

11-02-2000



101503322

RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

MKD 10/1/00

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

- New
- Resubmission (Non-Recordation)
Document ID #
- Correction of PTO Error
Reel # Frame #
- Corrective Document
Reel # Frame #

Conveyance Type

- Assignment
- License
- Security Agreement
- Nunc Pro Tunc Assignment
- Merger
Effective Date
Month Day Year
- Change of Name
- Other

Conveying Party

Mark if additional names of conveying parties attached

Execution Date
Month Day Year

Name Applied Theory Communications, Inc.

04 29 99

Formerly

- Individual
- General Partnership
- Limited Partnership
- Corporation
- Association
- Other

Citizenship/State of Incorporation/Organization New York

Receiving Party

Mark if additional names of receiving parties attached

Name Applied Theory Corporation

DBA/AKA/TA

Composed of

Address (line 1) 224 Harrison St., Syracuse, NY 13202

Address (line 2)

Address (line 3)

City State/Country Zip Code

- Individual
- General Partnership
- Limited Partnership
- Corporation
- Association
- Other

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

Citizenship/State of Incorporation/Organization Delaware

FOR OFFICE USE ONLY

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name Angelo Gencorelli, III

Address (line 1) 224 Harrison ST., 8th Floor, Syracuse, NY 13202

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number 315 453-2912

Name Terri Kennett

Address (line 1) 224 Harrison ST., 8th Floor, Syracuse, NY 13202

Address (line 2)

Address (line 3)

Address (line 4)

Pages Enter the total number of pages of the attached conveyance document including any attachments. # 27

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

<u>2172393</u>		

Number of Properties Enter the total number of properties involved. # 1

Fee Amount Fee Amount for Properties Listed (37 CFR 3.41): \$ 40.00

Method of Payment: Enclosed Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number: #

Authorization to charge additional fees: Yes No

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. Charges to deposit account are authorized, as indicated herein.

Angelo Gencorelli, III

Name of Person Signing

Angelo Gencorelli, III
Signature

10/2/00

Date Signed

RECORDATION FORM COVER SHEET
CONTINUATION
TRADEMARKS ONLY

Conveying Party

Enter Additional Conveying Party

Mark if additional names of conveying parties attached

Execution Date
Month Day Year

Name

Formerly

Individual General Partnership Limited Partnership Corporation Association

Other

Citizenship State of Incorporation/Organization

Receiving Party

Enter Additional Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City

State/Country

Zip Code

Individual General Partnership Limited Partnership

Corporation Association

Other

Citizenship/State of Incorporation/Organization

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached (Designation must be a separate document from the Assignment.)

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

Office of the Secretary of State

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 CERTIFICATE OF OWNERSHIP, WHICH MERGES:

"APPLIEDTHEORY COMMUNICATIONS, INC.", A NEW YORK CORPORATION,

WITH AND INTO "APPLIEDTHEORY CORPORATION" UNDER THE NAME OF "APPLIEDTHEORY CORPORATION", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE TWENTY-NINTH DAY OF APRIL, A.D. 1999, AT 12 O'CLOCK P.M.

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



2994408 8100M
991169383

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

Edward J. Freel, Secretary of State

AUTHENTICATION: 9715280
DATE: 04-29-99

CERTIFICATE OF OWNERSHIP AND MERGER

merging

APPLIEDTHEORY COMMUNICATIONS, INC., a New York corporation,

with and into

APPLIEDTHEORY CORPORATION., a Delaware corporation

Pursuant to Section 253 of the General Corporation
Law of the State of Delaware


AppliedTheory Communications, Inc., a New York corporation, desiring to merge with and into its wholly-owned subsidiary, AppliedTheory Corporation., a Delaware corporation, pursuant to the provisions of Section 253 of the Delaware General Corporation Law (the "DGCL"), hereby certifies as follows:

1. AppliedTheory Communications, Inc. is a corporation organized and validly existing under the laws of the state of New York.
2. AppliedTheory Corporation, the surviving corporation, is a corporation organized and validly existing under the laws of the state of Delaware.
3. AppliedTheory Communications, Inc. is the owner of all of the outstanding shares of capital stock of AppliedTheory Corporation.
4. The proposed merger has been adopted, approved, certified, executed and acknowledged by AppliedTheory Communications, Inc. in accordance with the laws of the State of New York.
5. The Board of Directors of AppliedTheory Communications, Inc., by unanimous written consent of February 25, 1999, duly adopted resolutions authorizing the merger of AppliedTheory Communications, Inc. with and into AppliedTheory Corporation. A true copy of such resolutions is annexed hereto as Exhibit A. Such resolutions have not been modified or rescinded and are in full force and effect on and as of the date hereof. A true copy of the Agreement and Plan of Merger referenced therein is annexed hereto as Exhibit B.
6. The Agreement and Plan of Merger shall be effective on April 29, 1999 at 4:00 p.m. (Eastern time) (the "Effective Date").

7. Anything herein or elsewhere to the contrary notwithstanding, this merger may be terminated and abandoned by the Board of Directors of AppliedTheory Communications, Inc. or AppliedTheory Corporation at any time prior to the Effective Date.

IN WITNESS WHEREOF, AppliedTheory Communications, Inc. has caused this Certificate of Ownership and Merger to be executed in its name and on its behalf and attested as of this 29 day of April --, 1999.

APPLIEDTHEORY COMMUNICATIONS,
INC., a New York corporation

By: 
Richard Mandelbaum
Chairman of the Board and
Chief Executive Officer

Attest:

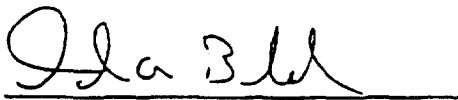
By: 
David A. Buckel
Vice President and
Chief Financial Officer and Secretary

Exhibit A

Resolutions of AppliedTheory Communications, Inc. authorizing the merger

UNANIMOUS WRITTEN CONSENT
OF THE
BOARD OF DIRECTORS
OF
APPLIEDTHEORY COMMUNICATIONS, INC.
(a New York corporation)

We the undersigned, being all of the Directors of Applied Theory Communications, Inc. (the "Corporation"), do hereby consent, pursuant to Sections 708(b), 901, 902, 905 and 907 of the New York Business Corporation Law, to the adoption of the following resolutions:

Agreement and Plan of Merger

WHEREAS, the Board of Directors of the Corporation (the "Board") has determined that it is in the Corporation's best interests to make a initial public offering of the Corporation's common stock,

WHEREAS, to facilitate the Corporation's initial public offering, the Board deems it advisable to reincorporate the Corporation in Delaware through a merger of the Corporation with Applied Theory Corporation, its wholly owned Delaware subsidiary.

NOW THEREFORE, BE IT:

RESOLVED, that the Board of the Corporation, a New York corporation, hereby declares it to be advisable and in the best interests of the Corporation for the Corporation to enter into an Agreement and Plan of Merger (the "Merger Agreement") by and between the Corporation and Applied Theory Corporation, a wholly owned subsidiary of the Corporation, such subsidiary being incorporated under the laws of the State of Delaware and such Merger Agreement being substantially in the form attached hereto as Exhibit A; and further

RESOLVED, that the form, terms and provisions of the Merger Agreement substantially in such form as is attached hereto as Exhibit A, and the merger and any related transactions contemplated thereby, be, and they hereby are, approved and adopted in all respects; and further

RESOLVED, that the appropriate officers of the Corporation be, and each of them hereby is, authorized and directed, in the name of and behalf of the Corporation, to execute and deliver the Merger Agreement substantially in such form, with such changes therein as may be approved by the officer who shall execute the Merger Agreement, such approval to be conclusively evidenced by his execution thereof; and further

RESOLVED, that the Merger Agreement be submitted for approval and adoption by the stockholders of the Corporation at a special meeting to be held on February 26, 1999 at the offices of the Corporation at 40 Cuttermill Road, Great

Neck, NY, 10021 or at such other place and time as the Chairman of the Corporation shall deem practicable, or at any adjournment of such meeting; and further

RESOLVED, that the Board shall recommend to the stockholders of the Corporation that they approve and adopt the Merger Agreement and that they authorize and direct the proper officers of the Corporation to give written notice of any such special meeting in the manner provided by applicable law and the by-laws of the Corporation and to solicit proxies on behalf of this Board from the holders of the Corporation's voting common stock, non-voting common stock and preferred stock, with respect to the voting of such stock at any such special meeting; and further

RESOLVED, that, following execution of the Merger Agreement and subject to the satisfaction or waiver of the conditions set forth in such Merger Agreement, the appropriate officers of the Corporation be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation, to execute and acknowledge a certificate of merger with respect to the merger contemplated by the Merger Agreement, and to cause the filing of such certificate of merger with the Secretaries of State for the State of Delaware and for the State of New York, and to cause a certified copy of such certificate of merger to be recorded in any proper State and County offices within such States, all in accordance with the Delaware General Corporation Law and the New York Business Corporation Law; and further

RESOLVED, that the officers of the Corporation be, and each of them hereby is, authorized, empowered and directed to do, or cause to be done, all such acts or things, to pay all costs, fees and expenses and to make, execute, seal and deliver, or cause to be made, executed, sealed and delivered, all such agreements, documents, instruments, payments, applications and certificates, in the name and on behalf of the Corporation and under its corporate seal or otherwise, as such officer, in his or her discretion, may deem necessary, advisable or appropriate to effectuate or carry out the purposes and intent of the foregoing resolutions; and further


RESOLVED, that any acts of any officer or any member of this Board of Directors, and of any person or persons designated and authorized to act by any officer or by resolution of this Board of Directors, which would have been authorized by the foregoing resolutions, are individually and collectively ratified, confirmed and approved and adopted as acts on behalf of the Corporation.

IN WITNESS WHEREOF, the undersigned have executed this
Unanimous Written Consent as of the 25th day of February, 1999.


James Guthrie

Shelley Harrison

James Kelsey

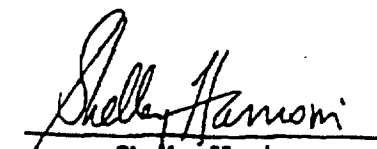

Richard Mandelbaum

John Pndray

George Sadowsky

IN WITNESS WHEREOF, the undersigned have executed this
Unanimous Written Consent as of the 25th day of February, 1999.

James Guthrie



Shelley Harrison

James Kelsey



Richard Mandelbaum

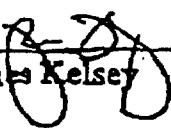
John Pendray

George Sadowsky

IN WITNESS WHEREOF, the undersigned have executed this
Unanimous Written Consent as of the 25th day of February, 1999.

James Guthrie

Shelley Harrison



James Kelsey



Richard Mandelbaum

John Pendray

George Sadowsky

IN WITNESS WHEREOF, the undersigned have executed this
Unanimous Written Consent as of the 25th day of February, 1999.

James Guthrie

Shelley Harrison

James Kelsey

Richard Mandelbaum

John J. Pendray

John Pendray

George Sadowsky

IN WITNESS WHEREOF, the undersigned have executed this
Unanimous Written Consent as of the 25th day of February, 1999.

James Guthrie

Shelley Harrison

James Kelsey

Richard Mandelbaum

John Pendray



George Sadowsky

Exhibit A
AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER, dated as of April 29, 1999 (the "Agreement"), is made by and between AppliedTheory Corporation (formerly AppliedTheory Inc.), a Delaware corporation ("AppliedTheory"), and AppliedTheory Communications, Inc. (formerly NYSERNet.com, Inc.), a New York corporation ("AppliedTheory Communications").

WHEREAS, AppliedTheory and AppliedTheory Communications have each determined that it is in the best interests of their respective stockholders for AppliedTheory Communications to merge with and into AppliedTheory upon the terms and subject to the conditions set forth in this Agreement;

WHEREAS, the respective Boards of Directors of AppliedTheory and AppliedTheory Communications have each approved this Agreement and the consummation of the transactions contemplated hereby and approved the execution and delivery of this Agreement;

NOW, THEREFORE, in consideration of the foregoing premises and agreements contained herein, the parties hereto hereby agree as follows:

ARTICLE I

THE MERGER

1.1 **MERGER.** Subject to the terms and conditions of this Agreement, at the Effective Time (as defined in Section 1.2), AppliedTheory Communications will be merged with and into AppliedTheory and the separate corporate existence of AppliedTheory Communications will thereupon cease (the "Merger") in accordance with the applicable provisions of the New York Business Corporation Law ("BCL"), including, without limitation, Sections 905 and 907 thereof, and the Delaware General Corporation Law ("DGCL").

1.2 **EFFECTIVE TIME.** As soon as practicable after satisfaction or waiver of all conditions to the Merger, AppliedTheory and AppliedTheory Communications shall cause a certificate of ownership and merger complying with the requirements of the DGCL (the "Delaware Certificate of Ownership and Merger") to be filed with the Secretary of State of the State of Delaware and a certificate of merger complying with the requirements of the BCL (the "New York Certificate of Merger") to be filed with the Secretary of State of the State of New York. The Merger will become effective at the time of the later of the following to occur: (a) the filing of the Delaware Certificate of Ownership and Merger with the Secretary of State of the State of Delaware, (b) the filing of the New York Certificate of Merger with Secretary of State of the State of New York, or (c) such later time as shall be specified in such filings (the "Effective Time").

1.3 EFFECT OF MERGER. The Merger will have the effects specified in the BCL, the DGCL and this Agreement. Without limiting the generality of the foregoing, AppliedTheory will be the surviving corporation in the Merger (sometimes hereinafter referred to as the "Surviving Corporation") and will continue to be governed by the laws of the State of Delaware, and the separate corporate existence of AppliedTheory and all of its rights, privileges, powers and franchises, public as well as private, and all its debts, liabilities and duties as a corporation organized under the DGCL, will continue unaffected by the Merger.

1.4 CERTIFICATE OF INCORPORATION AND BY-LAWS. The Certificate of Incorporation and By-laws of AppliedTheory in effect immediately prior to the Effective Time shall be the Certificate of Incorporation and By-laws of the Surviving Corporation, until amended in accordance with their terms and the DGCL.

1.5 DIRECTORS AND OFFICERS OF SURVIVING CORPORATION. The directors and officers of AppliedTheory immediately prior to the Effective Time will be the directors and officers, respectively, of the Surviving Corporation, from and after the Effective Time, until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the terms of the Surviving Corporation's Certificate of Incorporation and By-laws and the DGCL.

1.6 ADDITIONAL ACTIONS. If, at any time after the Effective Time, the Surviving Corporation shall consider or be advised that any further deeds, assignments or assurances in law or any other acts are necessary or desirable to (i) vest, perfect or confirm, of record or otherwise, in the Surviving Corporation its right, title or interest in, to or under any of the rights, properties or assets of AppliedTheory Communications, or (ii) otherwise carry out the purposes of this Agreement, AppliedTheory Communications and its officers and directors shall be deemed to have granted to the Surviving Corporation an irrevocable power of attorney to execute and deliver all such deeds, assignments or assurances in law or any other acts as are necessary or desirable to (a) vest, perfect or confirm, of record or otherwise, in the Surviving Corporation its right, title or interest in, to or under any of the rights, properties or assets of AppliedTheory Communications and (b) otherwise carry out the purposes of this Agreement, and the officers and directors of the Surviving Corporation are authorized in the name of AppliedTheory Communications or otherwise to take any and all such action.

ARTICLE II.

CONVERSION OF SHARES

2.1 CONVERSION OF SHARES. At the Effective Time:

(a) each then outstanding share of voting common stock, par value \$.01 per share, and non-voting common stock, par value \$.01 per share, of AppliedTheory Communications (collectively, "AppliedTheory Communications

Common Stock") shall by virtue of the Merger, and without any action on the part of AppliedTheory Communications, AppliedTheory or the holder thereof, be converted into such number of shares of legally and validly issued, fully-paid and nonassessable common stock, par value \$.01 per share, of AppliedTheory ("AppliedTheory Common Stock"), as may be determined by the Capital Formation Committee of the Board of Directors of AppliedTheory Communications (such committee consisting of Richard Mandelbaum, Shelley A. Harrison and James T. Kelsey) (the "Capital Formation Committee") after consultation with the representatives of the underwriters of the initial public offering of AppliedTheory contemplated by the Registration Statement on Form S-1 (Registration No. 333-72133) filed by AppliedTheory with the Securities and Exchange Commission (the "Initial Public Offering") (*provided*, that each holder of AppliedTheory Communications Common Stock immediately prior to the Effective Time shall have his or her shares converted into such number of shares of AppliedTheory Common Stock representing the same percentage of the total outstanding AppliedTheory Common Stock immediately following the Effective Time (without giving effect to the Initial Public Offering) as the percentage of the total outstanding AppliedTheory Communications Common Stock held by such holder immediately prior to the Effective Time);

(b) each then outstanding share of Preferred Stock, par value \$.01 per share, of AppliedTheory Communications ("AppliedTheory Communications Preferred Stock") shall by virtue of the Merger, and without any action on the part of AppliedTheory Communications, AppliedTheory or the holder thereof, be converted into such number of shares of legally and validly issued, fully-paid and nonassessable Preferred Stock, par value \$.01 per share, of AppliedTheory ("AppliedTheory Preferred Stock"), as may be determined by the Capital Formation Committee after consultation with the representatives of the underwriters of the Initial Public Offering (*provided*, that each holder of AppliedTheory Communications Preferred Stock immediately prior to the Effective Time shall have his or her shares converted into such number of shares of AppliedTheory Preferred Stock representing the same percentage of the total outstanding AppliedTheory Preferred Stock immediately following the Effective Time as the percentage of the total outstanding AppliedTheory Communications Preferred Stock held by such holder immediately prior to the Effective Time);

(c) each share of AppliedTheory Common Stock issued and outstanding immediately prior to the Effective Time and owned by AppliedTheory Communications will be cancelled and retired.

2.2 ASSUMPTION OF OPTIONS.

Each option or other right, whether vested before or after the Effective Date, to purchase or otherwise acquire shares of AppliedTheory Communications Common Stock pursuant to stock option or other stock-based plans of AppliedTheory Communications and each other similar right to acquire shares of

AppliedTheory Communications Common Stock, in each case granted and outstanding immediately prior to the Effective Time, shall, by virtue of the Merger, and without any action on the part of the holder of such option or right, be converted into and become a right to purchase or otherwise acquire such number of shares of AppliedTheory Common Stock at a price per share that, in the case of both the number of shares and price per share, gives effect to the conversion rate with respect to AppliedTheory Communications Common Stock as determined in accordance with Section 2.1(a). All other terms and conditions applicable to such options or other rights immediately prior to the Effective Time shall remain the same.

2.3 CERTIFICATES.

(a) After the Effective Time, any certificate theretofore evidencing outstanding shares of AppliedTheory Communications Common Stock shall, without any action on the part of the holder thereof, represent the number of shares of AppliedTheory Common Stock into which such AppliedTheory Communications Common Stock shall have been converted as provided in Section 2.1(a).

(b) After the Effective Time, any certificate theretofore evidencing outstanding shares of any series of AppliedTheory Communications Preferred Stock shall, without any action on the part of the holder thereof, represent the number of shares of AppliedTheory Preferred Stock into which such AppliedTheory Communications Preferred Stock shall have been converted as provided in Section 2.1(b).

(c) If, after the Effective Time, certificates formerly representing shares of AppliedTheory Communications Common Stock or AppliedTheory Communications Preferred Stock are surrendered to the Surviving Corporation for exchange or transfer, they shall be cancelled and certificates representing shares of AppliedTheory Common Stock or AppliedTheory Preferred Stock, as the case may be, shall be issued to the holder or transferee thereof, as the case may be.

ARTICLE III.

CONDITIONS

3.1 SHAREHOLDER APPROVAL.

Consummation of the Merger is subject to the satisfaction at or prior to the Effective Time of the Merger of the following condition:

This Agreement and the Merger shall have been adopted and approved by:
(i) the affirmative vote of two-thirds of the votes of the shares of AppliedTheory Communications Common Stock (both voting and non-voting) and AppliedTheory Communications Preferred Stock entitled to vote thereon, voting

together as a single class, (ii) the affirmative vote of a majority of the votes of the shares of AppliedTheory Communications Common Stock (both voting and non-voting) entitled to vote thereon, voting separately as a class, and (iii) the affirmative vote of a majority of the votes of the shares of AppliedTheory Communications Preferred Stock entitled to vote thereon, voting separately as a class. This Agreement and the Merger shall also have been adopted and approved by AppliedTheory Communications as the holder of all the outstanding shares of AppliedTheory Common Stock prior to the Effective Time of the Merger.

ARTICLE IV.

TERMINATION

This Agreement shall be terminated and abandoned without further action by the parties hereto in the event that one or more of the Boards of Directors of AppliedTheory or AppliedTheory Communications by requisite action deems it advisable to terminate and abandon this Agreement, and in such event this Agreement shall have no further force or effect and there shall be no liability on the part of the parties hereto.

ARTICLE V.

MISCELLANEOUS

5.1 DESIGNATION AND NUMBER OF OUTSTANDING SHARES.

<i>AppliedTheory Communications.</i> Designation of Class	Shares Authorized	Shares Outstanding ⁽¹⁾
Voting Common Stock, par value \$.01 per share	25,000,000	10,565,805
Non-Voting Common Stock, par value \$.01 per share	5,000,000	80,981
Preferred Stock, par value \$.01 per share	75,000	15,000

⁽¹⁾ Based on number of shares outstanding as of March 31, 1999. Outstanding shares of Voting Common Stock and Non-Voting Common Stock of AppliedTheory Communications are subject to increase in the event of the exercise of outstanding stock options prior to the Effective Time. No outstanding shares of Voting Common Stock, Non-Voting Common Stock or Preferred Stock of AppliedTheory Communications are owned by AppliedTheory.

AppliedTheory.

<u>Designation of Class</u>	<u>Shares Authorized</u>	<u>Shares Outstanding⁽¹⁾</u>
Common Stock, par value \$.01 per share	90,000,000	100
Preferred Stock, par value \$.01 per share	1,000,000	0

⁽¹⁾ Based on number of shares outstanding as of March 31, 1999. AppliedTheory owns none of its outstanding shares of Common Stock.

5.2 COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

5.3 AMENDMENTS. Subject to applicable law, and except as otherwise provided herein, this Agreement may be amended, modified or supplemented only by written agreement of AppliedTheory and AppliedTheory Communications or by their respective officers thereunto duly authorized, at any time prior to the Effective Date.

5.4 GOVERNING LAW. This Merger Agreement shall be construed in accordance with the laws of the State of Delaware applicable to contracts made and to be performed entirely within such State.

IN WITNESS WHEREOF, each undersigned corporation has caused this Agreement and Plan of Merger to be executed as of the date first written above by a duly authorized officer.

AppliedTheory Corporation,
a Delaware corporation

By: _____
Richard Mandelbaum
Chairman of the Board and
Chief Executive Officer

Attest:

David A. Buckel
Vice President and Chief Financial
Officer and Assistant Secretary
(Corporate Seal)

AppliedTheory Communications, Inc., a New York
corporation

By: _____
Richard Mandelbaum
Chairman of the Board and
Chief Executive Officer

Attest:

David A. Buckel
Vice President and Chief Financial
Officer and Assistant Secretary
(Corporate Seal)

EXHIBIT B

COPY OF THE EXECUTED
AGREEMENT AND PLAN OF MERGER

3

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER, dated as of April 29, 1999 (the "Agreement"), is made by and between AppliedTheory Corporation (formerly AppliedTheory Inc.), a Delaware corporation ("AppliedTheory"), and AppliedTheory Communications, Inc. (formerly NYSErNet.com, Inc.), a New York corporation ("AppliedTheory Communications").

WHEREAS, AppliedTheory and AppliedTheory Communications have each determined that it is in the best interests of their respective stockholders for AppliedTheory Communications to merge with and into AppliedTheory upon the terms and subject to the conditions set forth in this Agreement;

WHEREAS, the respective Boards of Directors of AppliedTheory and AppliedTheory Communications have each approved this Agreement and the consummation of the transactions contemplated hereby and approved the execution and delivery of this Agreement;

NOW, THEREFORE, in consideration of the foregoing premises and agreements contained herein, the parties hereto hereby agree as follows:

ARTICLE I.

THE MERGER

1.1 **MERGER.** Subject to the terms and conditions of this Agreement, at the Effective Time (as defined in Section 1.2), AppliedTheory Communications will be merged with and into AppliedTheory and the separate corporate existence of AppliedTheory Communications will thereupon cease (the "Merger") in accordance with the applicable provisions of the New York Business Corporation Law ("BCL"), including, without limitation, Sections 905 and 907 thereof, and the Delaware General Corporation Law ("DGCL").

1.2 **EFFECTIVE TIME.** As soon as practicable after satisfaction or waiver of all conditions to the Merger, AppliedTheory and AppliedTheory Communications shall cause a certificate of ownership and merger complying with the requirements of the DGCL (the "Delaware Certificate of Ownership and Merger") to be filed with the Secretary of State of the State of Delaware and a certificate of merger complying with the requirements of the BCL (the "New York Certificate of Merger") to be filed with the Secretary of State of the State of New York. The Merger will become effective at the time of the later of the following to occur: (a) the filing of the Delaware Certificate of Ownership and Merger with the Secretary of State of the State of Delaware, (b) the filing of the New York Certificate of Merger with Secretary of State of the State of New York, or (c) such later time as shall be specified in such filings (the "Effective Time").

TRADEMARK

REEL: 002166 FRAME: 0283

1.3 EFFECT OF MERGER. The Merger will have the effects specified in the BCL, the DGCL and this Agreement. Without limiting the generality of the foregoing, AppliedTheory will be the surviving corporation in the Merger (sometimes hereinafter referred to as the "Surviving Corporation") and will continue to be governed by the laws of the State of Delaware, and the separate corporate existence of AppliedTheory and all of its rights, privileges, powers and franchises, public as well as private, and all its debts, liabilities and duties as a corporation organized under the DGCL, will continue unaffected by the Merger.

1.4 CERTIFICATE OF INCORPORATION AND BY-LAWS. The Certificate of Incorporation and By-laws of AppliedTheory in effect immediately prior to the Effective Time shall be the Certificate of Incorporation and By-laws of the Surviving Corporation, until amended in accordance with their terms and the DGCL.

1.5 DIRECTORS AND OFFICERS OF SURVIVING CORPORATION. The directors and officers of AppliedTheory immediately prior to the Effective Time will be the directors and officers, respectively, of the Surviving Corporation, from and after the Effective Time, until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the terms of the Surviving Corporation's Certificate of Incorporation and By-laws and the DGCL.

1.6 ADDITIONAL ACTIONS. If, at any time after the Effective Time, the Surviving Corporation shall consider or be advised that any further deeds, assignments or assurances in law or any other acts are necessary or desirable to (i) vest, perfect or confirm, of record or otherwise, in the Surviving Corporation its right, title or interest in, to or under any of the rights, properties or assets of AppliedTheory Communications, or (ii) otherwise carry out the purposes of this Agreement, AppliedTheory Communications and its officers and directors shall be deemed to have granted to the Surviving Corporation an irrevocable power of attorney to execute and deliver all such deeds, assignments or assurances in law or any other acts as are necessary or desirable to (a) vest, perfect or confirm, of record or otherwise, in the Surviving Corporation its right, title or interest in, to or under any of the rights, properties or assets of AppliedTheory Communications and (b) otherwise carry out the purposes of this Agreement, and the officers and directors of the Surviving Corporation are authorized in the name of AppliedTheory Communications or otherwise to take any and all such action.

ARTICLE II.

CONVERSION OF SHARES

2.1 CONVERSION OF SHARES. At the Effective Time:

(a) each then outstanding share of voting common stock, par value \$.01 per share, and non-voting common stock, par value \$.01 per share, of AppliedTheory Communications (collectively, "AppliedTheory Communications

Common Stock") shall by virtue of the Merger, and without any action on the part of AppliedTheory Communications, AppliedTheory or the holder thereof, be converted into such number of shares of legally and validly issued, fully-paid and nonassessable common stock, par value \$.01 per share, of AppliedTheory ("AppliedTheory Common Stock"), as may be determined by the Capital Formation Committee of the Board of Directors of AppliedTheory Communications (such committee consisting of Richard Mandelbaum, Shelley A. Harrison and James T. Kelsey) (the "Capital Formation Committee") after consultation with the representatives of the underwriters of the initial public offering of AppliedTheory contemplated by the Registration Statement on Form S-1 (Registration No. 333-72133) filed by AppliedTheory with the Securities and Exchange Commission (the "Initial Public Offering") (*provided*, that each holder of AppliedTheory Communications Common Stock immediately prior to the Effective Time shall have his or her shares converted into such number of shares of AppliedTheory Common Stock representing the same percentage of the total outstanding AppliedTheory Common Stock immediately following the Effective Time (without giving effect to the Initial Public Offering) as the percentage of the total outstanding AppliedTheory Communications Common Stock held by such holder immediately prior to the Effective Time);

(b) each then outstanding share of Preferred Stock, par value \$.01 per share, of AppliedTheory Communications ("AppliedTheory Communications Preferred Stock") shall by virtue of the Merger, and without any action on the part of AppliedTheory Communications, AppliedTheory or the holder thereof, be converted into such number of shares of legally and validly issued, fully-paid and nonassessable Preferred Stock, par value \$.01 per share, of AppliedTheory ("AppliedTheory Preferred Stock"), as may be determined by the Capital Formation Committee after consultation with the representatives of the underwriters of the Initial Public Offering (*provided*, that each holder of AppliedTheory Communications Preferred Stock immediately prior to the Effective Time shall have his or her shares converted into such number of shares of AppliedTheory Preferred Stock representing the same percentage of the total outstanding AppliedTheory Preferred Stock immediately following the Effective Time as the percentage of the total outstanding AppliedTheory Communications Preferred Stock held by such holder immediately prior to the Effective Time);

(c) each share of AppliedTheory Common Stock issued and outstanding immediately prior to the Effective Time and owned by AppliedTheory Communications will be cancelled and retired.

2.2 ASSUMPTION OF OPTIONS.

Each option or other right, whether vested before or after the Effective Date, to purchase or otherwise acquire shares of AppliedTheory Communications Common Stock pursuant to stock option or other stock-based plans of AppliedTheory Communications and each other similar right to acquire shares of

AppliedTheory Communications Common Stock, in each case granted and outstanding immediately prior to the Effective Time, shall, by virtue of the Merger, and without any action on the part of the holder of such option or right, be converted into and become a right to purchase or otherwise acquire such number of shares of AppliedTheory Common Stock at a price per share that, in the case of both the number of shares and price per share, gives effect to the conversion rate with respect to AppliedTheory Communications Common Stock as determined in accordance with Section 2.1(a). All other terms and conditions applicable to such options or other rights immediately prior to the Effective Time shall remain the same.

2.3 CERTIFICATES.

(a) After the Effective Time, any certificate theretofore evidencing outstanding shares of AppliedTheory Communications Common Stock shall, without any action on the part of the holder thereof, represent the number of shares of AppliedTheory Common Stock into which such AppliedTheory Communications Common Stock shall have been converted as provided in Section 2.1(a).

(b) After the Effective Time, any certificate theretofore evidencing outstanding shares of any series of AppliedTheory Communications Preferred Stock shall, without any action on the part of the holder thereof, represent the number of shares of AppliedTheory Preferred Stock into which such AppliedTheory Communications Preferred Stock shall have been converted as provided in Section 2.1(b).

(c) If, after the Effective Time, certificates formerly representing shares of AppliedTheory Communications Common Stock or AppliedTheory Communications Preferred Stock are surrendered to the Surviving Corporation for exchange or transfer, they shall be cancelled and certificates representing shares of AppliedTheory Common Stock or AppliedTheory Preferred Stock, as the case may be, shall be issued to the holder or transferee thereof, as the case may be.

ARTICLE III.

CONDITIONS

3.1 SHAREHOLDER APPROVAL.

Consummation of the Merger is subject to the satisfaction at or prior to the Effective Time of the Merger of the following condition:

This Agreement and the Merger shall have been adopted and approved by:
(i) the affirmative vote of two-thirds of the votes of the shares of AppliedTheory Communications Common Stock (both voting and non-voting) and AppliedTheory Communications Preferred Stock entitled to vote thereon, voting

together as a single class, (ii) the affirmative vote of a majority of the votes of the shares of AppliedTheory Communications Common Stock (both voting and non-voting) entitled to vote thereon, voting separately as a class, and (iii) the affirmative vote of a majority of the votes of the shares of AppliedTheory Communications Preferred Stock entitled to vote thereon, voting separately as a class. This Agreement and the Merger shall also have been adopted and approved by AppliedTheory Communications as the holder of all the outstanding shares of AppliedTheory Common Stock prior to the Effective Time of the Merger.

ARTICLE IV.

TERMINATION

This Agreement shall be terminated and abandoned without further action by the parties hereto in the event that one or more of the Boards of Directors of AppliedTheory or AppliedTheory Communications by requisite action deems it advisable to terminate and abandon this Agreement, and in such event this Agreement shall have no further force or effect and there shall be no liability on the part of the parties hereto.

ARTICLE V.

MISCELLANEOUS

5.1 DESIGNATION AND NUMBER OF OUTSTANDING SHARES.

AppliedTheory Communications.

Designation of Class	Shares Authorized	Shares Outstanding ⁽¹⁾
Voting Common Stock, par value \$.01 per share	25,000,000	10,565,805
Non-Voting Common Stock, par value \$.01 per share	5,000,000	80,981
Preferred Stock, par value \$.01 per share	75,000	15,000

⁽¹⁾ Based on number of shares outstanding as of March 31, 1999. Outstanding shares of Voting Common Stock and Non-Voting Common Stock of AppliedTheory Communications are subject to increase in the event of the exercise of outstanding stock options prior to the Effective Time. No outstanding shares of Voting Common Stock, Non-Voting Common Stock or Preferred Stock of AppliedTheory Communications are owned by AppliedTheory.

AppliedTheory.

Designation of Class	Shares Authorized	Shares Outstanding ⁽¹⁾
Common Stock, par value \$.01 per share	90,000,000	100
Preferred Stock, par value \$.01 per share	1,000,000	0

⁽¹⁾ Based on number of shares outstanding as of March 31, 1999. AppliedTheory owns none of its outstanding shares of Common Stock.

5.2 COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

5.3 AMENDMENTS. Subject to applicable law, and except as otherwise provided herein, this Agreement may be amended, modified or supplemented only by written agreement of AppliedTheory and AppliedTheory Communications or by their respective officers thereunto duly authorized, at any time prior to the Effective Date.

5.4 GOVERNING LAW. This Merger Agreement shall be construed in accordance with the laws of the State of Delaware applicable to contracts made and to be performed entirely within such State.

IN WITNESS WHEREOF, each undersigned corporation has caused this Agreement and Plan of Merger to be executed as of the date first written above by a duly authorized officer.

AppliedTheory Corporation,
a Delaware corporation

By: Richard Mandelbaum
Richard Mandelbaum
Chairman of the Board and
Chief Executive Officer

Attest:

David A. Buckel
David A. Buckel
Vice President and Chief Financial
Officer and Assistant Secretary
(Corporate Seal)

AppliedTheory Communications, Inc., a New York
corporation

By: Richard Mandelbaum
Richard Mandelbaum
Chairman of the Board and
Chief Executive Officer

Attest:

David A. Buckel
David A. Buckel
Vice President and Chief Financial
Officer and Assistant Secretary
(Corporate Seal)