

01-07-2004



Form PTO-1594  
(Rev. 03/01)  
OMB No. 0651-0027 (exp. 5/31/2002)

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

102639616

Tab settings

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

1-7-04

1. Name of conveying party(ies):  
Video Network Communications, Inc.  
  
 Individual(s)       Association  
 General Partnership       Limited Partnership  
 Corporation-State Delaware  
 Other \_\_\_\_\_  
Additional name(s) of conveying party(ies) attached?  Yes  No

2. Name and address of receiving party(ies)  
Name: TalkPoint Communications, Inc.  
Internal  
Address: \_\_\_\_\_  
Street Address: 100 William Street, 8th Floor  
City: New York State: NY Zip: 10038  
  
 Individual(s) citizenship \_\_\_\_\_  
 Association \_\_\_\_\_  
 General Partnership \_\_\_\_\_  
 Limited Partnership \_\_\_\_\_  
 Corporation-State Delaware  
 Other \_\_\_\_\_  
If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
(Designations must be a separate document from assignment)  
Additional name(s) & address(es) attached?  Yes  No

3. Nature of conveyance:  
 Assignment       Merger  
 Security Agreement       Change of Name  
 Other \_\_\_\_\_  
Execution Date: August 13, 2003

4. Application number(s) or registration number(s):  
A. Trademark Application No.(s)  
B. Trademark Registration No.(s)  
1437145  
Additional number(s) attached  Yes  No

6. Total number of applications and registrations involved: ..... 12

5. Name and address of party to whom correspondence concerning document should be mailed:  
Name: Daniel B. Hassett  
Internal Address: \_\_\_\_\_  
Street Address: Wiley Rein & Fielding, LLP  
7925 Jones Branch Drive, Ste. 6200  
City: McLean State: VA Zip: 22102

7. Total fee (37 CFR 3.41).....\$ 31500  
 Enclosed  
 Authorized to be charged to deposit account  
8. Deposit account number:  
501129  
(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.*  
Daniel B. Hassett      [Signature]      1/6/04  
Name of Person Signing      Signature      Date  
Total number of pages including cover sheet, attachments, and document: 1

01/06/2004 LNUJELLER 00000021 501129 1437145

01 FC:8521 40.00 DA  
02 FC:8522 275.00 DA

Mail documents to be recorded with required cover sheet information to:  
Commissioner of Patent & Trademarks, Box Assignments  
Washington, D.C. 20231

TRADEMARK  
REEL: 002892 FRAME: 0216

**Item 4B Continuation**  
**Additional Registration Numbers:**

2000183

2038839

2077801

2159875

2197363

2227585

2241927

2263052

2541161

2588760

2676372

WRFMAIN 12155934.1

TRADEMARK  
REEL: 002892 FRAME: 0217

**FIFTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
VIDEO NETWORK COMMUNICATIONS, INC.**

Video Network Communications, Inc. (the "Corporation") is a corporation organized and existing under the laws of the State of Delaware. The original Certificate of Incorporation of Objective Communications, Inc. (as later amended and restated, the "Certificate of Incorporation") was filed with the Secretary of State of the State of Delaware on October 5, 1993. This Amended and Restated Certificate of Incorporation of the Corporation (the "Amended and Restated Certificate of Incorporation"), which restates, integrates and further amends the Certificate of Incorporation in its entirety, was duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware. The Corporation does hereby certify on this 13<sup>th</sup> day of August, 2003 that:

**ARTICLE FIRST  
NAME**

The name of the corporation is: TalkPoint Communications Inc. (the "Corporation").

**ARTICLE SECOND  
REGISTERED OFFICE AND REGISTERED AGENT**

The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, Wilmington, Delaware, 19801, County of New Castle, Delaware, and the name of the Corporation's registered agent in the State of Delaware at such address is The Corporation Trust Company.

**ARTICLE THIRD  
PURPOSE**

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

**ARTICLE FOURTH  
CAPITAL STOCK**

The total number of shares which the Corporation shall have authority to issue is ninety-two million five hundred thousand (92,500,000) shares of capital stock, of which ninety million (90,000,000) shares shall be common stock, par value of \$.01 per share ("Common Stock"), and two million five hundred thousand (2,500,000) shall be preferred stock, par value \$.01 per share ("Preferred Stock").

NY810356.3

**ARTICLE FIFTH  
COMMON STOCK**

On February 5, 2002 (the "Effective Date"), each five (5) shares of authorized Common Stock issued and outstanding or held in the treasury of the Corporation immediately prior to the Effective Date shall automatically be reclassified and converted into one (1) validly issued, fully paid and non-assessable share of Common Stock of the Corporation, par value \$0.01 (a "New Share"). Each holder of record of shares of Common Stock so reclassified and converted shall on the Effective Date automatically become the record owner of the number of New Shares as shall result from such reclassification and conversion. Each such record holder shall be entitled to receive, upon the surrender of the certificate or certificates representing the shares of Common Stock so reclassified and converted at the office of the transfer agent of the Corporation in such form and accompanied by such documents, if any, as may be prescribed by the transfer agent of the Corporation, a new certificate or certificates representing the number of New Shares of which he, she or it is the record owner after giving effect to the provisions of this Article Fifth. The Corporation shall not issue fractional New Shares. Stockholders entitled to receive fractional New Shares shall receive, in lieu thereof, cash in an amount equal to the product of (a) the number of shares of the Common Stock held by such holder immediately prior to the Effective Date which have not been classified into a whole New Share, (b) multiplied by the closing price per share of the Common Stock as reported on the Over the Counter Bulletin Board (the "OTC") (or such other quotation or listing system on which the Common Stock may then be listed or quoted) on the last business day prior to the Effective Date on which such closing price was published by the OTC.

**ARTICLE SIXTH  
PREFERRED STOCK**

Section A. Preferred Stock. Shares of Preferred Stock may be issued from time to time in one or more classes or series as the Board of Directors of the Corporation (the "Board"), by resolution or resolutions, may from time to time determine, each of such classes or series to be distinctly designated. The voting powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations or restrictions thereof, if any, of each such class or series may differ from those of any and all other class or series of Preferred Stock at any time outstanding, and the Board is hereby expressly granted authority to fix or alter, by resolution or resolutions, the designation, number, voting powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions, of each such series, including, but without limiting the generality of the foregoing, the following:

1. The distinctive designation of, and the number of shares of Preferred Stock that shall constitute, such class or series, which number (except where otherwise provided by the Board in the resolution establishing such class or series) may be increased (but not above the total number of shares of Preferred Stock) or decreased (but not below the number of shares of such class or series then outstanding) from time to time by like action of the Board;

2. The rights in respect of dividends, if any, of such class or series of Preferred Stock, the extent of the preference or relation, if any, of such dividends to the dividends payable on any other class or classes or any other series of the same or other class or classes of capital stock of the Corporation, and whether such dividends shall be cumulative or noncumulative;

3. The right, if any, of the holders of such class or series of Preferred Stock to convert the same into, or exchange the same for, shares of any other class or classes or of any other series of the same or any other class or classes of capital stock of the Corporation, and the terms and conditions of such conversion or exchange;

4. Whether or not shares of such class or series of Preferred Stock shall be subject to redemption, and the redemption price or prices and the times at which, and the terms and conditions on which, shares of such class or series of Preferred Stock may be redeemed;

5. The rights, if any, of the holders of such class or series of Preferred Stock upon the voluntary or involuntary liquidation, dissolution or winding-up of the Corporation or in the event of any merger or consolidation of or sale of assets by the Corporation;

6. The terms of any sinking fund or redemption or purchase account, if any, to be provided for shares of such class or series of the Preferred Stock;

7. The voting powers, if any, of the holders of any class or series of Preferred Stock generally or with respect to any particular matter, which may be less than, equal to or greater than one vote per share, and which may, without limiting the generality of the foregoing, include the right, voting as a class or series by itself or together with the holders of any other class or classes or series of Preferred Stock or all series of Preferred Stock as a class, to elect one or more directors of the Corporation (which, without limiting the generality of the foregoing, may include a specified number or portion of the then-existing number of authorized directorships of the Corporation) generally or under such specific circumstances and on such conditions as shall be provided in the resolution or resolutions of the Board adopted pursuant thereto; and

8. Such other powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions thereof, as the Board shall determine.

## Section B. Rights of Preferred Stock.

1. After the provisions with respect to preferential dividends on any series of Preferred Stock (fixed in accordance with the provisions of this Article Sixth), if any, shall have been satisfied and after the Corporation shall have complied with all the requirements, if any, with respect to redemption of, or the setting aside of sums as sinking funds or redemption or purchase accounts with respect to, any series of Preferred Stock (fixed in accordance with the provisions of this Article Sixth), and subject further to any other conditions that may be fixed in accordance with the provisions of this Article Sixth, then and not otherwise, the holders of Common Stock shall be entitled to receive such dividends as may be declared from time to time by the Board.

2. In the event of the voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, after distribution in full of the preferential amounts, if any, to be distributed to the holders of Preferred Stock by reason thereof, the holders of Common Stock shall, subject to the additional rights, if any (fixed in accordance with the provisions of this Article Sixth), of the holders of any outstanding shares of Preferred Stock, be entitled to receive all of the remaining assets of the Corporation, tangible or intangible, of whatever kind available for distribution to stockholders ratably in proportion to the number of shares of Common Stock held by them respectively.

3. Except as may otherwise be required by law, and subject to the provisions of such resolution or resolutions as may be adopted by the Board pursuant to this Article Sixth granting the holders of one or more series of Preferred Stock exclusive voting powers with respect to any matter, each holder of Common Stock may have one vote in respect to each share of Common Stock held on all matters voted upon by the stockholders. The number of authorized shares of Preferred Stock and each class of Common Stock may, without a class or series vote, be increased or decreased from time to time by the affirmative vote of the holders of shares having a majority of the total number of votes which may be cast in the election of directors of the Corporation by all stockholders entitled to vote in such an election, voting together as a single class.

## ARTICLE SEVENTH DURATION

The Corporation is to have perpetual existence.

**ARTICLE EIGHTH  
BYLAWS**

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation is expressly authorized to make, alter, or repeal the Bylaws of the Corporation.

**ARTICLE NINTH  
INDEMNIFICATION**

The Corporation shall, to the fullest extent permitted by Section 145 of the General Corporation Law of the State of Delaware, as the same may be amended and supplemented, indemnify and hold harmless any and all persons who it shall have power to indemnify under said section from and against any and all of the expenses, liabilities, or other matters referred to in or covered by said section, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those stockholders, or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in any other capacity while holding such office, and shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors, and administrators of such a person.

**ARTICLE TENTH  
BOARD OF DIRECTORS**

Section A. **Classified Board.** The Board of Directors shall be divided into three classes, as nearly equal in number as the then-authorized number of directors constituting the Board permits, with the term of office of one class expiring each year and with each director serving for a term ending at the third annual meeting of stockholders following the annual meeting at which such director was elected. One class of directors shall be initially elected for a term expiring at the annual meeting of shareholders to be held in 1999, the second class shall be initially elected for a term expiring at the annual meeting of stockholders to be held in 2000 and the third class shall be initially elected for a term expiring at the annual meeting of stockholders to be held in 2001. Members of each class shall hold office until their successors are elected and qualified. At each succeeding annual meeting of the stockholders of the Corporation, the successors of the class of directors whose term expires at the meeting shall be elected by a plurality vote of all votes cast at such meeting to hold office for a term expiring at the annual meeting of stockholders held in the third year following the year of their election. Any vacancy on the Board resulting from the resignation or removal of a director may be filled by the remaining members of the Board of Directors, and the director so chosen shall hold office for the remainder of the full term of the resigning or removed director's seat.

Section B. **Vote Required for Modification of Classified Board.** Any action to amend or repeal this Article Tenth will require the affirmative vote of the holders of 66 2/3% of the outstanding shares of Common Stock, voting together as a single class, unless such action has been previously approved by a majority vote of the full Board, in which case the affirmative

vote of the holders of a majority of the outstanding shares of Common Stock entitled to vote thereon will be sufficient to amend or repeal any provision of this Article Tenth.

### **ARTICLE ELEVENTH LIMITATION ON DIRECTOR LIABILITY**

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, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law of the State of Delaware, or (iv) for any transaction from which the director derived any improper personal benefit. If the General Corporation Law of the State of Delaware is amended after the filing of this Fifth Amended and Restated Certificate of Incorporation to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law of the State of Delaware. No modifications or repeal of the provisions of this Article Eleventh shall adversely affect any right or protection of any director of the Corporation existing at the date of such modification or repeal or create any liability or adversely affect any such right or protection for any acts or omissions of such director occurring prior to such modification or repeal.

### **ARTICLE TWELFTH RIGHTS OF STOCKHOLDERS**

From time to time any of the provisions of this Fifth Amended and Restated Certificate of Incorporation may be amended, altered, or replaced, and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted in the manner and at the time prescribed by said laws, and all rights at any time conferred upon the stockholders of the Corporation by this Certificate of Incorporation are granted subject to the provisions of this Article Twelfth.



IN WITNESS WHEREOF, the undersigned, being a duly authorized officer of the Corporation herein before named, hereby executes and acknowledges that the facts set forth herein are true under penalties of perjury on the date first written above.

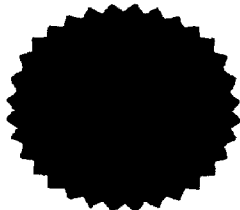
By: /s/ Nicholas Balletta  
Name: Nicholas Balletta  
Title: Chief Executive Officer

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS FILED FROM AND INCLUDING THE RESTATED CERTIFICATE OF "TALKPOINT COMMUNICATIONS INC." AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

RESTATED CERTIFICATE, CHANGING ITS NAME FROM "VIDEO NETWORK COMMUNICATIONS, INC." TO "TALKPOINT COMMUNICATIONS INC.", FILED THE THIRTEENTH DAY OF AUGUST, A.D. 2003, AT 7:26 O'CLOCK A.M.



*Harriet Smith Windsor*  
Harriet Smith Windsor, Secretary of State

2353897 8100X

AUTHENTICATION: 2838861

030839033

DATE: 12-29-03