represented by proxy at a meeting at which a quorum is present and entitled to vote on the subject matter submitted to a vote at the meeting shall be the act of the stockholders.

**Section 2.8 Fixing Date for Determination of Stockholders of Record.** 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 or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or 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 of Directors may fix, in advance, a record date, which shall not be more than sixty nor less than ten days before the date of such meeting, more than ten days after the date upon which the resolution fixing the record date with respect to the taking of corporate action by written consent without a meeting is adopted by the Board of Directors, nor more than sixty days prior to any other action. If no record date is fixed: (a) 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; (b) the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is necessary, shall be the day on which the first written consent is

expressed; (c) the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, when prior action by the Board of Directors is required, shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action; and (d) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. 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 of Directors may fix a new record date for the adjourned meeting.

Section 2.9 List of Stockholders Entitled to Vote. The Secretary shall make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares 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 days prior to the meeting, either 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 thereof and may be inspected by any stockholder who is present.

Section 2.10 Consent of Stockholders in Lieu of Meeting. Unless otherwise provided by the Certificate of Incorporation, any action required by law to be taken at any annual or special meeting of stockholders of the Corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be 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 thereon were present and voted. 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.

### ARTICLE III

#### Board of Directors

Section 3.1 Powers; Number; Qualifications. Unless otherwise provided by law or the Certificate of Incorporation, the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. Unless otherwise provided by the Certificate of Incorporation, the Board of Directors shall initially consist of three (3) directors and thereafter shall consist of such number of directors as the Board of Directors shall from time to time

designate. Unless otherwise provided by the Certificate of Incorporation, directors need not be stockholders.

Section 3.2 Election; Term of Office; Resignation; Removal; Vacancies. Each director shall hold office until his successor is elected and qualified or until his earlier resignation or removal. Any director may resign at any time upon written notice to the Corporation directed to the Board of Directors or the Secretary. Such resignation shall take effect at the time specified therein, and unless otherwise specified therein no acceptance of such resignation shall be necessary to make it effective. Any director or the entire Board of Directors may be removed, with or without cause, by the vote of the holders of a majority of shares of capital stock then entitled to vote at an election of directors. Whenever the holders of shares of any class or series of capital stock are entitled to elect one or more directors by the provisions of the Certificate of Incorporation, the provisions of the preceding sentence shall apply, in respect to the removal without cause of a director or directors so elected, to the vote of the holders of the outstanding shares of that class or series of capital stock and not to the vote of the holders of the outstanding shares of capital stock as a whole. Unless otherwise provided by the Certificate of Incorporation, vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having a right to vote as a single class may be filled by the vote of a majority of the directors then in office, although less than a quorum, or by the vote of the sole remaining director. Whenever the holders of shares of any class or classes of capital stock or series thereof are entitled to elect one or more directors by the provisions of the Certificate of Incorporation, vacancies and newly created directorships of such class or classes or series thereof may be filled by the vote of a majority of the directors elected by such class or classes or series thereof then in office, or by the vote of the sole remaining director so elected.

Section 3.3 Regular Meetings. Regular meetings of the Board of Directors shall be held at such dates, times and places either within or without the State of Delaware as the Board of Directors shall from time to time determine.

Section 3.4 Special Meetings. Special meetings of the Board of Directors may be called at any time by the Chairman, the President or by any two members of the Board of Directors. Each special meeting shall be held at such date, time and place either within or without the State of Delaware as shall be fixed by the person, or persons calling the meeting.

Section 3.5 Notice of Meetings. Written notice of each meeting of the Board of Directors shall be given which shall state the date, time and place of the meeting. The written notice of any meeting shall be given at least twenty-four hours in advance of the meeting to each director. Notice may be given by letter, telegram, telex or facsimile and shall be deemed to have been given when deposited in the United States mail, delivered to the telegraph company or transmitted by telex or facsimile, as the case may be.

Section 3.6 Telephonic Meetings Permitted. Members of the Board of Directors or any committee designated by the Board of Directors may participate in a meeting of the Board of Directors or of such committee by means of conference telephone or similar communication equipment by means of which all persons participating in the meeting can hear each other, and participation in the meeting pursuant to this by-law shall constitute presence in person at such meeting.

Section 3.7 Quorum; Vote Required for Action. Unless otherwise required by law, at each meeting of the Board of Directors, the presence of the majority of the total number of directors shall constitute a quorum for the transaction of business. The vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the vote of a greater number is required by law or the Certificate of Incorporation. In case at any meeting of the Board of Directors a quorum shall not be present, the members of the Board of Directors present may by majority vote to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall attend.

Section 3.8 Organization. Meetings of the Board of Directors shall be presided over by the Chairman, or in his absence by the President, or in their absence by a chairman chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his absence the chairman of the meeting may appoint any person to act as secretary of the meeting.

Section 3.9 Action by Directors Without a Meeting. Unless otherwise provided by the Certificate of Incorporation, any action required or permitted to be taken at any meeting of the Board of Directors or any committee designated by the Board of Directors may be taken without a meeting if all members of the Board of Directors or of such committee consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Directors or such committee.

Section 3.10 Compensation of Directors. Unless otherwise provided by the Certificate of Incorporation, the Board of Directors shall have the authority to fix the compensation of directors, which compensation may include the reimbursement of expenses incurred in connection with meetings of the Board of Directors or a committee thereof.

#### ARTICLE IV

##### Committees

Section 4.1 Committees. The Board of Directors may, by resolution passed by a majority of the whole Board of Directors, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or

disqualified member of such committee at any meeting thereof. In the absence or disqualification of a member of a committee, the member or members thereof 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 of Directors to act at the meeting in place of any such absent or disqualified member.

Section 4.2 Power of Committees. Any committee designated by the Board of Directors, to the extent provided in a resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority to take any action which by law may only be taken by the Board of Directors or to take any action with reference to: amending the Certificate of Incorporation (except that a committee may, to the extent authorized in the resolution or resolutions providing for the issuance of shares of stock adopted by the Board of Directors fix the designation and any of the preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the Corporation or the conversion into, or the exchange of such shares for, 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 or fix the number of shares of any series of stock or authorize the increase or decrease of the shares of any series), adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets, recommending to the stockholders a dissolution of the Corporation or a revocation of dissolution, removing or indemnifying directors or amending these By-Laws; and, unless a resolution of the Board of Directors expressly so provides, no such committee shall have the power or authority to declare a dividend, to authorize the issuance of stock or to adopt a certificate of ownership and merger pursuant to Section 253 of the General Corporation Law of the State of Delaware.

Section 4.3 Committee Rules. Unless the Board of Directors otherwise provides, each committee designated by the Board of Directors may adopt, amend and repeal rules for the conduct of its business. In the absence of a resolution by the Board of Directors or a provision in the rules of such committee to the contrary, the presence of a majority of the total number of members of such committee shall constitute a quorum for the transaction of business, and the vote of a majority of the members present at a meeting at which a quorum is present shall be the act of such committee.

## ARTICLE V

### Officers

Section 5.1 Officers; Elections. As soon as practicable after the annual meeting of stockholders in each year, the Board of Directors shall elect from its membership or outside thereof a President and a Secretary. The Board of Directors may also elect from its membership a Chairman and a Vice Chairman, and from its membership or outside thereof one or more Vice Presidents, one or more Assistant Vice Presidents, one or more Assistant Secretaries, a Treasurer and one or more Assistant Treasurers and such other officers or agents as it may determine. Unless otherwise provided by the Certificate of Incorporation, any number of offices may be held by the same person.

Section 5.2 Term of Office; Resignation; Removal; Vacancies. Except as otherwise provided by the Board of Directors when electing any officer, each officer shall hold office until the first meeting of the Board of Directors after the annual meeting of stockholders next succeeding his election, or until his successor is elected and qualified or until his earlier resignation or removal. Any officer may resign at any time upon written notice to the Corporation directed to the Board of Directors and the Secretary. Any such resignation shall take effect at the time specified therein, and unless otherwise specified therein no acceptance of such resignation shall be necessary to make it effective. The Board of Directors may remove any officer or agent with or without cause at any time. Any such removal shall be without prejudice to the contractual rights of such officer or agent, if any, with the Corporation, but the election of an officer or agent shall not of itself create any contractual rights. Any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise may be filled for the unexpired portion of the term by the Board of Directors.

Section 5.3 Powers and Duties. The officers of the Corporation shall have such powers and duties in the management of the Corporation as shall be stated in these By-Laws or in a resolution of the Board of Directors which is not inconsistent with these By-Laws and, to the extent not so stated, as generally pertain to their respective offices, subject to the control of the Board of Directors.

Section 5.4 Chairman of the Board and Chief Executive Officer. If any such officer is appointed, the Chairman of the Board and Chief Executive Officer (the "Chairman") shall be the chief executive officer of the Corporation and shall have the powers and perform the duties incident to that position. Subject to the powers of the Board of Directors, he or she shall be in the general and active charge of the entire business and affairs of the Corporation and shall be its

chief policy making officer. He or she shall preside at all meetings of the Board of Directors and stockholders and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or provided in these By-Laws. Whenever the President is unable to serve, by reason of sickness, absence or otherwise, the Chairman shall perform all the duties and responsibilities and exercise all the powers of the President.

Section 5.5 The President. The President, subject to the powers of the Board of Directors and the Chairman, if any, shall have general charge of the business, affairs and property of the Corporation and control over its officers, agents and employees; and shall see that all orders and resolutions of the Board of Directors are carried into effect. The President shall execute bonds, mortgages and other contracts requiring a seal, under the seal of the Corporation, if any, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the Corporation. The President shall have such other powers and perform such other duties as may be prescribed by the Chairman or the Board of Directors or as may be provided in these By-Laws.

Section 5.6 The Secretary and the Assistant Secretaries. The Secretary shall attend all meetings of the Board of Directors, all meetings of the committees thereof and all meetings of the stockholders and record all the proceedings of the meetings in a book or books to be kept for that purpose. Under the President's supervision, the Secretary shall give, or cause to be given, all notices required to be given by these By-Laws or by law; shall have such powers and perform such duties as the Board of Directors, the Chairman, the President or these By-Laws may, from time to time, prescribe; and shall have custody of the corporate seal, if any, of the Corporation. The Secretary, or an Assistant Secretary, shall have authority to affix the corporate seal, if any, to any instrument requiring it and when so affixed, it may be attested by his or her signature or by the signature of such Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the corporate seal, if any, and to attest the affixing by his or her signature. The Assistant Secretary shall, in the absence or disability of the Secretary, perform the duties and exercise the powers of the Secretary and shall Perform such other duties and have such other powers as the Board of Directors, the Chairman, the President or Secretary may, from time to time, prescribe.

Section 5.7 Other Officers; Security. The other officers, if any, of the Corporation shall have such duties and powers as generally pertain to their respective offices and such other duties and powers as the Board of Directors shall from time to time delegate to each such officer. The Board of Directors may require any officer, agent or employee to give security, by bond or otherwise, for the faithful performance of his duties.

Section 5.8 Compensation of Officers. The compensation of each officer shall be fixed by the Board of Directors and no officer shall be prevented from receiving such compensation by virtue of his also being a director.

## ARTICLE VI

### Stock

Section 6.1 Certificates. Every holder of one or more shares of capital stock of the Corporation shall be entitled to have a certificate signed by or in the name of the Corporation by the Chairman or Vice Chairman, if any, or the President or a Vice President, and by the Treasurer or an Assistant Treasurer, if any, or the Secretary or an Assistant Secretary, certifying the number of shares owned by him in the Corporation. Any or all of the signatures 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 he were such officer, transfer agent or registrar at the date of issue.

Section 6.2 Lost, Stolen or Destroyed Stock Certificates; Issuance of New Certificates. The Corporation may issue a new certificate of stock in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or his legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

## ARTICLE VII

### Indemnification of Directors and Officers

Section 7.1 Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he 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 or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than permitted prior thereto),

against all reasonable expense, liability and loss (including, without limitation, reasonable attorneys' fees, judgments, fines and amounts paid in settlement) incurred or suffered by such indemnitee in connection therewith, and such indemnification shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the indemnitee's heirs, executors and administrators; provided, however, that, except as provided in Section 7.2 below with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. The right to indemnification conferred in this Article VII shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition (hereinafter an "advancement of expenses"); provided, however, that, if the Delaware General Corporation Law requires, an advancement of expenses incurred by an indemnitee in his capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this Article VII or otherwise.

Section 7.2 Right of Indemnitee to Bring Suit. If a claim under Section 7.1 above is not paid in full by the Corporation within sixty days after a written claim has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be thirty days, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (a) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (b) any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking the Corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met the applicable standard of conduct set forth in the General Corporation Law of the State of Delaware. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the Corporation (including its Board of Directors, independent counsel or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a

defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article VII or otherwise shall be on the Corporation.

Section 7.3 Non-Exclusivity of Rights under this Article. The rights to indemnification and to the advancement of expenses conferred in this Article VII shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, by-law, agreement, vote of stockholders or disinterested directors or otherwise.

Section 7.4 Insurance. The Corporation may purchase and maintain insurance on its own behalf or on behalf of any person who is or was a director, officer, 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 enterprise against any expense, liability or loss asserted against 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 General Corporation Law of the State of Delaware.

Section 7.5 Indemnification of Employees and Agents. The Corporation may, to the extent authorized at any time or from time to time by the Board of Directors, grant rights to indemnification and the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Article VII with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

Section 7.6 Merger or Consolidation. For purposes of this Article VII, references to "the Corporation" shall include, in addition to the resulting Corporation, any constituent Corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent Corporation, or is or was serving at the request of such constituent Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under this Article VII with respect to the resulting or surviving Corporation as he or she would have with respect to such constituent Corporation if its separate existence had continued.

ARTICLE VIII

Miscellaneous

Section 8.1 Fiscal Year. The fiscal year of the Corporation shall be determined by the Board of Directors.

Section 8.2 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 of Directors.

Section 8.3 Waiver of Notice of Meetings of Stockholders, Directors and Committees. Whenever notice is required to be given by law, the Certificate of Incorporation or these By-Laws, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to 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. Unless otherwise provided by the Certificate of Incorporation, 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.

Section 8.4 Interested Directors, Officers, 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, association or other organization in which one or more of its directors or officers are directors or officers, 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 of Directors or committee thereof which authorizes the contract or transaction, or solely because his or their votes are counted for such purpose, if: (a) the material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors constitute less than a quorum; or (b) the material facts as to his 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 (c) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified, by the Board of Directors, 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 of Directors or of a committee which authorizes the contract or transaction.

Section 8.5 Books and Records. The books and records of the Corporation may be kept within or without the State of Delaware at such place or places as may be designated from time to time by the Board of Directors. 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.

Section 8.6 Amendment of By-Laws. These By-Laws may be amended or repealed, and new by-laws adopted, by the Board of Directors, but the stockholders entitled to vote may adopt additional by-laws and may amend or repeal any by-law whether or not adopted by them.

State of Delaware  
Office of the Secretary of State PAGE 1

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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 CERTIFICATE OF INCORPORATION OF "OGLP ACQUISITION SUB II CORP.", FILED IN THIS OFFICE ON THE FOURTH DAY OF APRIL, A.D. 2001, AT 9 O'CLOCK A.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

3377651 8100

010167677

AUTHENTICATION: 1067211

DATE: 04-06-01

CERTIFICATE OF INCORPORATION  
OF  
OGLP ACQUISITION SUB II CORP.

FIRST: The name of the Corporation is OGLP Acquisition Sub II Corp.

SECOND: The address of the Corporation's registered office in the State of Delaware is 2711 Centerville Road, Suite 400, Wilmington, New Castle County, Delaware, 19808. The name of its registered agent at such address is Corporation Service Company.

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

FOURTH: The total number of shares of stock that the Corporation shall have authority to issue is Ten Thousand (10,000), and the par value of each of such shares is \$.01

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

<u>Name</u>	<u>Mailing Address</u>
Alejandro San Miguel	Chadbourne & Parke LLP 30 Rockefeller Plaza New York, New York 10112

SIXTH: The Board of Directors is authorized to adopt, amend or repeal the By-Laws of the Corporation.

SEVENTH: Meetings of stockholders shall be held at such place, within or without the State of Delaware, as may be designated by or in the manner provided in the By-Laws, or, if not so designated or provided, at the registered office of the Corporation in the State of Delaware. Elections of directors need not be by written ballot unless and to the extent that the By-Laws so provide.

EIGHTH: No director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided, however, that the foregoing clause shall not apply to any liability of a director to the extent provided by applicable law (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 which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law or (iv) for any transaction from which the director derived an improper personal benefit. Neither the amendment nor repeal of this Article EIGHTH, nor the adoption of any provision of this Certificate of Incorporation inconsistent with this Article EIGHTH, shall be effective with respect to any cause of action, suit, claim or other matter that, but for this Article EIGHTH, would accrue or arise prior to such amendment, repeal or adoption of an inconsistent provision.

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

THE UNDERSIGNED, being the sole incorporator above named, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, has signed this instrument this 4th day of April, 2001.



Alejandro San Miguel  
Sole Incorporator

State of Delaware  
Office of the Secretary of State PAGE 1

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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 CERTIFICATE OF AMENDMENT OF "OGLP ACQUISITION SUB II CORP.", CHANGING ITS NAME FROM "OGLP ACQUISITION SUB II CORP." TO "ORBCOMM LICENSE CORP.", FILED IN THIS OFFICE ON THE THIRD DAY OF JULY, A.D. 2001, AT 9 O'CLOCK A.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

3377651 8100

AUTHENTICATION: 1225425

010321571

DATE: 07-03-01

STATE OF DELAWARE  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
FILED 09:00 AM 07/03/2001  
010321571 - 3377651

CERTIFICATE OF AMENDMENT OF  
CERTIFICATE OF INCORPORATION  
OF  
OGLP ACQUISITION SUB II CORP.

Pursuant to the provisions of Sections 103 and 242 of the Delaware General Corporation Law, OGLP Acquisition Sub II Corp., a corporation organized and existing under the laws of the State of Delaware (the "Company"), DOES HEREBY CERTIFY as follows:

1. The certificate of incorporation of the Company was filed with the office of the Secretary of State of the State of Delaware on April 4, 2001 (the "Certificate of Incorporation").
2. The board of directors has adopted a resolution declaring the advisability of this Amendment (the "Amendment") and recommending that the stockholders of the Company adopt the Amendment, and the Amendment has been adopted by the sole stockholder of the Company.
3. Article First of the Certificate of Incorporation is deleted in its entirety and is replaced by the following:

"FIRST. The name of the corporation is ORBCOMM License Corp."

IN WITNESS WHEREOF, the undersigned has caused this certificate to be executed on and as of this 2nd day of July, 2001.

OGLP ACQUISITION SUB II CORP.

By: Don Franco  
Don Franco  
Chief Financial Officer

**EXHIBIT C**  
**ASSIGNEE OWNERSHIP & CONTROL**

ORBCOMM License Corp. ("OLC" or "Assignee") seeks FCC approval to consummate the assignment of the Experimental Radio Service authorizations issued to Assignor Orbital Communications Corporation under FCC Call Signs WB2XDL & WB2XGL. Assignee is a corporation, organized under the laws of the State of Delaware. Set forth below are all requisite disclosures concerning the ownership and control of Assignee, its parent company ORBCOMM LLC, and ORBCOMM LLC's parent company International Licensees, LLC.

**I. Ownership & Control of Assignee**

**A. Ownership of Assignee**

Assignee is wholly-owned by its single shareholder:

ORBCOMM LLC  
21819 Atlantic Boulevard  
Dulles, Virginia 20166  
Tel: 1-703-433-6300  
TIN# [REDACTED]

**B. Control of Assignee**

Control of all aspects of the conduct of business by Assignee is exclusively vested in its Board of Directors and its Officers. The Directors and Officers of Assignee, all of whom are telecommunications executives engaged in the principal business of mobile satellite communications are:

James C. Eagan, Director & Chief Marketing Officer  
SSN: [REDACTED]  
8221 Peridot Drive, #304  
McLean, VA 22102  
Citizenship: USA

Jerome B. Eisenberg, Director & Chief Operating Officer  
SSN: [REDACTED]  
346 Hillcrest Road  
Englewood, NJ 07631  
Citizenship: USA

Don Franco, Director & Chief Financial Officer  
SSN: [REDACTED]  
12 Hickory Hill Road  
Saddle River, NJ 07458  
Citizenship: USA

Hyung Jin ("Gene") Song, Director  
12<sup>th</sup> Floor, 49-6 Jamwon-Dong  
Seocho-Gu, Seoul, ROK, 137-906  
Citizenship: ROK (South Korea)

## **II. Ownership & Control of Assignee's Parent Company**

Assignee's parent company, ORBOMM LLC (see above at I(A) for detail data), is presently wholly-owned by International Licensees, LLC, a Delaware limited liability company (TIN# [REDACTED]), with principal offices located at 7 East Ridgewood Avenue, Paramus, New Jersey 07652.

By the terms of the ORBCOMM LLC Operating Agreement, control of all aspects of the conduct of the company's business is exclusively vested in its Board of Directors and its Officers. The Directors and Officers (as indicated below) of ORBCOMM LLC (see above at I(B) for personal data) are:

James C. Eagan, Chief Marketing Officer  
Jerome B. Eisenberg, Chief Operating Officer  
Don Franco, Chief Financial Officer  
Hyung Jin Song

Subject to the satisfaction of certain terms and conditions of the agreements resolving the Chapter 11 bankruptcy of ORBCOMM Global, L.P. ("ORBCOMM Global"), as approved by the United States Bankruptcy Court for the District of Delaware, Orbital Sciences Corporation ("OSC") will be entitled to obtain a 40% ownership interest in ORBCOMM LLC at such time as the ORBCOMM Global

consensual 'Debtor's Plan of Liquidation', and the transactions contemplated thereby, become final. In connection with OSC's contemplated 40% equity interest acquisition, OSC will become entitled to appoint three new members to the ORBCOMM LLC Board of Directors, thus expanding the number of ORBCOMM LLC Directors from four to seven. An additional 5% ownership interest in ORBCOMM LLC will also be distributed to certain of ORBCOMM Global's principal unsecured creditors at that time, with no associated changes to the company's Board of Directors. Upon completion of these contemplated equity distributions and new Director appointments, International Licensees, LLC would continue to own the remaining 55% of ORBCOMM LLC, thereby maintaining its current *de facto* and *de jure* control of Assignee and Assignee's parent company. Assignee will keep the Commission apprised of all relevant developments.

### III. Ownership & Control of International Licensees, LLC

Control of ORBCOMM LLC's parent company, International Licensees, LLC (see above at II for detail data) is exclusively vested in its Board of Directors. The identity of the company's Directors and its LLC Members owning greater than 10% of the company, and all requisite accompanying information, is provided below:

- A. Directors of International Licensees, LLC (see above at I(A) for personal data)

James C. Eagan  
Jerome B. Eisenberg  
Don Franco  
Hyung Jin Song

- B. The International Licensees, LLC Member investors who own a 10% or greater equity share of the company, or who are not citizens of the United States are:

1. Jerome B. Eisenberg (22.2% owner)  
(see above at I(A) for personal data)
2. Don Franco (22.2% owner)  
(see above at I(A) for personal data)

3. ORBCOMM Asia Limited (44.8% owner)  
c/o Korea ORBCOMM Ltd.  
20<sup>th</sup> Floor, Koosan Tower  
#3250 Bangbae-Dong  
Seocho-Gu  
Seoul 137-026, KOREA  
(privately-held company organized under the law of the Cayman Islands) 100% owned by Mr. Hyung Jin Song  
(see above at I(A) for Mr. Song's personal data)
  
4. ORBCOMM Deutschland, A.G. (3.4% owner)  
D-28359 Bremen  
Universitätsallee 29  
GERMANY

The shareholders and Directors of ORBCOMM Deutschland, A.G., a corporation organized under the laws of the Federal Republic of Germany, are:

Marco Romed Fuchs (35% owner & Director)  
Alte Reihe 84  
28865 Lilienthal, GERMANY  
Citizenship: German

Romana Mayrhofer Fuchs (22.5% owner & Director)  
Starnberger Strasse 7  
82166 Grafelfing, GERMANY  
Citizenship: German

Manfred Johannes Fuchs (30% owner)  
Stuhrer Landstr. 22  
28259 Bremen, GERMANY  
Citizenship: German

Christa Fuchs (12.5% owner & Director)  
Stuhrer Landstr. 22  
28259 Bremen, GERMANY  
Citizenship: German

**EXHIBIT D  
DESCRIPTION OF THE PROPOSED TRANSACTION**

The FCC license assignments proposed in this application entail the transfer from Orbital Communications Corporation (“OCC”) to ORBCOMM License Corp. (“OLC” or “Assignee”) of two Experimental Radio Service licenses issued under FCC Call Signs WB2XDL & WB2XGL. These authorizations support ongoing technology development activities relating to the ORBCOMM NVNG MSS system (ITU designation LEOTELCOM-1) (the “ORBCOMM system”).<sup>1</sup> The proposed assignment transaction is an integral component of the comprehensive arrangements relating to the resolution of the Chapter 11 bankruptcy of ORBCOMM Global, L.P. and affiliated companies (collectively referred to herein as “ORBCOMM Global”), as approved by the United States Bankruptcy Court for the District of Delaware. Under these Court-approved arrangements, all of the assets relating to the ORBCOMM system that were formerly owned by ORBCOMM Global have been transferred to OLC’s parent company, ORBCOMM LLC.<sup>2</sup>

Subject to the approval requested in the instant application, OLC now seeks authority to consummate the assignment of the FCC authorizations relating to the ORBCOMM system covered hereby. OLC is a Delaware corporation, established as a wholly-owned subsidiary of ORBCOMM LLC, for the purpose of consolidating the ownership and control of the various FCC authorizations issued in connection with the construction, launch and operation of the ORBCOMM system, and the ORBCOMM system’s United States ground segment, in accordance with the ORBCOMM Global bankruptcy resolution agreements. If any further information concerning the proposed transaction is required by the Commission, Assignee will be pleased to provide it upon request.

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<sup>1</sup> By three other concurrently filed assignment applications, Commission approval is also being sought for the assignment of the licenses relating to the ORBCOMM system space segment, and the ORBCOMM system ground segment operations in the United States.

<sup>2</sup> By the terms of the Court-approved plan of bankruptcy reorganization, ORBCOMM LLC also assumed certain contractual rights and obligations of ORBCOMM Global, including an agreement with OCC that facilitates the management and operation of the ORBCOMM system assets authorized under OCC’s FCC licenses, including the Experimental Radio Service licenses that are the subject of the instant assignment application. This agreement will terminate upon the Commission-approved consummation of the proposed assignments.

**EXHIBIT E  
PUBLIC INTEREST STATEMENT**

By the instant application, Orbital Communications Corporation (“OCC” or “Assignor”) proposes to assign to ORBCOMM License Corp. (“OLC” or “Assignee”) two Experimental Radio Service licenses associated with the ORBCOMM NVNG MSS satellite system (the “ORBCOMM system”), issued under FCC Call Signs WB2XDL & WB2XGL. The proposed license assignments arise in connection with the resolution of the Chapter 11 bankruptcy of ORBCOMM Global, L.P. and affiliated companies (collectively referred to herein as “ORBCOMM Global” or “Debtor”), the terms and conditions of which were approved on April 23, 2001, by the United States Bankruptcy Court for the District of Delaware.<sup>1</sup> As discussed more fully below, the public interest will be well served by timely Commission approval of the proposed assignments.

Under the Court-approved resolution of the ORBCOMM Global bankruptcy, Assignee’s parent company, ORBCOMM LLC, has acquired all of the assets of the ORBCOMM system formerly owned by ORBCOMM Global. OLC now seeks Commission approval to take assignment of the FCC licenses relating to the ORBCOMM system, its United States ground segment operations, and certain ongoing experimental technology development activities covered by the licenses that are the subject of the instant assignment application. The proposed license assignments are integral to the successful resolution of the ORBCOMM Global bankruptcy reorganization, and the Commission generally seeks to accommodate the policies of the federal bankruptcy law with those of the Communications Act.<sup>2</sup> Most importantly, timely Commission approval of the proposed license assignments is essential to the viability of the ongoing worldwide development and operation of the ORBCOMM system, the continuing provision of ORBCOMM NVNG services in the United States, and the numerous benefits to the public that derive therefrom.

A successful emergence from bankruptcy is obviously critical to the continued operation and expansion of the ORBCOMM system, and the continuing availability of all of the associated public benefits. The Commission has already determined that Little LEO satellite services provided by the ORBCOMM system well serve the public interest by making available efficient

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<sup>1</sup> The ORBCOMM Global Chapter 11 bankruptcy filing was effected on Friday, September 15, 2000, in the United States Bankruptcy Court for the District of Delaware, Case Nos. 00-3636 through 00-3643. The transfer of the Debtors’ assets to ORBCOMM LLC was approved by the Court on April 23, 2001. The consummation of the transfer of material assets occurred the following day, on April 24, 2001.

<sup>2</sup> See, e.g., *LaRose v. FCC*, 494 F.2d 1145, 1147 n.2 (D.C. Cir. 1974); *MobileMedia Corporation*, FCC 99-15, released February 5, 1999.

**Exhibit E**  
**ORBCOMM License Corp.**  
**Call Signs WB2XDL & WB2XGL**  
**FCC Form 702**  
**Item 25**  
**Page 2 of 2**

communications capabilities to unserved and underserved markets.<sup>3</sup> In addition, the success of the ORBCOMM reorganization will serve to minimize any losses arising from the bankruptcy suffered by the customers of the ORBCOMM system, and the creditors of ORBCOMM Global, thus advancing principal goals of the bankruptcy law and the Communications Act.

For all of these reasons, the two license assignments proposed in the instant application will well serve the public interest, convenience, and necessity. Accordingly, OCC and OLC respectfully request an expeditious grant of this assignment application.

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<sup>3</sup> See, e.g., *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum to the Fixed-Satellite Service and the Mobile-Satellite Service for Low-Earth Orbit Satellites*, Report and Order, 8 FCC Rcd 1812, 1813 (1993).