

110779

State of Idaho

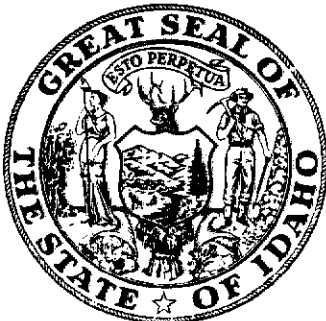
Department of State

CERTIFICATE OF MERGER OR CONSOLIDATION

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, hereby certify that duplicate originals of Articles of merger of GEM COMMUNICATIONS, INC., an Idaho corporation, file number C 59504, and MOBEX IDAHO, INC., an Idaho corporation, file number C 110779, into MOBEX GEM, INC., an Idaho corporation, file number C 110778, duly executed pursuant to the provisions of the Idaho Business Corporation Act, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I issue this certificate of merger, and attach hereto a duplicate original of the Articles of merger.

Dated: January 17, 1997



Pete T. Cenarrusa
SECRETARY OF STATE

By *Louisa Harold*

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ARTICLES OF MERGER

30.00 = 30.00
MERGER
JAN 17 1997

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OF

GEM COMMUNICATIONS, INC.

DATE 01/17/1997 0900 56363
IDAHO SECRETARY OF STATE

AND

MOBEX IDAHO, INC.

INTO

MOBEX GEM, INC.

JAN 17 2 27 PM '97

SECRETARY OF STATE
STATE OF IDAHO

Pursuant to the provisions of the Idaho Business Corporation Act, the undersigned domestic corporations hereby certify:

1. That the following Plan of Merger was approved by the directors and shareholder of Gem Communications, Inc., Mobex Idaho, Inc. and Mobex Gem, Inc. (the "Constituent Corporations") in the manner prescribed by the Idaho Business Corporation Act:

A. The Merger.

At the Effective Time (as defined in Section E below), Gem Communications, Inc. and Mobex Idaho, Inc. shall be merged with and into Mobex Gem, Inc. on the terms and conditions hereinafter set forth and in accordance with the applicable provisions of the laws of the State of Idaho (the "Merger"). Mobex Gem, Inc. (the "Surviving Corporation") shall be the surviving corporation and shall be governed by the laws of the State of Idaho. The separate existence of Gem Communications, Inc. and Mobex Idaho, Inc. shall cease at the Effective Time. The existence of Mobex Gem, Inc. shall continue unaffected and unimpaired by the Merger with all the

rights, privileges, immunities and powers, and subject to all duties and liabilities, of a corporation organized under the laws of the State of Idaho.

B. Effects of Merger.

At and after the Effective Time,

(a) the Surviving Corporation shall, consistent with its certificate of incorporation, possess all the rights, privileges, immunities, powers and purposes of each of the Constituent Corporations;

(b) all the property, real and personal, causes of action and very other asset of each of the Constituent Corporations shall vest in the Surviving Corporation without further act or deed;

(c) the Surviving Corporation shall assume and be liable for all the liabilities, obligations and penalties of each of the Constituent Corporations; no liability or obligation due or to become due or any claim or demand for any cause existing against any Constituent Corporation, or any shareholder, officer or director thereof, shall be released or impaired by the Merger; no action or proceeding, whether civil or criminal, then pending by or against any Constituent Corporation, or any shareholder, officer or director thereof, shall abate or be discontinued by the Merger, but any such action or proceeding may be enforced, prosecuted, settled or compromised as if the Merger had not occurred, or the Surviving Corporation may be substituted in such action or proceeding in place of any Constituent Corporation.

C. Articles of Incorporation; By-Laws, Directors.

(a) At the Effective Time, the Articles of Incorporation of Mobex Gem, Inc., as currently constituted, shall be and continue to be the Articles of

Incorporation of the Surviving Corporation until the same shall be amended and changed in accordance with such Articles of Incorporation or applicable law.

(b) At the Effective Time, the By-Laws of Mobex Gem, Inc., as currently constituted, shall be and continue to be the By-Laws of the Surviving Corporation until the same shall be amended and changed as provided by such By-Laws, the Articles of Incorporation of the Surviving Corporation or applicable law.

(c) At the Effective Time, the officers and directors of the Surviving Corporation shall be the officers and directors of Mobex Gem, Inc. immediately prior to the Effective Time. Such directors shall continue in office as, and shall be and constitute, the Board of Directors of the Surviving Corporation from the Effective Time, to serve until their successors shall be elected and qualified, unless theretofore removed in accordance with the Articles of Incorporation or the By-Laws of the Surviving Corporation or applicable law.

D. Manner and Basis of Conversion of Shares.

The manner and basis of converting the shares of stock of the Constituent Corporations shall be as follows:

(a) At the Effective Time, all of the shares of Gem Communications, Inc. common stock and Mobex Idaho, Inc. common stock which are outstanding immediately prior to the Effective Time, and all rights in respect thereof, shall forthwith be cancelled.

(b) At the Effective Time, all of the shares of Mobex Gem, Inc. common stock which are outstanding immediately prior to the Effective Time shall remain outstanding.

E. Effective Time of the Merger.

(a) This Agreement has been duly approved and adopted by the Boards of Directors and Shareholders of each of Gem Communications, Inc., Mobex Idaho, Inc. and Mobex Gem, Inc. If no condition exists which would permit any of the parties hereto to terminate this Agreement, or if no party elects to exercise any right it may have to terminate this Agreement, the Constituent Corporations shall promptly file or cause to be filed Articles of Merger pursuant to Section 30-1-74 of the Idaho Business Corporation Act and shall thereafter take or cause to be taken any further action which may be necessary or appropriate to further effectuate the Merger. The Merger shall become effective immediately upon such filing. The date and time when the Merger so becomes effective is referred to as the "Effective Time."

(b) That, as to each of the Constituent Corporations, the number of shares outstanding is as follows, and that no outstanding shares of any class is entitled to vote as a class on such Plan:

<u>Name of Corporation</u>	<u>Number of Shares Outstanding</u>
Gem Communications, Inc.	3,000
Mobex Idaho, Inc.	100
Mobex Gem, Inc.	100

(c) That, as to each of the constituent corporations, the total number of shares voted for and against such Plan, respectively, are as follows:

<u>Name of Corporation</u>	<u>Total Voted For</u>	<u>Total Voted Against</u>
Gem Communications, Inc.	3,000	0
Mobex Idaho, Inc.	100	0
Mobex Gem, Inc.	100	0

IN WITNESS WHEREOF, this Certificate has been signed this
22 day of August, 1996.

GEM COMMUNICATIONS, INC.

BY: Richard D. Young
Richard D. Young, President

BY: Christopher P. O'Connell
Christopher P. O'Connell, Secretary

MOBEX IDAHO, INC.

BY: Richard D. Young
Richard D. Young, President

BY: Christopher P. O'Connell
Christopher P. O'Connell, Secretary

MOBEX GEM, INC.

BY: Richard D. Young
Richard D. Young, President

BY: Christopher P. O'Connell
Christopher P. O'Connell, Secretary

AGREEMENT AND PLAN OF MERGER

JAN 17 2 27 PM '97

AGREEMENT AND PLAN OF MERGER ("Agreement"), dated as of August 22, 1996, by and among Gem Communications, Inc., an Idaho corporation ("Gem"), Mobex Idaho, Inc., an Idaho corporation ("Idaho") and Mobex Gem, Inc., an Idaho corporation ("Mobex" or the "Surviving Corporation").

WHEREAS, Gem is a corporation duly organized and existing under the laws of the State of Idaho, having as of the date of this Agreement an authorized capitalization of 5,000 shares of common stock, \$10 par value per share ("Gem Common Stock"), of which 3,000 shares are issued and outstanding and owned by Mobex Holdings, Inc.; and

WHEREAS, Idaho is a corporation duly organized and existing under the laws of the State of Idaho, having as of the date of this Agreement an authorized capitalization of 1,000 shares of common stock, \$.01 par value per share ("Idaho Common Stock"), of which 100 shares are issued and outstanding and owned by Mobex Holdings, Inc.; and

WHEREAS, Mobex is a corporation duly organized and existing under the laws of the State of Idaho, having as of the date of this Agreement an authorized capitalization of 1,000 shares of common stock, \$.01 par value per share ("Mobex Common Stock"), of which 100 shares are issued and outstanding and owned by Mobex Holdings, Inc.; and

WHEREAS, the respective Boards of Directors of Gem, Idaho and Mobex (hereinafter sometimes referred to collectively as the "Constituent Corporations") deem it desirable and in the best interests of the Constituent Corporations and the shareholders of the Constituent Corporations that Gem and Idaho be merged with and into Mobex on the terms and conditions hereinafter set forth and in accordance with Section 30-1-71 of the Idaho Business Corporation Act.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and provisions hereinafter set forth, the parties agree that Gem and Idaho shall be merged with and into Mobex, and that the terms and conditions of such merger, the mode of carrying the same into effect and the manner and basis of converting Gem Common Stock and Idaho Common Stock into Mobex Common Stock shall be as follows:

1. The Merger.

At the Effective Time (as defined in Section 5 below), Gem and Idaho shall be merged with and into Mobex on the terms and conditions hereinafter set forth and in accordance with the applicable provisions of the laws of the State of Idaho (the "Merger"). Mobex shall be the surviving corporation and shall be governed by the laws of the State of Idaho. The separate existence of Gem and Idaho

shall cease at the Effective Time. The existence of Mobex shall continue unaffected and unimpaired by the Merger with all the rights, privileges, immunities and powers, and subject to all duties and liabilities, of a corporation organized under the laws of the State of Idaho.

2. Effects of Merger.

At and after the Effective Time,

(a) the Surviving Corporation shall, consistent with its certificate of incorporation, possess all the rights, privileges, immunities, powers and purposes of each of the Constituent Corporations;

(b) all the property, real and personal, causes of action and every other asset of each of the Constituent Corporations shall vest in the Surviving Corporation without further act or deed;

(c) the Surviving Corporation shall assume and be liable for all the liabilities, obligations and penalties of each of the Constituent Corporations; no liability or obligation due or to become due or any claim or demand for any cause existing against any Constituent Corporation, or any shareholder, officer or director thereof, shall be released or impaired by the Merger; no action or proceeding, whether civil or criminal, then pending by or against any Constituent Corporation, or any shareholder, officer or director thereof, shall abate or be discontinued by the Merger, but any such action or proceeding may be enforced, prosecuted, settled or compromised as if the Merger had not occurred, or the Surviving Corporation may be substituted in such action or proceeding in place of any Constituent Corporation.

3. Articles of Incorporation; By-Laws, Directors.

(a) At the Effective Time, the Articles of Incorporation of Mobex, as currently constituted, shall be and continue to be the Articles of Incorporation of the Surviving Corporation until the same shall be amended and changed in accordance with such Articles of Incorporation or applicable law.

(b) At the Effective Time, the By-Laws of Mobex, as currently constituted, shall be and continue to be the By-Laws of the Surviving Corporation until the same shall be amended and changed as provided by such By-Laws, the Articles of Incorporation of the Surviving Corporation or applicable law.

(c) At the Effective Time, the officers and directors of the Surviving Corporation shall be the officers and directors of Mobex immediately prior to the Effective Time. Such directors shall continue in office as, and shall be and constitute, the Board of Directors of the Surviving Corporation from the Effective Time, to serve until their successors shall be elected and qualified, unless theretofore removed in accordance with the Articles of Incorporation or the By-Laws of the Surviving Corporation or applicable law.

4. Manner and Basis of Conversion of Shares.

The manner and basis of converting the shares of stock of the Constituent Corporations shall be as follows:

(a) At the Effective Time, all of the shares of Gem Common Stock and Idaho Common Stock which are outstanding immediately prior to the Effective Time, and all rights in respect thereof, shall forthwith be cancelled.

(b) At the Effective Time, all of the shares of Mobex Common Stock which are outstanding immediately prior to the Effective Time shall remain outstanding.

5. Effective Time of the Merger.

This Agreement has been duly approved and adopted by the Boards of Directors and Shareholders of each of Gem, Idaho and Mobex. If no condition exists which would permit any of the parties hereto to terminate this Agreement, or if no party elects to exercise any right it may have to terminate this Agreement, the Constituent Corporations shall promptly file or cause to be filed Articles of Merger pursuant to Section 30-1-74 of the Idaho Business Corporation Act and shall thereafter take or cause to be taken any further action which may be necessary or appropriate to further effectuate the Merger. The Merger shall become effective immediately upon such filing. The date and time when the Merger so becomes effective is referred to in this Agreement as the "Effective Time."

6. Termination.

Anything contained in this Agreement to the contrary notwithstanding, this Agreement may be terminated and the Merger may be abandoned at any time prior to the filing of the Articles of Merger pursuant to Section 5 hereof,

(a) by mutual consent of the Boards of Directors of each Constituent Corporation, notwithstanding the approval of this

Agreement or the Merger by the Shareholders of each Constituent Corporation,

(b) by the Board of Directors of Mobex if there shall be an effective injunction, writ, restraining order or any order of any nature issued by a court or other governmental body or agency directing that the transaction set forth herein not be consummated as herein provided (the "Injunction") or if there shall be any litigation or proceeding pending or threatened with respect to the transactions contemplated hereby which would materially adversely affect Gem or Idaho (the "Adverse Action"), or

(c) by the Board of Directors of either Gem and Idaho if there shall be an Adverse Action which would materially affect Mobex.

7. Amendment.

Any of the provisions of this Agreement may be modified at any time by an agreement in writing approved by each of the Constituent Corporations and executed in the same manner as this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, all as of the day and year first above written.

MOBEX GEM, INC.

By: Richard D. Young
Richard D. Young, President

GEM COMMUNICATIONS, INC.

By: Richard D. Young
Richard D. Young, President

MOBEX IDAHO, INC.

By: Richard D. Young
Richard D. Young, President