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PATENT

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ument(s) or copy(ies).

SUBMISSION TYPE (New, Resubmission, Correction)	CONVEYANCE TYPE (Assignment, License, ..., Name Change)
New	Name Change

CONVEYING PARTY (IES)	EXECUTION DATE (mm/dd/yyyy)
Name(s): SC-Wireless Inc. A corporation of Delaware	01/28/2000

RECEIVING PARTY	
Name:	mDiversity Inc. A corporation of Delaware
Address:	150 Charcot Avenue San Jose, CA 94043-1139

CORESPONDENT		
Name/Address	Customer No.	Communication
David E. Lovejoy 4 Embarcadero Ctr., Suite 400 San Francisco, CA 94111-4156	21603	Tel: (415) 362-3800 Fax: (415) 362-2928 e-mail: del@fdml.com

PAGES	Total number of pages of attached conveyance document including attachments.	# 16
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PATENT APPLICATION NUMBER(S)				PATENT NUMBER(S)			
09133282	09017188	09001370	08801711	6137784	6131034	6112058	6108385
				6041232	5805576	5715516	

If filed with a new Patent application, the date signed by the first executing inventor (mm/dd/yy):

NUMBER OF PROPERTIES	Total number of properties to be recorded:	# 11
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FEE AMOUNT	{{(37 CFR §§ 1.21(h), 3.41} Number of Properties X \$40 =	\$ 440.00
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METHOD OF PAYMENT
<input type="checkbox"/> Payment Enclosed: None
<input checked="" type="checkbox"/> Deposit Account 06-1325: The Commissioner is authorized to charge the FEE AMOUNT and any additional fees and credit any over payment associated with this communication to the Deposit Account.

STATEMENT AND SIGNATURE		
<i>To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.</i>		
David E. Lovejoy (Reg. No. 22,748)		Signature Date: <input checked="" type="checkbox"/> 2 November 2000

State of Delaware
Office of the Secretary of State

PAGE 1

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "SC-WIRELESS INC.", CHANGING ITS NAME FROM "SC-WIRELESS INC." TO "MDIVERSITY INC.", FILED IN THIS OFFICE ON THE TWENTY-EIGHTH DAY OF JANUARY, A.D. 2000, AT 5 O'CLOCK P.M.



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A handwritten signature in cursive script, reading "Edward J. Freel".

Edward J. Freel, Secretary of State

AUTHENTICATION: 0749668

DATE: 10-23-00

PATENT
REEL: 011219 FRAME: 0146

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
SC-WIRELESS INC.**

The undersigned, Joseph T. Negler and David E. Bartlett, hereby certify that:

ONE: They are the duly elected and acting Chief Executive Officer and Secretary, respectively, of SC-Wireless Inc. (the "Company").

TWO: The Company's original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on August 4, 1998, and was later amended on each of April 19, 1999, September 30, 1999 and November 19, 1999.

THREE: This Amended and Restated Certificate of Incorporation restates, integrates and amends the Company's Certificate of Incorporation filed on August 4, 1998, as amended, and has been duly adopted in accordance with Sections 228, 242 and 245 of the Delaware General Corporation Law.

FOUR: The text of the Amended and Restated Certificate of Incorporation of the Company is hereby amended and restated to read in its entirety as follows:

ARTICLE I.

The name of the corporation is mDiversity Inc. (the "Company").

ARTICLE II.

The address of the registered office of the Company in the State of Delaware is 9 East Loockerman Street, City of Dover, County of Kent, State of Delaware 19901, and the name of the registered agent of the Company in the State of Delaware at such address is National Registered Agents, Inc.

ARTICLE III.

The purpose of this Company is to engage in any lawful act or activity for which a Company may be organized under the General Corporation Law of the State of Delaware.

ARTICLE IV.

A. Classes of Stock. The Company is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Company is authorized to issue is one hundred twenty-five million (125,000,000) shares. Sixty-five million (65,000,000) shares shall be Common Stock, each having a par value of one-tenth of one cent (\$.001). Sixty million (60,000,000) shares shall be Preferred Stock,

mDiversity, Inc.
Amended and Restated Certificate of Incorporation
January 28, 2000

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 05:00 PM 01/28/2000
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REEL: 011219 FRAME: 0147

each having a par value of one-tenth of one cent (\$.001), thirty-five (35,000,000) of which shall be designated "Series A Preferred Stock" (the "Series A Preferred").

B. Additional Preferred Stock. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors is hereby authorized, by filing a certificate (a "Preferred Stock Designation") pursuant to the Delaware General Corporation Law, to fix or alter from time to time the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations or restrictions of any wholly unissued series of Preferred Stock, and to establish from time to time the number of shares constituting any such series or any of them; and to increase or decrease the number of shares of any series subsequent to the issuance of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be decreased in accordance with the foregoing sentence, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series.

C. Rights, Preferences and Restrictions of Preferred Stock. The respective rights, preferences, privileges and restrictions granted to and imposed on the Series A Preferred Stock are as set forth below in this Section C of this IV.

1. Dividend Rights.

Holders of Series A Preferred shall be entitled to participate equally in the payment of dividends (other than stock dividends resulting in an adjustment to the Series A Conversion Price), when and as declared by the Board of Directors, out of funds that are legally available therefor, with the holders of Common Stock on an as-converted basis.

2. Voting Rights.

Except as otherwise provided herein or as required by law, the Series A Preferred shall vote with the shares of the Common Stock of the Company (and not as a separate class) at any annual or special meeting of stockholders of the Company, and may act by written consent in the same manner as the Common Stock, in either case upon the following basis: each holder of shares of Series A Preferred shall be entitled to such number of votes as shall be equal to the whole number of shares of Common Stock into which such holder's aggregate number of shares of Series A Preferred are convertible (pursuant to Section C4 below) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent.

3. Liquidation Rights.

a. Upon any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, before any distribution or payment shall be made to the holders of any other stock of the Company, the holders of Series A Preferred shall be entitled to be paid out of the assets of the Company, an amount with respect to each share of Series A Preferred equal to the sum of \$1.00 plus any declared and unpaid dividends (the "Series A Liquidation Value").

b. After the payment of the full liquidation preference to the holders of the Series A Preferred as set forth in Section C3.a. above, the remaining assets of the Company legally available for distribution, if any, shall be distributed ratably to the holders of the Common Stock and Series A Preferred on an as-converted basis.

c. For purposes of this Section C3, the following shall be considered a liquidation: (i) a sale, lease or other disposition of all or substantially all of the assets of the Company (an "Asset Transfer") or (ii) any consolidation or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization, in which the stockholders of the Company immediately prior to such consolidation, merger or reorganization, own less than fifty percent (50%) of the Company's voting power immediately after such consolidation, merger or reorganization, or any transaction or series of related transactions in which in excess of fifty percent (50%) of the Company's voting power is transferred (an "Acquisition").

d. If, upon any liquidation, dissolution or winding up, the assets of the Company shall be insufficient to make payment in full to all holders of Series A Preferred of the liquidation preference set forth in Section C3.a. above, then such assets shall be distributed among the holders of Series A Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

4. Conversion Rights.

The holders of the Series A Preferred shall have the following rights with respect to the conversion of the Series A Preferred into shares of Common Stock:

a. **Optional Conversion.** Subject to and in compliance with the provisions of this Section C4, any shares of Series A Preferred may, at the option of the holder, be converted at any time into fully paid and non-assessable shares of Common Stock. The number of shares of Common Stock to which a holder of Series A Preferred shall be entitled upon conversion shall be the product obtained by multiplying the applicable "Conversion Rate" then in effect (determined as provided in Section C4b. below by the number of shares of Series A Preferred being converted.

b. **Series A Preferred.** The conversion rate in affect at any time for conversion of the Series A Preferred (the "Series A Conversion Rate") shall be the quotient obtained by dividing the Original Issue Price of the Series A Preferred by the "Series A Conversion Price," calculated as provided in Section C4.c. below

c. **Conversion Price.** The conversion price for the Series A Preferred (the "Series A Conversion Price") shall initially be the original issue price of \$0.472 per share (the "Original Issue Price"). Such initial Series A

Conversion Price shall be adjusted from time to time in accordance with this Section C4. All references to the Series A Conversion Price herein shall mean the Series A Conversion Price as so adjusted.

d. Adjustment for Stock Splits and Combinations. If the Company shall at any time or from time to time after the date that the first share of Series A Preferred is issued (the "Series A Original Issue Date") effect a subdivision of the outstanding Common Stock without a corresponding subdivision of the Series A Preferred, the Series A Conversion Price in effect immediately before that subdivision shall be proportionately decreased. Conversely, if the Company shall at any time or from time to time after the Original Series A Issue Date combine the outstanding shares of Common Stock into a smaller number of shares without a corresponding combination of the Series A Preferred, the Series A Conversion Price in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section C4.d. shall become effective at the close of business on the date the subdivision or combination becomes effective.

e. Adjustment for Common Stock Dividends and Distributions. If the Company at any time or from time to time after the Original Series A Issue Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in shares of Common Stock, in each such event the Series A Conversion Price that is then in effect shall be decreased as of the time of such issuance or, in the event such record date is fixed, as of the close of business on such record date, by multiplying the Series A Conversion Price then in effect by a fraction (i) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date and (ii) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution; *provided, however,* that if such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series A Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series A Conversion Price shall be adjusted pursuant to this Section C4.e. to reflect the actual payment of such dividend or distribution.

f. Adjustments for Other Dividends and Distributions. If the Company at any time or from time to time after the Original Series A Issue Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Company other than shares of Common Stock, in each such event provision shall be made so that the holders of the Series A Preferred shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of other securities of the Company which they

would have received had their Series A Preferred been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section C4 with respect to the rights of the holders of the Series A Preferred or with respect to such other securities by their terms.

g. Adjustment for Reclassification, Exchange and Substitution. If at any time or from time to time after the Original Series A Issue Date, the Common Stock issuable upon the conversion of the Series A Preferred is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section C4), in any such event each holder of Series A Preferred shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property receivable in connection with such recapitalization, reclassification or other change by holders of the maximum number of shares of Common Stock into which such shares of Series A Preferred could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustments as provided herein or with respect to such other securities or property by the terms thereof.

h. Reorganizations, Mergers, Consolidations or Sales of Assets. If at any time or from time to time after the Original Series A Issue Date, there is a capital reorganization of the Common Stock (other than a recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this Section C4), as a part of such capital reorganization, provision shall be made so that the holders of the Series A Preferred shall thereafter be entitled to receive upon conversion of the Series A Preferred the number of shares of stock or other securities or property of the Company to which a holder of the maximum number of shares of Common Stock deliverable upon conversion would have been entitled in connection with such capital reorganization, subject to adjustment in respect of such stock or securities by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of Series A Preferred after the capital reorganization to the end that the provisions of this Section C4 (including adjustment of the Series A Conversion Price then in effect and the number of shares issuable upon conversion of the Series A Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

i. Sale of Shares Below Series A Conversion Price.

(i) **Dilutive Issuances.** If at any time or from time to time after the date of this Amended and Restated Certificate of Designations,

Preferences and Rights, the Company issues or sells, or is deemed by the express provisions of this subsection (i) to have issued or sold, Additional Shares of Common Stock (as hereinafter defined), other than as a dividend or other distribution on any class of stock as provided in Section C4.e. above, and other than a subdivision or combination of shares of Common Stock as provided in Section C4.d. above, for an Effective Price (as hereinafter defined) less than the then effective Series A Conversion Price, then and in each such case the then existing Series A Conversion Price shall be reduced, as of the opening of business on the date of such issue or sale, to a price determined by multiplying the Series A Conversion Price by a fraction (i) the numerator of which shall be (A) the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale, plus (B) the number of shares of Common Stock which the aggregate consideration received (subparagraph ii of this subsection i) by the Company for the total number of Additional Shares of Common Stock so issued would purchase at such Series A Conversion Price, and (ii) the denominator of which shall be the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale plus the total number of Additional Shares of Common Stock so issued. For the purposes of the preceding sentence, the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (A) the number of shares of Common Stock actually outstanding, and (B) the number of shares of Common Stock into which the then outstanding shares of Series A Preferred could be converted if fully converted on the day immediately preceding the given date, and (C) the number of shares of Common Stock which could be obtained through the exercise or conversion of all other rights, options and convertible securities on the day immediately preceding the given date.

(ii) **Determination of Consideration.** For the purpose of making any adjustment required under this Section C4.i., the consideration received by the Company for any issue or sale of securities shall (A) to the extent it consists of cash, be computed at the net amount of cash received by the Company after deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Company in connection with such issue or sale but without deduction of any expenses payable by the Company, (B) to the extent it consists of property other than cash, be computed at the fair value of that property as determined in good faith by the Board of Directors, and (C) if Additional Shares of Common Stock, Convertible Securities (as hereinafter defined) or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Company for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board of Directors to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

(iii) **Deemed Issuances and Recalculation.** For the purpose of the adjustment required under this Section C4.i., if the Company issues or sells any rights or options for the purchase of, stock or other securities convertible into, Additional Shares of Common Stock (such convertible stock or securities being herein referred to as "**Convertible Securities**") and if the Effective Price of such Additional Shares of Common Stock is less than the Series A Conversion Price, in each case the Company shall be deemed to have issued at the time of the issuance of such rights or options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration for the issuance of such shares an amount equal to the total amount of the consideration, if any, received by the Company for the issuance of such rights or options or Convertible Securities, plus, in the case of such rights or options, the minimum amounts of consideration, if any, payable to the Company upon the exercise of such rights or options, plus, in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion thereof; provided that if in the case of Convertible Securities the minimum amounts of such consideration cannot be ascertained, but are a function of anti-dilution or similar protective clauses, the Company shall be deemed to have received the minimum amounts of consideration without reference to such clauses; provided further that if the minimum amount of consideration payable to the Company upon the exercise or conversion of rights, options or Convertible Securities is reduced over time or on the occurrence or nonoccurrence of specified events other than by reason of anti-dilution adjustments, the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced; provided further that if the minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities is subsequently increased, the Effective Price shall be again recalculated using the increased minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities. No further adjustment of the Series A Conversion Price, as adjusted upon the issuance of such rights, options or Convertible Securities, shall be made as a result of the actual issuance of Additional Shares of Common Stock on the exercise of any such rights or options or the conversion of any such Convertible Securities. If any such rights or options or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, the Series A Conversion Price as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the Series A Conversion Price which would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of

Common Stock, if any, actually issued or sold on the exercise of such rights or options or rights of conversion of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the Company upon the exercise, plus the consideration, if any, actually received by the Company for the granting of all such rights or options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted, plus the consideration, if any, actually received by the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities, provided that such readjustment shall not apply to prior conversions of Series A Preferred.

(iv) **Additional Common Stock.** "Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section C4.i., whether or not subsequently reacquired or retired by the Company other than (A) share of Common Stock issued upon conversion of the Series A Preferred, (B) shares of Common Stock and/or options, warrants or other Common Stock purchase rights, and the Common Stock issued pursuant to such options, warrants or other rights (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) after the Series A Original Issue Date to employees, officers or directors of, or consultants to, the Company or any subsidiary pursuant to stock purchase or stock option plans or other arrangements that are approved by the Board, and (C) shares of Common Stock issued pursuant to the exercise of options, warrants or convertible securities outstanding as of the Series A Original Issue Date. The "Effective Price" of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold by the Company under this Section C4.i., into the aggregate consideration received, or deemed to have been received by the Company for such issue under this Section C 4.i., for such Additional Shares of Common Stock.

j. **Certificate of Adjustment.** In each case of an adjustment or readjustment of the Series A Conversion Price for the number of shares of Common Stock or other securities issuable upon conversion of the Series A Preferred, the Company, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of Series A Preferred at the holder's address as shown in the Company's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based.

k. **Notices of Record Date.** Upon (i) any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or (ii) any Acquisition (as defined in Section C3.c. above), or other capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company, any merger or consolidation of the Company with or into any other company, or any Asset Transfer (as defined in Section C3.c. above), or any voluntary or involuntary dissolution, liquidation or winding up of the Company, the Company shall mail to each holder of Series A Preferred at least twenty (20) days prior to the record date specified therein a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such acquisition, reorganization, reclassification, transfer, consolidation, merger, Acquisition, Asset Transfer, dissolution, liquidation or winding up is expected to become effective, and (C) the date, if any, that is to be fixed for determining the holders of record of Common Stock (or other securities) that shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up.

l. **Automatic Conversion.** Each share of Series A Preferred shall automatically be converted into shares of Common Stock, based on the then-effective Series A Conversion Price, (i) at any time upon the affirmative election of the holders of two-thirds (2/3) of the outstanding shares of Series A Preferred, *provided, that*, no additional consideration is paid or offered to be paid to such consenting holders or their affiliates, or (ii) immediately upon the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company in which (A) the per share price to the public is at least \$5.00 (as adjusted for stock splits, recapitalizations and the like) and (B) the gross cash proceeds to the Company (before underwriting discounts, commissions and fees) are at least \$15,000,000 (a "Qualified Public Offering"). Upon such automatic conversion, all declared but unpaid dividends, if any, shall be paid in accordance with Section C4.m. below.

m. **Mechanics of Conversion.**

(i) **Optional Conversion.** Each holder of Series A Preferred who desires to convert the same into shares of Common Stock pursuant to this Section C4 shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or any transfer agent for the Series A Preferred, and shall give written notice to the Company at such office that such holder elects to convert the same. Such notice shall state the number of shares of Series A Preferred being converted. Thereupon, the Company shall promptly issue and deliver at such office to such holder a

certificate or certificates for the number of shares of Common Stock to which such holder is entitled and shall promptly pay in cash or, to the extent sufficient funds are not then legally available therefor, in Common Stock (at the Common Stock's fair market value determined by the Board of Directors as of the date of such conversion), any declared and unpaid dividends on the shares of Series A Preferred being converted. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificate representing the shares of Series A Preferred to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date.

(ii) **Automatic Conversion.** Upon the occurrence of the event specified in Section C4.l. above, the outstanding shares of Series A Preferred shall be converted into Common Stock automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent; *provided, however,* that the Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Series A Preferred are either delivered to the Company or its transfer agent as provided below, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. Upon surrender by any holder of the certificates formerly representing shares of Series A Preferred at the office of the Company or any transfer agent for the Series A Preferred, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Series A Preferred surrendered were convertible on the date on which such automatic conversion occurred, and any declared and unpaid dividends shall be paid in accordance with the provisions of Section C 4.m.(i) above.

(iii) **Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of Series A Preferred. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series A Preferred by a holder thereof shall be aggregated for purposes of determination whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the

conversion would result in the issuance of any fractional share, the Company shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the Common Stock's fair market value (as determined by the Board) on the date of conversion.

n. Waiver of Adjustment of Series A Preferred Conversion Price. Notwithstanding anything herein to the contrary, the operation of, and any adjustment of the Series A Conversion Price pursuant to, this Section C4 may be waived with respect to any specific share or shares of Series A Preferred Stock, either prospectively or retroactively and either generally or in a particular instance by a writing executed by the registered holder of such share or shares. Any waiver pursuant to this subsection 4.n. shall bind all future holders of shares of Series A Preferred for which such rights have been waived. In the event that a waiver of adjustment of Conversion Price under this subsection 4.n. results in different Conversion Prices for shares of Series A Preferred, the Secretary of the Corporation shall maintain a written ledger identifying the Conversion Price for each share of Series A Preferred. Such information shall be made available to any person upon request.

5. Protective Provisions.

So long as any shares of Series A Preferred Stock are outstanding, the Company shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock:

- a. sell, convey or otherwise dispose of all or substantially all of its property or business or merge into or consolidate with any other corporation (other than a wholly-owned subsidiary corporation) or effect any transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Company is disposed of;
- b. alter or change the rights, preferences or privileges of the shares of Series A Preferred Stock so as to affect adversely the shares;
- c. increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series A Preferred Stock;
- d. authorize or issue, or obligate itself to issue, any other equity security (including any security convertible into or exercisable for any equity security) having a preference over, or being on a parity with, the Series A Preferred Stock with respect to dividends, liquidation, redemption, conversion or voting;

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

6. General Provisions

a. **Registration of Transfer.** The Company shall keep at its principal office a register for the registration of the Series A Preferred. Upon the surrender of any certificate representing Series A Preferred at such place, the Company shall, at the request of the record holder of such certificate, execute and deliver (at the Company's expense) a new certificate or certificates in exchange therefor representing in the aggregate the number of shares represented by the surrendered certificate. Each such new certificate shall be registered in such name and shall represent such number of shares as is requested by the holder of the surrendered certificate and shall be substantially identical in form to the surrendered certificate.

b. **Replacement.** Upon receipt of evidence reasonably satisfactory to the Company (an affidavit of the registered holder shall be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing shares of Series A Preferred, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Company (provided that if the holder is a financial institution or other institutional investor its own agreement shall be satisfactory), or in the case of any such mutilation upon surrender of such certificate, the Company shall (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of shares of such class represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate.

c. **Reservation of Common Stock Issuable Upon Conversion.** The Company shall at all times keep available out of its authorized but unissued shares of Common Stock sufficient number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series A Preferred. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then-outstanding shares of the Series A Preferred, the Company will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

d. **Notices.** Any notice required by the provisions of Section C4 above shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed telex or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with verification of receipt. All notices to stockholders shall be addressed to each holder of record at the address of such holder appearing on the books of the Company.

e. **No Dilution or Impairment.** The Company shall not amend its Certificate of Incorporation, as amended, or participate in any reorganization, Transfer of Assets, Acquisition, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company.

f. **Redemption.** The Series A Preferred shall not be redeemable by the Company, except as granted by the Company pursuant to written agreements.

g. **No Reissuance of Series Preferred.** No share or shares of Series A Preferred acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued.

h. **No Preemptive Rights.** Stockholders shall have no preemptive rights except as granted by the Company pursuant to written agreements.

ARTICLE V.

For the management of the business and for the conduct of the affairs of the Company, and in further definition, limitation and regulation of the powers of the Company, of its directors and of its stockholders or any class thereof, as the case may be, it is further provided that:

1. The management of the business and the conduct of the affairs of the Company shall be vested in its Board of Directors.

2. The number of directors that shall constitute the whole Board of Directors shall be fixed exclusively by one or more resolutions adopted by the Board of Directors.

3. In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to adopt, amend, or repeal Bylaws.

4. The directors of the Company need not be elected by written ballot unless the Bylaws so provide.

ARTICLE VI.

A. **Indemnification.** A director of the Company shall not be personally liable to the Company or its stockholders for monetary damages for any breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Company 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. If the Delaware General Corporation Law is amended after approval by the stockholders of this Article VI to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

B. **Modification of Indemnification.** Any repeal or modification of this Article VI shall be prospective and shall not affect the rights under this Article VI in effect at the time of the alleged occurrence of any act or omission to act giving rise to liability or indemnification.

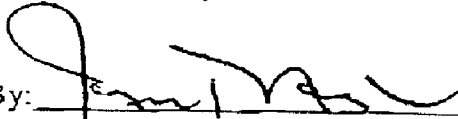
ARTICLE VII.

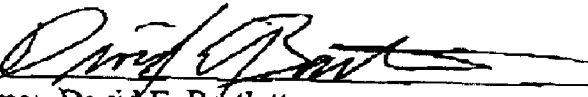
The Company reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now, or hereafter prescribed by statute, and all rights conferred upon the stockholders herein are granted subject to this reservation.

[signature page to follow]

IN WITNESS WHEREOF, this Amended and Restated Certificate of Incorporation has been executed this 28 day of January, 2000, by the Chief Executive Officer and Secretary of the Company, who affirm that the statements made herein are true and correct.

SC-WIRELESS, INC.

By: 
Name: Joseph T. Negler
Title: Chief Executive Officer

By: 
Name: David E. Bartlett
Title: Secretary