

04-14-2003

Form PTO-1595

(Rev. 03/01)

OMB No. 0651-0027 (exp. 5/31/2002)

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U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Mabuhay Networks, Inc.

4-11-03

2. Name and address of receiving party(ies)

Name: Vivato, Inc.

Internal Address: _____

Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

3. Nature of conveyance:



Assignment



Merger



Security Agreement



Change of Name



Other _____

Street Address: 139 Townsend Street, Suite 200

City: San Francisco State: CA Zip: 94107

Execution Date: 8/7/02

Additional name(s) & address(es) attached? ☐ Yes ☒ No

4. Application number(s) or patent number(s): 10/235,198

If this document is being filed together with a new application, the execution date of the application is: _____

A. Patent Application No.(s)

B. Patent No.(s)

Additional numbers attached? ☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Thomas A. Jolly

Internal Address: Lee & Hayes, PLLC

Street Address: 421 West Riverside Avenue

Suite 500

City: Spokane State: WA Zip: 99201

6. Total number of applications and patents involved: 1

7. Total fee (37 CFR 3.41).....\$ 40.00



Enclosed



Authorized to be charged to deposit account

8. Deposit account number: 12-0769

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

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.

Thomas A. Jolly

Name of Person Signing

Signature

Date

Total number of pages including cover sheet, attachments, and documents: 19

Mail documents to be recorded with required cover sheet information to:

Commissioner of Patents & Trademarks, Box Assignments
Washington, D.C. 20231

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PATENT
REEL: 013937 FRAME: 0771

**FOURTH AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
MABUHAY NETWORKS, INC.**

The undersigned, Ken Biba and Mike Wilson, hereby certify that:

1. They are the duly elected and acting President and Secretary, respectively, of Mabuhay Networks, Inc., a Delaware corporation.
2. The Certificate of Incorporation of this corporation was originally filed with the Secretary of State of Delaware on December 7, 2000.
3. The Certificate of Incorporation of this corporation was amended and restated by that certain Amended and Restated Certificate of Incorporation filed with the Secretary of State of Delaware on February 23, 2001.
4. The Amended and Restated Certificate of Incorporation of this corporation was amended and restated by that certain Second Amended and Restated Certificate of Incorporation filed with the Secretary of State of Delaware on July 23, 2001.
5. The Amended and Restated Certificate of Incorporation of this corporation was amended and restated by that certain Third Amended and Restated Certificate of Incorporation filed with the Secretary of State of Delaware on March 6, 2002.
6. The Third Amended and Restated Certificate of Incorporation of this corporation is hereby amended and restated in its entirety to read as follows:

ARTICLE I

The name of the corporation is Vivato, Inc.

ARTICLE II

The resident agent and the address of the corporation's registered office in the State of Delaware are: The Corporation Trust Company, 1209 Orange Street, Wilmington Delaware 19801, County of New Castle.

SF #677371 v1

ARTICLE III

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

ARTICLE IV

A. The corporation is authorized to issue two classes of shares to be designated respectively Preferred Stock ("Preferred Stock") and Common Stock ("Common Stock"). The total number of shares of capital stock that the corporation is authorized to issue is One Hundred Sixty Two Million Ninety Nine Thousand Three Hundred Fifty Nine (162,099,359) shares, each with a par value of \$0.000001 per share, of which One Hundred Million (100,000,000) shares shall be Common Stock and Sixty Two Million Ninety Nine Thousand Three Hundred Fifty Nine (62,099,359) shares shall be Preferred Stock.

B. Seven Million Ninety Nine Thousand Three Hundred Fifty Nine (7,099,359) shares of the Preferred Stock are designated "Series A Preferred Stock," and Fifty Five Million (55,000,000) shares of the Preferred Stock are designated "Series B Preferred Stock."

C. The powers, preferences, rights, restrictions, and other matters relating to the Series A Preferred Stock and Series B Preferred Stock are as follows:

1. Dividends.

(a) The holders of the Series A and Series B Preferred Stock shall be entitled to receive dividends at the rate of \$0.031 and \$0.03128 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares) per annum, respectively, payable out of funds legally available therefore. Such dividends shall be payable only when, as, and if declared by the Board of Directors of this corporation (the "Board of Directors") and shall not be cumulative.

(b) No dividends (other than those payable solely in the Common Stock of the corporation) shall be paid on any Common Stock of the corporation during any fiscal year of the corporation until dividends in the total amount of \$0.031 and \$0.03128 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares), respectively, on the Series A and Series B Preferred Stock shall have been paid or declared and set apart during that fiscal year. Thereafter, dividends may be paid to the holders of Common Stock as declared by the Board of Directors.

(c) No dividend shall be paid on or declared and set apart for the shares of any series of Preferred Stock for any dividend period unless at the same time a like proportionate dividend for the same dividend period, ratably in proportion to the respective annual dividend rates fixed therefor, shall be paid on or declared and set apart for the shares of all other series of Preferred Stock.

(d) In the event of a conversion of the Series A or Series B Preferred Stock pursuant to Section C.3 hereof, any accrued and unpaid dividends with respect to such

converted Series A or Series B Preferred Stock shall be paid at the election of the corporation in cash or Common Stock at its then fair market value, as determined in good faith by the Board of Directors.

2. Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of the corporation, either voluntary or involuntary, the holders of Series A and Series B Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the corporation to the holders of Common Stock or other junior equity security by reason of their ownership thereof, an amount equal to \$0.3875 and \$0.391022896 (as adjusted for any stock dividends, combinations or splits with respect to such shares), respectively, per share of Series A and Series B Preferred Stock, plus all declared but unpaid dividends on each such share of Series A and Series B Preferred Stock then held by them. The Series A and Series B Preferred Stock shall rank on parity as to the receipt of the respective preferential amounts for each such series upon the occurrence of such event. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A and Series B Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the corporation legally available for distribution shall be distributed ratably among the holders of the Series A and Series B Preferred Stock in proportion to the preferential amount such holder is otherwise entitled to receive.

(b) After the distribution described in subsection (a) above has been paid to the holders of the Series A and Series B Preferred Stock, all remaining assets of the corporation available for distribution to stockholders shall be distributed among the holders of Common Stock in proportion to the shares of Common Stock then held by them.

(c) For purposes of this Section C.2, a sale, conveyance or other disposition of all or substantially all of the property or business of the corporation, or a merger or consolidation with or into any other corporation, other than (i) a consolidation with a wholly-owned subsidiary of the corporation; (ii) a merger effected exclusively to change the domicile of the corporation; or (iii) any such merger or consolidation involving the corporation or a subsidiary in which the holders of the issued and outstanding shares of capital stock of the corporation immediately prior to such merger or consolidation continue to hold immediately following such merger or consolidation at least 50% of the voting power of the capital stock of (1) the surviving or resulting corporation or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation. Any bona fide equity financing of the corporation shall not be deemed a liquidation.

(d) Any securities to be delivered to the holders of Series A Preferred Stock, Series B Preferred Stock and Common Stock pursuant to Section C.2(c) above shall be valued as follows:

(i) Securities not subject to investment letter or other similar restrictions on free marketability:

(A) If traded on a securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty (30) day period ending three (3) days prior to the closing;

(B) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid and asked prices over the thirty (30) day period ending three (3) days prior to the closing; and

(C) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the corporation and the holders of not less than a majority of the then outstanding shares of Preferred Stock.

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

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

(f) In the event the requirements of this Section C.2 are not complied with, the corporation shall forthwith either cause the closing of the transaction to be postponed until such requirements have been complied with, or cancel such transaction, in which event the rights, preferences and privileges of the holders of the Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in Section C.2(e) hereof.

(g) The provisions of this Section 2 are in addition to the restrictions and limitations provisions of Section 5 hereof.

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

(a) Right To Convert. Subject to subsection (d), each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the \$0.3875 (the "Original Series A Issue Price") by the conversion price in effect at the time that the certificate is surrendered for conversion for the Series A Preferred Stock (the "Series A Conversion Price"). The initial Series A Conversion Price per share for shares of Series A Preferred Stock shall be the Original Series A Issue Price, subject to adjustment as set forth in subsection (d). Subject to subsection (d), each share of Series B Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the \$0.391022896 (the "Original Series B Issue Price") by the conversion price in effect at the time that the certificate is surrendered for conversion for the Series B Preferred Stock (the "Series B Conversion Price"). The initial Series B Conversion Price per share for shares of Series B Preferred Stock shall be the Original Series B Issue Price, subject to adjustment as set forth in subsection (d). The Series A and Series B Conversion Price are also referred to herein as the "Conversion Price" for each respective series of Preferred Stock.

(b) Automatic Conversion. The Preferred Stock shall automatically be converted into shares of Common Stock at the applicable Conversion Price then in effect for such Preferred Stock upon the earlier of (i) the date specified by vote or written consent or agreement of holders of at least a majority of the then outstanding shares of Preferred Stock, voting together as a class, (ii) immediately upon the closing of the sale of the corporation's Common Stock in a firm commitment, underwritten public offering registered under the Securities Act of 1933, as amended (the "Securities Act"), other than a registration relating solely to a transaction under Rule 145 under such Act (or any successor thereto) or to an employee benefit plan of the Corporation, with aggregate proceeds to the corporation of at least \$20,000,000, or (iii) as to a series of Preferred Stock, the date specified by vote or written consent or agreement of holders of at least a majority of the then outstanding shares of such series of Preferred Stock.

(c) Mechanics of Conversion.

(i) Before any holder of Series A or Series B Preferred Stock shall be entitled voluntarily to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefore, duly endorsed, at the office of the corporation or of any transfer agent for such stock, and shall give written notice to the corporation at such office that such holder elects to convert the same and shall state therein the number of shares to be converted and the name or names in which he wishes the certificate or certificates for shares of Common Stock to be issued. The corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A or Series B Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder

shall be entitled. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of surrender of the shares of Series A or Series B Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(ii) If the conversion is in connection with an underwritten offering of securities pursuant to the Securities Act, the conversion may, at the option of any holder tendering shares of Series A or Series B Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock upon conversion of the Series A or Series B Preferred Stock shall not be deemed to have converted such Series A or Series B Preferred Stock until immediately prior to the closing of such sale of securities.

(d) Adjustments to Preferred Stock Conversion Price.

(i) Special Definitions. For purposes of this Section 3(d), the following definitions apply:

(A) "Options" shall mean rights, options, or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities (defined below).

(B) "Original Issue Date" shall mean the date on which a share of Series B Preferred Stock was first issued.

(C) "Convertible Securities" shall mean any evidences of indebtedness, shares (other than Common Stock and Series A and Series B Preferred Stock) or other securities convertible into or exchangeable for Common Stock.

(D) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Section 3(d)(iii), deemed to be issued) by the corporation after the Original Issue Date, other than shares of Common Stock issued or issuable:

(1) pursuant to stock splits, stock dividends or similar transactions;

(2) to employees, consultants, officers or directors of the corporation pursuant to stock option plans or restricted stock plans (or under agreements providing for issuance of securities from such stock option plan or restricted stock plans) approved by the Board of Directors;

(3) to financial institutions, lessors or other lenders in connection with commercial credit arrangements, equipment financings, bridge financings, commercial property lease transactions, or similar transactions, the terms of which have been approved by the Board of Directors;

(4) in connection with bona fide acquisition, merger or similar transactions, the terms of which have been approved by the Board of Directors;

(5) upon conversion of the Preferred Stock, provided that any and all adjustments required pursuant to this Section C.3(d) by the issuance of such Preferred Stock have been effected prior to such conversion;

(6) Common Stock in a public offering prior to or in connection with which all outstanding shares of Preferred Stock are converted to Common Stock;

(7) in strategic partnership transactions or other transactions the terms of which have been approved by the Board of Directors, which approval shall include the approval of the Series B Directors (as such term is defined in Section C.4(b) of this Article IV); and

(8) for which adjustment of the Conversion Price is made pursuant to Section 3(e).

(ii) No Adjustment of Conversion Price. Any provision herein to the contrary notwithstanding, no adjustment in the Conversion Price applicable to a series of Preferred Stock shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share (determined pursuant to Section 3(d)(v) hereof) for an Additional Share of Common Stock issued or deemed to be issued by the corporation is less than the Conversion Price for such series of Preferred Stock in effect on the date of, and immediately prior to, such issue.

(iii) Deemed Issue of Additional Shares of Common Stock. In the event the corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities then entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein designed to protect against dilution) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefore, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(A) No further adjustments in the Series A or Series B Conversion Price, as applicable, shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(B) If such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the corporation, or decrease or increase in the number of shares

of Common Stock issuable (including, but not limited to, a change resulting from the antidilution provisions hereof, upon the exercise, conversion or exchange thereof, the Series A or Series B Conversion Price, as applicable, computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities (provided, however, that no such adjustment of the Series A or Series B Conversion Price shall affect Common Stock previously issued upon conversion of such series of Preferred Stock);

(C) Upon the expiration or termination of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Series A or Series B Conversion Price, as applicable, computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:

(1) In the case of Convertible Securities or Options for Common Stock the only Additional Shares of Common Stock issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefore was the consideration actually received by the corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the corporation upon such exercise, or for the issue of all such Convertible Securities, plus the additional consideration, if any, actually received by the corporation upon such conversion or exchange; and

(2) In the case of Options for Convertible Securities only the Additional Shares of Common Stock, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the corporation (determined pursuant to Section 3(d)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(D) No readjustment pursuant to clause (B) or (C) above shall have the effect of increasing the Series A or Series B Conversion Price to an amount which exceeds the lower of (a) the Series A or Series B Conversion Price immediately prior to the original adjustment date, or (b) the Series A or Series B Conversion Price resulting from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date;

(E) In the case of any Options which expire by their terms not more than thirty (30) days after the date of issue thereof, no adjustment of the Series A or Series B Conversion Price shall be made until the expiration or exercise of all such

Options, whereupon such adjustment shall be made in the same manner provided in clause (C) above.

(F) If any such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefore, the adjustment previously made in the Series A or Series B Conversion Price which became effective on such record date shall be canceled as of the close of business on such record date, and shall instead be made on the actual date of issuance, if any.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the corporation, at any time after the Original Issue Date shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 3(d)(iii)) without consideration or for a consideration per share less than the Conversion Price with respect to any series of Preferred Stock in effect on the date of and immediately prior to such issue, then the Conversion Price for such series shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Conversion Price in effect immediately prior to such issuance, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued. For the purpose of the above calculation, the number of shares of Common Stock outstanding immediately prior to such issue shall be calculated as if all shares of Preferred Stock and all Convertible Securities had been fully converted into shares of Common Stock immediately prior to such issuance and any outstanding warrants, options or other rights for the purchase of shares of stock or Convertible Securities had been fully exercised immediately prior to such issuance (and the resulting securities fully converted into shares of Common Stock, if so convertible) as of such date. No adjustment of the Conversion Price shall be made in an amount less than one cent per share, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three years from the date of the event giving rise to the adjustment being carried forward.

(v) Determination of Consideration. For purposes of this Section 3(d), the consideration received by the corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(A) Cash and Property. Such consideration shall:

(1) Insofar as it consists of cash, be computed at the aggregate amount of cash received by the corporation excluding amounts paid or payable for accrued interest or accrued dividends;

(2) Insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith by the Board of Directors irrespective of any accounting treatment; and

(3) In the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (1) and (2) above, as determined in good faith by the Board of Directors.

(B) Options and Convertible Securities. The consideration per share received by the corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 3(d)(iii), relating to Options and Convertible Securities shall be determined by dividing:

(1) The total amount, if any, received or receivable by the corporation as consideration for the issue of such Options or Convertible Securities (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against dilution) payable to the corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities by

(2) The maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against the dilution) issuable upon the exercise of such Options or conversion or exchange of such Convertible Securities.

(e) Adjustments to Conversion Prices for Stock Dividends and for Combinations or Subdivisions of Common Stock. In the event that the corporation at any time or from time to time after the Original Issue Date shall declare or pay, without consideration, any dividend on the Common Stock payable in Common Stock or in any right to acquire (directly or indirectly) Common Stock for no consideration, or shall effect a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock (by stock split or otherwise than by payment of a dividend in Common Stock or in any right to acquire Common Stock), or in the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, then the Conversion Price in effect immediately prior to such event shall, concurrently with the effectiveness of such event be proportionately decreased or increased, as appropriate. In the event that the corporation shall declare or pay, without consideration, any dividend on the Common Stock payable in any right to acquire (directly or indirectly) Common Stock for no consideration, then the corporation shall be deemed to have made a dividend payable in Common Stock in an amount of shares equal to the maximum number of shares issuable upon exercise of such rights to acquire Common Stock.

(f) Adjustments for Reclassification and Reorganization. If the Common Stock issuable upon conversion of the Series A and Series B Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for in Section 3(e) above or a merger or other reorganization referred to in Section 2(d) above), the Series A or Series B Conversion Price then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted so that the Series A and Series B Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of the Series A and Series B Preferred Stock immediately before that change.

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

(h) Certificates as to Adjustments. Upon the occurrence of each adjustment or readjustment of any Conversion Price for a series of Preferred Stock pursuant to this Section 3, the corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A and Series B Preferred Stock a certificate executed by the corporation's President or Chief Financial Officer setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The corporation shall, upon the written request at any time of any holder of Series A or Series B Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price for such series of Preferred Stock at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of the Series A or Series B Preferred Stock.

(i) Notices of Record Date. In the event that the corporation shall propose at any time: (i) to declare any dividend or distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus; (ii) to offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights; (iii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or (iv) to merge or consolidate with or into any other corporation, or sell, lease or convey all or substantially all of its assets, or to liquidate, dissolve or wind up; then, in connection with each such event, the corporation shall send to the holders of Series A and Series B Preferred Stock:

(A) At least twenty (20) days' prior written notice of the date on which a record shall be taken for such dividend, distribution or subscription rights (and specifying the date on which the holders of Common Stock shall be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (iii) and (iv) above; and

(B) In the case of the matters referred to in (iii) and (iv) above, at least twenty (20) days' prior written notice of the date when the same shall take place (and specifying the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such event).

(j) Issue Taxes. The corporation shall pay any and all issue and other taxes that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of Series A Preferred Stock pursuant hereto; provided, however, that the corporation shall not be obligated to pay any transfer taxes resulting from any transfer requested by any holder in connection with any such conversion.

(k) Reservation of Stock Issuable Upon Conversion. The corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A and Series B Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A and Series B Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A and Series B Preferred Stock, the corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Certificate.

(l) Fractional Shares. No fractional share shall be issued upon the conversion of any share or shares of Series A or Series B Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series A or Series B Preferred Stock by a holder thereof shall be aggregated for purposes of determining 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 a fraction of a share of Common Stock, the corporation shall, in lieu of issuing any fractional share, pay the holder otherwise entitled to such fraction a sum in cash equal to the fair market value of such fraction on the date of conversion (as determined in good faith by the Board of Directors, in accordance with Section 3(d)(v)).

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

4. Voting Rights.

(a) The holder of each share of Preferred Stock shall have the right to one vote for each share of Common Stock into which such share of Preferred Stock could be converted on the record date for the vote or written consent of stockholders. In all cases any fractional share, determined on an aggregate conversion basis, shall be rounded to the nearest whole share. With respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock (except as otherwise provided herein or as required by law, voting together with the Common Stock as a single class), and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the bylaws of the corporation. Each holder of Common Stock shall be entitled to one (1) vote for each share of Common Stock held.

(b) The Board of Directors shall consist of seven (7) directors. For so long as at least 1,316,129 shares of the originally issued Series A Preferred Stock remain outstanding (as adjusted for any stock dividends, combinations, splits or the like), the holders of Series A Preferred Stock shall be entitled, as a group voting as a separate class, to elect one (1) member of the Board of Directors of the corporation. For so long as at least 9,947,499 shares of the originally issued Series B Preferred Stock remain outstanding (as adjusted for any stock dividends, combinations, splits or the like), the holders of Series B Preferred Stock shall be entitled, as a group voting as a separate class, to elect two (2) members of the Board of Directors of the corporation (the "Series B Directors"). The holders of the Common Stock shall be entitled, as a group voting as a separate class, to elect one (1) member of the Board of Directors of the corporation. The remaining three (3) members of the Board of Directors of the corporation shall be elected by the holders of Series A Preferred Stock, Series B Preferred Stock and Common Stock, voting together as a class. Voting for members of the Board of Directors on a class basis shall terminate for Preferred Stock and Common Stock, except as provided for by applicable law, upon the effectiveness of a registration statement filed by the corporation under the Securities Act.

5. Restrictions and Limitations.

(a) So long as at least 11,263,628 shares, in the aggregate, of the originally issued Series A and Series B Preferred Stock (as adjusted for any stock dividends, combinations, splits or the like) remain outstanding, the corporation shall not, without first obtaining the affirmative vote or written consent in favor thereof by the holders of at least a majority of the then outstanding Series A and Series B Preferred Stock, voting as a single class, take any action that:

(i) effects a liquidation, sale, conveyance or other disposition of all or substantially all of the property or business of the corporation, or a merger or consolidation with or into any other corporation other than (i) a consolidation with a wholly-owned subsidiary of the corporation; (ii) a merger effected exclusively to change the domicile of the corporation; or (iii) any such merger or consolidation involving the corporation or a subsidiary in which the holders of the issued and outstanding shares of capital stock of the corporation immediately prior to such merger or consolidation continue to hold immediately following such merger or consolidation at least 50% of the

voting power of the capital stock of (1) the surviving or resulting corporation or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation. Any bona fide equity financing of the Company shall not be deemed an Acquisition.;

(ii) an equity financing in which the corporation is the surviving corporation;

(iii) authorizes the issuance of securities having a preference over or on a parity with any series of Preferred Stock;

(iv) redeems, purchases or otherwise acquires (or pays into or sets funds 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 corporation or any subsidiary pursuant to agreements under which the corporation has the option to repurchase such shares at cost upon the occurrence of certain events, such as the termination of employment, or through the exercise of any right of first refusal; or

(v) amends the Certificate of Incorporation or Bylaws of the corporation in a manner which adversely and disproportionately affects the holders of Preferred Stock.

(b) So long as at least 1,316,129 shares of Series A Preferred Stock (as adjusted for any stock dividends, combinations, splits or the like) remain outstanding remain outstanding, the corporation shall not, without first obtaining the affirmative vote or written consent in favor thereof by the holders of at least a majority of the then outstanding Series A Preferred Stock, take any action that:

(i) alters or changes the rights, preferences or privileges of such series of Preferred Stock so as to adversely and disproportionately affect such series of Preferred Stock; or

(ii) increases or decreases the number of authorized shares of such series of Preferred Stock.

(c) So long as at least 9,947,499 shares of Series B Preferred Stock (as adjusted for any stock dividends, combinations, splits or the like) remain outstanding, the corporation shall not, without first obtaining the affirmative vote or written consent in favor thereof by the holders of at least a majority of the then outstanding Series B Preferred Stock, take any action that:

(i) alters or changes the rights, preferences or privileges of such series of Preferred Stock so as to adversely and disproportionately affect such series of Preferred Stock; or

(ii) increases or decreases the number of authorized shares of such series of Preferred Stock.

6. Status of Converted Stock. In the event any shares of Series A or Series B Preferred Stock shall be converted pursuant to Section 3 hereof, the shares so converted shall be canceled and shall not be issuable by the corporation, and the Certificate of Incorporation of the corporation shall be appropriately amended to effect the corresponding reduction in the corporation's authorized capital stock.

7. Redemption. The Series A and Series B Preferred Stock shall not have any right of redemption or otherwise be redeemable at the election of the corporation.

8. Waiver. To the extent permitted under the General Corporation Law of the State of Delaware, any of the rights, powers and preferences granted to a series of Preferred Stock under this Section C of Article IV may be waived as to a series of Preferred Stock by the vote of at least a majority of the then outstanding shares of such series of Preferred Stock.

D. The powers, preferences, rights, restrictions and other matters relating to the Common Stock are as follows:

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

2. Liquidation Rights. Upon the liquidation, dissolution or winding up of the corporation, the assets of the corporation shall be distributed as provided in Section C.2 above.

3. Redemption. The Common Stock is not redeemable.

4. Voting Rights. Each holder of Common Stock shall have the right to one vote per share of Common Stock, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

ARTICLE V

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

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

B. The Board of Directors of the corporation is expressly authorized to make, alter or repeal Bylaws of the corporation; provided, however, that the stockholders may change or repeal any Bylaw adopted by the Board of Directors by the affirmative vote of the holders of a majority of the voting power of all of the then outstanding shares of the capital stock of the corporation; and, provided further, that no amendment or supplement of the Bylaws adopted by the Board of Directors shall vary or conflict with any amendment or supplement thus adopted by the stockholders.

C. Elections of directors need not be by written ballot unless otherwise provided in the Bylaws of the corporation.

D. Following the effectiveness of the registration of any class of securities of the corporation pursuant to the requirements of the Securities Exchange Act of 1934, as amended, no action shall be taken by the stockholders of the corporation except at an annual or special meeting of the stockholders called in accordance with the Bylaws and no action shall be taken by the stockholders by written consent.

ARTICLE VI

A. To the fullest extent permitted by the General Corporation Law of the State of Delaware, as the same exists or as may hereafter be amended, a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

B. The corporation shall indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that such person, his or her testator or intestate is or was a director or officer of the corporation or any predecessor of the corporation, or serves or served at any other enterprise as a director or officer at the request of the corporation or any predecessor to the corporation.

C. Neither any amendment nor repeal of this Article VI, nor the adoption of any provision of the corporation's Certificate of Incorporation inconsistent with this Article VI, shall eliminate or reduce the effect of this Article VI in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article VI, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

ARTICLE VII

The corporation is to have perpetual existence.

ARTICLE VIII

The corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by

statute and herein, and all rights conferred upon the stockholders herein are granted subject to this right.


[SIGNATURE PAGE FOLLOWS]

The foregoing Third Amended and Restated Certificate of Incorporation has been duly adopted by this corporation's Board of Directors and stockholders in accordance with the applicable provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware.

The undersigned makes this certificate, hereby declaring and certifying that it is his act and deed, and the facts herein stated are true, and accordingly, have hereunto set his hand this 6th day of August 2002.



Ken Biba, President



Mike Wilson, Secretary

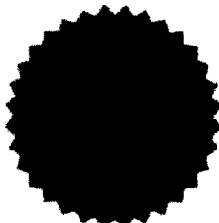
Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "MABUHAY NETWORKS, INC.", CHANGING ITS NAME FROM "MABUHAY NETWORKS, INC." TO "VIVATO, INC.", FILED IN THIS OFFICE ON THE SEVENTH DAY OF AUGUST, A.D. 2002, 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

AUTHENTICATION: 1925781

DATE: 08-07-02

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RECORDED: 04/11/2003

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