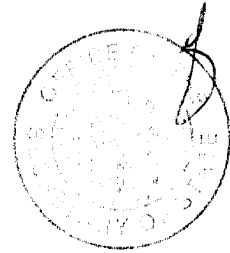






SECRETARY OF STATE

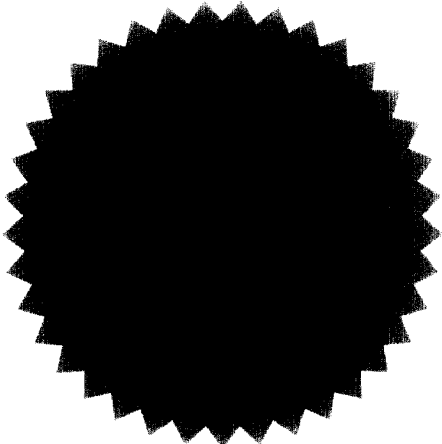


I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 12 page(s) was prepared by and in this office from the record on file, of which it purports to be a copy, and that it is full, true and correct.

*IN WITNESS WHEREOF*, I execute this certificate and affix the Great Seal of the State of California this

AUG 07 1998



*Bill Jones*

Secretary of State

D502673

FILED  
In the office of the Secretary of State  
of the State of California

SEP 28 1995

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AGREEMENT AND PLAN OF MERGER  
OF ADVANCED FIBRE COMMUNICATIONS, INC.  
A DELAWARE CORPORATION  
AND  
ADVANCED FIBRE COMMUNICATIONS,  
A CALIFORNIA CORPORATION

*Bill Jones*  
Secretary of State

THIS AGREEMENT AND PLAN OF MERGER dated as of September 28, 1995 (the "Agreement") is between Advanced Fibre Communications, Inc., a Delaware corporation ("AFC Delaware"), and Advanced Fibre Communications, a California corporation ("AFC California"). AFC Delaware and AFC California are sometimes referred to herein as the "Constituent Corporations."

RECITALS

A. AFC Delaware is a corporation duly organized and existing under the laws of the State of Delaware and has a total authorized capital stock of 60,000,000 shares. The number of shares of Preferred Stock authorized to be issued is 17,672,908 shares, par value \$.01, of which 4,056,044 shares have been designated Series A Preferred Stock (the "Series A Preferred Stock"), 4,056,044 shares have been designated Series A-1 Preferred Stock (the "Series A-1 Preferred Stock"), 1,020,410 shares have been designated Series B Preferred Stock (the "Series B Preferred Stock"), 1,020,410 shares have been designated Series B-1 Preferred Stock (the "Series B-1 Preferred Stock"), 1,600,000 shares have been designated Series C Preferred Stock (the "Series C Preferred Stock"), 1,600,000 shares have been designated Series C-1 Preferred Stock (the "Series C-1 Preferred Stock"), 1,040,000 shares have been designated Series D Preferred Stock (the "Series D Preferred Stock"), 1,040,000 shares have been designated Series D-1 Preferred Stock (the "Series D-1 Preferred Stock"), 1,120,000 shares have been designated Series E Preferred Stock (the "Series E Preferred Stock") and 1,120,000 shares have been designated Series E-1 Preferred Stock (the "Series E-1 Preferred Stock"). No shares of Preferred Stock were outstanding as of the date hereof and prior to giving effect to the transactions contemplated hereby. The number of shares of Common Stock authorized to be issued is 42,327,092, par value \$.01. As of the date hereof, and before giving effect to the transactions contemplated hereby, 100 shares of Common Stock were issued and outstanding, all of which were held by AFC California.

B. AFC California is a corporation duly organized and existing under the laws of the State of California and has an authorized capital stock of 39,146,454 shares. The number of shares of Preferred Stock authorized to be issued is 9,146,454 shares, no par value, of which 2,028,022 shares have been designated Series A Preferred Stock (the "Series A Preferred Stock"), 2,028,022 shares have been designated Series A-1 Preferred Stock (the "Series A-1 Preferred Stock"), 510,205 shares have been designated Series B Preferred Stock (the "Series B Preferred Stock"), 510,205 shares have been designated Series B-1 Preferred Stock (the "Series B-1 Preferred Stock"), 950,000 shares have been designated Series C Preferred Stock (the "Series C Preferred Stock"), 950,000 shares have been designated Series C-1 Preferred Stock (the "Series

C-1 Preferred Stock"), 720,000 shares have been designated Series D Preferred Stock (the "Series D Preferred Stock"), 720,000 shares have been designated Series D-1 Preferred Stock (the "Series D-1 Preferred Stock") and 730,000 shares have been designated as Series E Preferred Stock (the "Series E Preferred Stock"). The number of shares of Common Stock authorized to be issued is 30,000,000, no par value. As of the date hereof, and before giving effect to the transactions contemplated hereby, 2,028,022 shares of Series A Preferred Stock were issued and outstanding, 510,205 shares of Series B Preferred Stock were issued and outstanding, 800,000 shares of Series C Preferred Stock were issued and outstanding, 520,000 shares of Series D Preferred Stock were issued and outstanding, no shares of Series E Preferred Stock were issued and outstanding, and 1,253,682 shares of Common Stock were issued and outstanding.

C. The Board of Directors of AFC California has determined that, for the purpose of effecting the reincorporation of AFC California in the State of Delaware, it is advisable and in the best interests of AFC California that AFC California merge with and into AFC Delaware upon the terms and conditions herein provided.

D. The respective Boards of Directors of AFC Delaware and AFC California have approved this Agreement and have directed that this Agreement be submitted to a vote of their respective stockholders and executed by the undersigned officers.

E. AFC Delaware is a wholly-owned subsidiary of AFC California.

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, AFC Delaware and AFC California hereby agree, subject to the terms and conditions hereinafter set forth, as follows:

#### I. MERGER

1.1 *Merger.* In accordance with the provisions of this Agreement, the Delaware General Corporation Law and the California General Corporation Law, AFC California shall be merged with and into AFC Delaware (the "Merger"), the separate existence of AFC California shall cease and AFC Delaware shall be, and is herein sometimes referred to as, the "Surviving Corporation," and the name of the Surviving Corporation shall be Advanced Fibre Communications, Inc.

1.2 *Filing and Effectiveness.* The Merger shall become effective when the following actions shall have been completed:

(a) This Agreement shall have been adopted and approved by the shareholders of AFC California and the sole stockholder of AFC Delaware in accordance with the requirements of the California General Corporation Law and the Delaware General Corporation Law.

(b) All of the conditions precedent to the consummation of the Merger specified in this Agreement shall have been satisfied or duly waived by the party entitled to satisfaction thereof.

(c) An executed Certificate of Merger or an executed counterpart of this Agreement meeting the requirements of the Delaware General Corporation Law shall have been filed with the Secretary of State of the State of Delaware.

(d) An executed counterpart of this Agreement or a copy of this Agreement with an officers' certificate of each Constituent Corporation attached thereto meeting the requirements of the California General Corporation Law shall have been filed with the Secretary of State of the State of California.

The date and time when the Merger shall become effective, as aforesaid, is herein called the "Effective Date of the Merger."

1.3 *Effect of the Merger.* Upon the Effective Date of the Merger, the separate existence of AFC California shall cease and AFC Delaware, as the Surviving Corporation, (i) shall continue to possess all of its assets, rights, powers and property as constituted immediately prior to the Effective Date of the Merger, (ii) shall be subject to all actions previously taken by its and AFC California's Board of Directors, (iii) shall succeed, without other transfer, to all of the assets, rights, powers and property of AFC California in the manner more fully set forth in Section 259 of the Delaware General Corporation Law, (iv) shall continue to be subject to all of the debts, liabilities and obligations of AFC California as constituted immediately prior to the Effective Date of the Merger, and (v) shall succeed, without other transfer, to all of the debts, liabilities and obligations of AFC California in the same manner as if AFC Delaware had itself incurred them, all as more fully provided under the applicable provisions of the Delaware General Corporation Law and the California General Corporation Law.

## II. CHARTER DOCUMENTS, DIRECTORS AND OFFICERS

2.1 *Certificate of Incorporation.* The Certificate of Incorporation of AFC Delaware as in effect immediately prior to the Effective Date of the Merger shall continue in full force and effect as the Certificate of Incorporation of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.2 *Bylaws.* The Bylaws of AFC Delaware as in effect immediately prior to the Effective Date of the Merger shall continue in full force and effect as the Bylaws of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.3 *Directors and Officers.* The directors and officers of AFC California immediately prior to the Effective Date of the Merger shall be the directors and officers of the Surviving Corporation until their successors shall have been duly elected and qualified or until as otherwise provided by law, the Certificate of Incorporation of the Surviving Corporation or the Bylaws of the Surviving Corporation.

### III. MANNER OF CONVERSION OF STOCK

3.1 *AFC California Common Shares.* Upon the Effective Date of the Merger, each share of AFC California Common Stock, no par value, issued and outstanding immediately prior thereto shall by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into and exchanged for two (2) fully paid and nonassessable shares of Common Stock, \$.01 par value, per share, of the Surviving Corporation. No fractional share interests of the Surviving Corporation Common Stock shall be issued but shall, instead, be paid in cash by AFC Delaware to the holder of such shares.

3.2 *AFC California Preferred Shares.*

(a) *Series A Convertible Preferred Stock.* Upon the Effective Date of the Merger, each share of Series A Preferred Stock of AFC California, no par value, issued and outstanding immediately prior to the Merger, which shares are convertible into such number of shares of AFC California Common Stock as set forth in the Articles of Incorporation of AFC California, as amended, shall by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into or exchanged for two (2) fully paid and nonassessable shares of Series A Preferred Stock of the Surviving Corporation, par value \$.01 per share, respectively, having such rights, preferences and privileges as set forth in the Certificate of Incorporation of the Surviving Corporation. Upon the conversion of the Surviving Corporation's Series A Preferred Stock, each share of such Series A Preferred Stock of the Surviving Corporation shall be converted as set forth in the Certificate of Incorporation of AFC Delaware.

(b) *Series B Convertible Preferred Stock.* Upon the Effective Date of the Merger, each share of Series B Preferred Stock of AFC California, no par value, issued and outstanding immediately prior to the Merger, which shares are convertible into such number of shares of AFC California Common Stock as set forth in the Articles of Incorporation of AFC California, as amended, shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into or exchanged for two (2) fully paid and nonassessable shares of Series B Preferred Stock of the Surviving Corporation, par value \$.01 per share, respectively, having such rights, preferences and privileges as set forth in the Certificate of Incorporation of the Surviving Corporation. Upon the conversion of the Surviving Corporation's Series B Preferred Stock, such Series B Preferred Stock of the Surviving Corporation shall be converted as set forth in the Certificate of Incorporation of AFC Delaware.

(c) *Series C Convertible Preferred Stock.* Upon the Effective Date of the Merger, each share of Series C Preferred Stock of AFC California, no par value, issued and outstanding immediately prior to the Merger, which shares are convertible into such number of shares of AFC California Common Stock as set forth in the Articles of Incorporation of AFC California, as amended, shall by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into or exchanged for two (2) fully paid and nonassessable shares of Series C Preferred Stock of the Surviving Corporation, par value \$.01 per share, respectively, having such rights, preferences and privileges as set forth in the Certificate of Incorporation of the Surviving Corporation. Upon the conversion of the Surviving Corporation's Series C Preferred Stock, each share of such Series C Preferred Stock of the Surviving Corporation shall be converted as set forth in the Certificate of Incorporation of AFC Delaware.

(d) *Series D Convertible Preferred Stock.* Upon the Effective Date of the Merger, each share of Series D Preferred Stock of AFC California, no par value, issued and outstanding immediately prior to the Merger, which shares are convertible into such number of shares of AFC California Common Stock as set forth in the Articles of Incorporation of AFC California, as amended, shall by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into or exchanged for two (2) fully paid and nonassessable shares of Series D Preferred Stock of the Surviving Corporation, par value \$.01 per share, respectively, having such rights, preferences and privileges as set forth in the Certificate of Incorporation of the Surviving Corporation. Upon the conversion of the Surviving Corporation's Series D Preferred Stock, each share of such Series D Preferred Stock of the Surviving Corporation shall be converted as set forth in the Certificate of Incorporation of AFC Delaware.

### 3.3 *AFC California 1993 Stock Option/Stock Issuance Plan.*

(a) Upon the Effective Date of the Merger, the Surviving Corporation shall assume the obligations of AFC California under its 1993 Stock Option/Stock Issuance Plan (the "Plan"). Each outstanding and unexercised option to purchase AFC California Common Stock (an "Option") under the Plan shall become, subject to the provisions in paragraph (c) hereof, on the basis of two (2) shares of the Surviving Corporation's Common Stock for each one (1) share of AFC California Common Stock issuable pursuant to any such Option, an option to purchase the Surviving Corporation's Common Stock on the same terms and conditions and at an exercise price reflecting the two-for-one (2 for 1) exchange ratio described above.

(b) Two (2) shares of the Surviving Corporation's Common Stock shall be reserved for issuance upon the exercise of Options equal to one (1) share of AFC California Common Stock so reserved immediately prior to the Effective Date of the Merger (rounded down to the nearest whole number).

(c) Following the Effective Date of the Merger, the number of shares of the Surviving Corporation's Common Stock to which an option holder would be otherwise entitled upon exercise of an assumed Option shall be rounded down to the nearest whole number and the per share exercise price shall be rounded up to the nearest whole cent. In addition, no "additional benefits" (within the meaning of Section 424(a)(2) of the Internal Revenue Code of 1986, as amended) shall be accorded to the optionees pursuant to the assumption of their options.

3.4 *Warrants to Purchase Common Stock.* Upon the effective date of the Merger, the Surviving Corporation shall assume the obligations of AFC California to issue 1,297,753 shares of Common Stock pursuant to certain warrants (the "Warrants"). Two (2) shares of the Surviving Corporation's Common Stock shall be reserved for issuance pursuant to the Warrants for each one (1) share of AFC California so reserved for issuance prior to the Effective Date of the Merger, at an exercise price reflecting the two-for-one (2-for-1) exchange ratio described above.

3.5 *AFC Delaware Common Stock.* Upon the Effective Date of the Merger, each share of AFC Delaware Common Stock, \$.01 par value per share, issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by AFC Delaware, the holder of such shares or any other person, be cancelled and returned to the status of authorized but unissued shares.

3.6 *Exchange of Certificates.* After the Effective Date of the Merger, each holder of an outstanding certificate representing shares of AFC California Common Stock or Preferred Stock may, at such stockholder's option, surrender the same for cancellation to the Secretary of the Surviving Corporation, and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of the Surviving Corporation's Common Stock or Preferred Stock, as the case may be, into which the surrendered shares were converted as herein provided. Until so surrendered, each outstanding certificate theretofore representing shares of AFC California Common Stock or Preferred Stock shall be deemed for all purposes to represent the number of whole shares of the Surviving Corporation's Common Stock or Preferred Stock, respectively, into which such shares of AFC California Common Stock or Preferred Stock, as the case may be, were converted in the Merger.

The registered owner on the books and records of the Surviving Corporation of any such outstanding certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation, have and be entitled to exercise any voting and other rights with respect to and to receive dividends and other distributions upon the shares of Common Stock or Preferred Stock of the Surviving Corporation represented by such outstanding certificate as provided above.

Each certificate representing Common Stock or Preferred Stock of the Surviving Corporation so issued in the Merger shall bear the same legends, if any, with respect to the restrictions on transferability as the certificates of AFC California so



converted and given in exchange therefor, unless otherwise determined by the Board of Directors of the Surviving Corporation in compliance with applicable laws, or other such additional legends as agreed upon by the holder and the Surviving Corporation.

If any certificate for shares of AFC Delaware stock is to be issued in a name other than that in which the certificate surrendered in exchange therefore is registered, it shall be a condition of issuance thereof that the certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer, that such transfer otherwise be proper and comply with applicable securities laws and that the person requesting such transfer pay to the Surviving Corporation any transfer or other taxes payable by reason of issuance of such new certificate in a name other than that of the registered holder of the certificate surrendered or establish to the satisfaction of AFC Delaware that such tax has been paid or is not payable.

#### IV. GENERAL

4.1 *Covenants of AFC Delaware.* AFC Delaware covenants and agrees that it will, on or before the Effective Date of the Merger:

(a) Qualify to do business as a foreign corporation in the State of California and in connection therewith irrevocably appoint an agent for service of process as required under the provisions of Section 2105 of the California General Corporation Law.

(b) File any and all documents with the California Franchise Tax Board necessary for the assumption by AFC Delaware of all of the franchise tax liabilities of AFC California.

(c) Take such other actions as may be required by the California General Corporation Law.

4.2 *Further Assurances.* From time to time, as and when required by AFC Delaware or by its successors or assigns, there shall be executed and delivered on behalf of AFC California such deeds and other instruments, and there shall be taken or caused to be taken by it such further and other actions as shall be appropriate or necessary in order to vest or perfect in or conform of record or otherwise by AFC Delaware the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of AFC California and otherwise to carry out the purposes of this Agreement, and the officers and directors of AFC Delaware are fully authorized in the name and on behalf of AFC California or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.

4.3 *Abandonment.* At any time before the Effective Date of the Merger, this Agreement may be terminated and the Merger may be abandoned for any reason whatsoever by the Board of Directors of either AFC California or of AFC

Delaware, or of both, notwithstanding the approval of this Agreement by the shareholders of AFC California or by the sole stockholder of AFC Delaware, or by both.

4.4 *Amendment.* The Boards of Directors of the Constituent Corporations may amend this Agreement at any time prior to the filing of this Agreement (or certificate in lieu thereof) with the Secretary of State of the State of Delaware, provided that an amendment made subsequent to the adoption of this Agreement by the stockholders of either Constituent Corporation shall not: (1) alter or change the amount or kind of shares, securities, cash, property and/or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of such Constituent Corporation, (2) alter or change any term of the Certificate of Incorporation of the Surviving Corporation to be effected by the Merger, or (3) alter or change any of the terms and conditions of this Agreement if such alteration or change would adversely affect the holders of any class or series of capital stock of either Constituent Corporation.

4.5 *Registered Office.* The registered office of the Surviving Corporation in the State of Delaware is located at 32 Loockerman Square, Suite L-100, Dover, DE 19901 and the registered agent of the Surviving Corporation at such address is The Prentice-Hall Corporation System, Inc.

4.6 *Agreement.* Executed copies of this Agreement will be on file at the principal place of business of the Surviving Corporation at 1445 McDowell Boulevard North, Petaluma, California 94954, and copies thereof will be furnished to any stockholder of either Constituent Corporation, upon request and without cost.

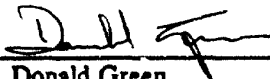
4.7 *Governing Law.* This Agreement shall in all respects be construed, interpreted and enforced in accordance with and governed by the laws of the State of Delaware and, so far as applicable, the merger provisions of the California General Corporation Law.

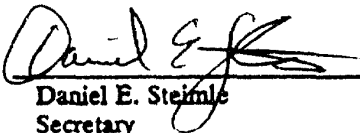
4.8 *Counterparts.* In order to facilitate the filing and recording of this Agreement, the same may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

4.9 *Adoption and Approval by Stockholders.* This Agreement and Merger have been approved by the stockholders of the Constituent Corporations in accordance with the requirements of the Delaware General Corporation Law and the California General Corporation Law.


IN WITNESS WHEREOF, the parties have duly executed this Agreement  
as of the date first written above.

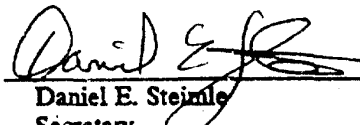
ADVANCED FIBRE COMMUNICATIONS,  
INC.

By:   
Donald Green  
President

By:   
Daniel E. Steimle  
Secretary

ADVANCED FIBRE COMMUNICATIONS

By:   
Donald Green  
President

By:   
Daniel E. Steimle  
Secretary

**CERTIFICATE OF APPROVAL  
OF  
AGREEMENT OF MERGER**

Donald Green and Karen Godfrey certify that:

1. They are the president and assistant secretary, respectively, of Advanced Fibre Communications, Inc., a Delaware corporation.
2. The Agreement and Plan of Merger in the form attached hereto was duly approved by the board of directors and sole stockholder of the corporation.
3. The total number of shares of the corporation's common stock issued and outstanding and entitled to vote was 100.

The number of shares voting in favor of the Agreement and Plan of Merger equaled or exceeded the vote required. The percentage vote required was more than 50%.

We further declare under penalty of perjury under the laws of the State of Delaware that the matters set forth in this certificate are true and correct of our own knowledge.

Date: September 28, 1995

  
\_\_\_\_\_  
Donald Green, President

  
\_\_\_\_\_  
Karen Godfrey,  
Assistant Secretary

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TRADEMARK

**CERTIFICATE OF APPROVAL  
OF  
AGREEMENT OF MERGER**

Donald Green and Karen Godfrey certify that:

1. They are the president and assistant secretary, respectively, of Advanced Fibre Communications, a California corporation.
2. The Agreement and Plan of Merger in the form attached hereto was duly approved by the board of directors and shareholders of the corporation.
3. The total number of shares of the corporation's capital stock issued and outstanding and entitled to vote was as follows:

Common: 1,253,682  
Series A Preferred: 2,028,022  
Series B Preferred: 510,205  
Series C Preferred: 800,000  
Series D Preferred: 520,000

The number of shares voting in favor of the Agreement and Plan of Merger equaled or exceeded the vote required. The percentage vote required was the affirmative vote of (i) the holders of more than 50% of the outstanding Common Stock and (ii) the holders of more than 50% of each of the Series A, B, C and D Preferred Stock, voting separately as a class.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Date: September 28, 1995

  
\_\_\_\_\_  
Donald Green, President

  
\_\_\_\_\_  
Karen Godfrey,  
Assistant Secretary



STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
P.O. BOX 942857  
SACRAMENTO, CA 94257-0541

## TAX CLEARANCE CERTIFICATE

September 25, 1995

EXPIRATION DATE: December 15, 1995

GKL CORPORATE SEARCH, INC.  
KEVIN LUTZ  
P. O. BOX 1913  
SACRAMENTO CA 95812

ISSUED TO: ADVANCED FIBRE COMMUNICATIONS  
Corporate Number 1822149 AF7C\*

This is to certify that all taxes imposed under the Bank and Corporation Tax Law on this corporation have been paid or are secured by bond deposit or other security.

A copy of this Tax Clearance Certificate has been sent to the Office of the Secretary of State. This original Tax Clearance Certificate may be retained in the files of the corporation.

By the Expiration Date noted above, this corporation must have filed the documents required by the Secretary of State to dissolve, withdraw or merge. Requests for the appropriate documents must be directed to: Office of the Secretary of State at 1500 11th Street, 3rd Floor, Sacramento CA 95814. The telephone number is (916) 657-5448.

NOTE: If the required documents are not filed with the Secretary of State prior to the Expiration Date noted above, the corporation will remain subject to the filing requirements of the Bank and Corporation Tax Law.

FRANCHISE TAX BOARD

By H. Hermansen  
Special Audit Unit  
Corporation Audit Section  
Telephone (916) 845-4124

FTB 2557 C MEMO NEW 1 8 9

COPY



TRADEMARK