

FORM  
OF  
CERTIFICATE OF INCORPORATION  
OF  
TRANSCONNECT CORPORATE MANAGER, INC.

ARTICLE I

NAME

The name of the Corporation is TransConnect Corporate Manager, Inc. (hereinafter the "Corporation").

ARTICLE II

PRINCIPAL OFFICE

The principal office of the Corporation and the mailing address of the Corporation is [to come].

ARTICLE III

REGISTERED OFFICE AND AGENT

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

ARTICLE IV

TERM OF CORPORATE EXISTENCE

The Corporation shall exist perpetually unless sooner dissolved according to law.

## ARTICLE V

### PURPOSE

The purpose for which the Corporation is organized is to operate as the managing member of TransConnect LLC, a Delaware limited liability company ("TransConnect LLC"), and, subject to the approval of the stockholders of the Corporation as may be required by Article VI hereof, to engage in or transact any lawful act or activity or business for which a corporation may be organized under the laws of the State of Delaware; provided, that the Corporation shall not be a Market Participant (as defined in this Certificate of Incorporation) and shall at no time hold, directly or indirectly, any interest in a Market Participant in the territory served by the RTO West. "Market Participant" shall have the meaning ascribed to such term in Order No. 2000 and all supplements and amendments thereto issued by the Federal Energy Regulatory Commission (the "FERC"). "RTO" shall have the meaning ascribed to the term in FERC Order No. 2000. "RTO West" is an RTO organized as a nonprofit corporation under the laws of the State of Washington.

## ARTICLE VI

### CAPITAL STOCK

A. AUTHORIZED CAPITAL STOCK. The aggregate number of shares of all classes of stock that the Corporation is authorized to issue is [\_\_\_\_\_] shares, of which [\_\_\_\_\_] shares shall be Class A Common Stock, [par value \$.01 per share] (the "Class A Common Stock"), [\_\_\_\_\_] shares shall be Class B Common Stock, [par value \$.01 per share] (the "Class B Common Stock"), [\_\_\_\_\_] shares shall be Class C Common Stock, [par value \$.01 per share] (the "Class C Common Stock"), and [\_\_\_\_\_] shares shall be Preferred Stock, [par value \$.01 per share] (the "Preferred Stock"). No holder of the Corporation's stock shall have any preemptive or subscription right to acquire the Corporation's securities. Except as otherwise provided in this Article VI or as otherwise required by applicable law, all shares of Class A Common Stock, Class B Common Stock and Class C Common Stock shall be identical in all respects and shall entitle the holders thereof to the same rights and privileges and shall be subject to the same qualifications, limitations and restrictions.

B. PROVISIONS RELATING TO CLASS A COMMON STOCK. At every meeting of stockholders, except as specifically otherwise required by law or this Certificate of Incorporation, the holders of Class A Common Stock shall be entitled to one vote per share of Class A Common Stock on all matters presented for a vote of the

stockholders of the Corporation, including the election of directors of the Corporation. For the purpose of complying with the rules and regulations of the FERC, (i) no Market Participant (including any Member of TransConnect, LLC, nor any of their Affiliates, (collectively, a “Restricted Person”) may own, directly or indirectly, or have the ability, by contract or otherwise, to direct the exercise of voting rights of, (collectively, “Own”) more than 5% of the outstanding Class A Common Stock of the Corporation during the five year period following the date of the commencement of the Corporation’s operations, (ii) no Class of Market Participants may own in the aggregate more than 15% of the outstanding Class A Common Stock of the Corporation during such five year period and (iii) no Restricted Person may Own any Class A Common Stock of the Corporation after the date that is five years after the date of the commencement of the Corporation’s operations without prior FERC approval. Any transfer, or attempted or purported transfer, of any shares of the capital stock of the Corporation or any interest therein or right thereof, which would result in a Restricted Person Owning in excess of 5% of the outstanding Class A Common Stock of the Corporation (or, after the five year period described above, any Class A Common Stock of the Corporation, unless otherwise permitted by the FERC) or a Class of Market Participants Owning in excess of 15% of the outstanding Class A Common Stock of the Corporation will, until such excess no longer exists, be void and ineffective as against the Corporation, and the Corporation will not recognize, to the extent of such excess, the purported transferee as a stockholder of the Corporation for any purpose other than the transfer of such excess to a person who would not be in violation of such prohibitions. The Board of Directors is hereby authorized to effect any and all other measures reasonably necessary or desirable (consistent with applicable law and the provisions of this Certificate of Incorporation and the Corporation’s By-laws) to fulfill the purpose and implement the provisions of this Section B, including without limitation, (i) obtaining, as a condition precedent to the transfer of shares on the records of the Corporation, representations and other proof as to the identity of existing or prospective stockholders and persons on whose behalf shares of the capital stock of the Corporation or any interest therein or right thereof are or are to be held, (ii) establishing and maintaining a dual stock certificate system under which different forms of stock certificates, representing outstanding shares of the capital stock of the Corporation, are issued to the holders of record of the shares represented thereby to indicate whether or not such shares or any interest therein or right thereof are Owned by Restricted Persons or members of a Class of Market Participants or (iii) requiring transmission customers under the RTO Tariff to submit certifications listing the percentage ownership interest of transmission users in the outstanding capital stock of the Corporation. If in excess of 5% of the outstanding Class A Common Stock of the Corporation (or, after the five year period described above, any Class A Common Stock of the Corporation, unless otherwise permitted by the FERC) is Owned by a

Restricted Person or if in excess of 15% of the outstanding Class A Common Stock of the Corporation is Owned by a Class of Market Participants, the shares deemed to be included in such excess will, until such excess no longer exists, not be entitled to (i) receive or accrue any rights with respect to any dividends or distributions of assets declared payable or paid to the holders of the capital stock of the Corporation during such period or (ii) vote with respect to any matter submitted to stockholders of the Corporation. The shares deemed included in such excess will be those shares Owned that the Board of Directors determines became so Owned most recently.

For purposes of this Certificate of Incorporation, the following terms shall have the following meanings:

"Affiliate" means an affiliate, as defined by the FERC in its Order No. 2000.

"Class of Market Participants" shall mean two or more Market Participants with common economic or commercial interests. A Market Participant may only be considered to be within one Class of Market Participants.

"Market Participant" shall mean (i) any entity that, either directly or through an Affiliate, sells or brokers electric energy, or provides transmission or ancillary services to RTO West, unless the FERC finds that the entity does not have economic or commercial interests that would significantly be affected by RTO West's actions or decisions and (ii) any other entity that the FERC finds has economic or commercial interests that would be significantly affected by RTO West's actions or decisions.

Notwithstanding anything to the contrary contained in this Certificate of Incorporation or in the Corporation's By-laws, investment banks and broker-dealers that are Market Participants may own voting securities of the Corporation solely in the ordinary course of, and only for so long as is necessary to perform, their function as an underwriter or selected dealer of such voting securities purchased or repurchased in the ordinary course of an underwritten offering of such voting securities or as a market maker or trader of such voting securities for their own account.

#### C. PROVISIONS RELATING TO CLASS B COMMON STOCK.

Except as otherwise provided in the next sentence, the Corporation shall at all times reserve and keep available all of its authorized but unissued shares of Class B Common Stock for issuance to persons who convert all or a portion of such person's Interest in the TransConnect LLC for one or more shares of Class B Common Stock pursuant to the terms and conditions of the Limited Liability Company Operating Agreement for the TransConnect LLC. No person shall own shares of Class B

Common Stock unless such person shall have transferred to the Corporation, in consideration for the issuance of such shares, all or any portion of such person's Interest in the TransConnect LLC pursuant to the terms and conditions of the Limited Liability Company Operating Agreement for the TransConnect LLC;<sup>1</sup> provided, however, that at the time any person initially becomes a Member of the TransConnect LLC, such person (or such person's designee), for a period not to exceed thirty (30) days following the date on which such person makes its Initial Capital Contribution to the TransConnect LLC, shall have the right to purchase from the Corporation one (1) share of Class B Common Stock for a purchase price of ten dollars (\$10), which share shall be issued fully paid and nonassessable to such person (or such person's designee) upon receipt therefrom of such purchase price. At every meeting of stockholders, (i) except as specifically otherwise required by law, the holders of Class B Common Stock shall not be entitled to propose any matter for stockholder approval, and (ii) except as specifically otherwise required by law or by Section E of this Article VI of this Certificate of Incorporation, the holders of Class B Common Stock shall not be entitled to vote on any matter presented for a vote of the stockholders of the Corporation, including the election of directors of the Corporation. For purposes of this Certificate of Incorporation, "Interest" means, with respect to any Member at any time, such Member's entire beneficial ownership interest in the TransConnect LLC at such time; "Member" means each person who may be admitted from time to time as a member of TransConnect LLC; and "Initial Capital Contribution" means the initial capital contribution in TransConnect LLC of a Member pursuant to terms of the Limited Liability Company Operating Agreement for TransConnect LLC.

#### D. PROVISIONS RELATING TO CLASS C COMMON STOCK.

Except as otherwise provided in the next sentence, the Corporation shall at all times reserve and keep available all of its authorized but unissued shares of Class C Common Stock for issuance to persons who convert all or a portion of such person's Interest in TransConnect LLC for one or more shares of Class C Common Stock pursuant to the terms and conditions of the Limited Liability Company Operating Agreement for TransConnect LLC. No person shall own shares of Class C Common Stock unless such person shall have transferred to the Corporation, in consideration for the issuance of such shares, all or any portion of such person's Interest in TransConnect LLC pursuant to the terms and conditions of the Limited Liability

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<sup>1</sup> The Limited Liability Company Operating Agreement for the TransConnect LLC and the Member and Stockholder Agreement will provide that the formula for the contemplated conversion shall be set forth in an agreement between the members of the TransConnect LLC and the holders of Class B Common Stock.

Company Operating Agreement for TransConnect LLC.<sup>2</sup> At every meeting of stockholders, (i) except as specifically otherwise required by law, the holders of Class C Common Stock shall be entitled to vote on all matters for which the holders of Class A Common Stock shall be entitled to vote, together as a single class, and (ii) the holders of Class C Common Stock shall be entitled to one vote per share of Class C Common Stock and one vote per share of Class C Common Stock into which any Interest in TransConnect LLC of any such holder is then convertible pursuant to the terms and conditions of the Limited Liability Company Operating Agreement for TransConnect LLC.

For the purpose of complying with the rules and regulations of the FERC, no Restricted Person may Own any Class C Common Stock of the Corporation. The Board of Directors is hereby authorized to effect any and all measures reasonably necessary or desirable (consistent with applicable law and the provisions of this Certificate of Incorporation and the Corporation's By-laws) to fulfill the purpose and implement the provisions of this Section D, including without limitation, (i) obtaining, as a condition precedent to the transfer of shares on the records of the Corporation, representations and other proof as to the identity of existing or prospective stockholders and persons on whose behalf shares of the capital stock of the Corporation or any interest therein or right thereof are or are to be held, (ii) establishing and maintaining a dual stock certificate system under which different forms of stock certificates, representing outstanding shares of the capital stock of the Corporation, are issued to the holders of record of the shares represented thereby to indicate whether or not such shares or any interest therein or right thereof are Owned by Restricted Persons or (iii) requiring transmission customers under the RTO Tariff to submit certifications listing the percentage ownership interest of transmission users in the outstanding capital stock of the Corporation. If any shares of Class C Common Stock of the Corporation are Owned by a Restricted Person, the holder of such shares will not be entitled to (i) receive or accrue any rights with respect to any dividends or distributions of assets declared payable or paid to the holders shares of Class C Common Stock of the Corporation during such period or (ii) vote with respect to any matter submitted to holders of Class C Common Stock of the Corporation.

E. CERTAIN VOTING RIGHTS. Notwithstanding any provision of this Article VI of this Certificate of Incorporation to the contrary, the following

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<sup>2</sup> The Limited Liability Company Operating Agreement for TransConnect LLC and the Member and Stockholder Agreement will provide that the formula for the contemplated conversion shall be set forth in an agreement between the members of TransConnect LLC and the holders of Class C Common Stock.

matters, and only the following matters, shall require the approval of a majority of the outstanding shares of Class A Common Stock, the outstanding shares of Class B Common Stock and the outstanding Class C Common Stock, voting together as a single class, for which vote the holders of Class A Common Stock shall be entitled to one vote per share of Class A Common Stock and the holders of Class B Common Stock shall be entitled to one vote per share of Class B Common Stock and one vote per share of Class B Common Stock into which any Interest in TransConnect LLC of any such holder is then convertible pursuant to the terms and conditions of the Limited Liability Company Operating Agreement for TransConnect LLC and the holders of Class C Common Stock shall be entitled to one vote per share of Class C Common Stock and one vote per share of Class C Common Stock into which any Interest in TransConnect LLC of any such holder is then convertible pursuant to the terms and conditions of the Limited Liability Company Operating Agreement for TransConnect LLC:

(i) any proposal to issue more than twenty percent (20%) of any outstanding class or series of securities of the Corporation or any proposal to issue more than ten percent (10%) of any outstanding class or series of securities of the Corporation to one or more Affiliates of the Corporation, in each case other than those issuances of securities, including distributions thereof, that are made on the same terms to all stockholders of the Corporation.

(ii) any proposal by the Corporation to (a) enter into any transaction that would result in a change of control of the Corporation, (b) sell, transfer, lease, exchange or otherwise dispose of all, or substantially all, of the assets of the Corporation (other than pursuant to a mortgage or security interest entered into in connection with a financing of the Corporation's business), or (c) merge or consolidate with or into any other entity. A "change of control" as applied herein to the Corporation shall be deemed to have occurred if, following the consummation of any transaction, less than fifty percent (50%) of the outstanding voting securities of the Corporation (or any successor entity resulting from such transaction) is held by those holders of voting securities of the Corporation immediately prior to the consummation of such transaction.

(iii) any proposal to enter into any acquisition or business development opportunity that is otherwise permissible under Article V of this Certificate of Incorporation but is not directly or indirectly related to the provision of electric transmission service, including but not limited to the formation and administration of electric markets, or other services or functions that are commonly performed by independent transmission companies participating in an RTO.

(iv) any proposal to (a) institute proceedings to have the Corporation adjudicated bankrupt or insolvent, (b) consent to the institution of bankruptcy or insolvency proceedings against the Corporation, (c) file a petition seeking a reorganization of the Corporation under federal or state bankruptcy laws, (d) consent to the appointment of a receiver or trustee for the Corporation, or (e) make an assignment for the benefit of creditors of the Corporation.

(v) any proposal to amend this Certificate of Incorporation that affects the rights of holders of Class B Common Stock, including the right to convert into Class A Common Stock.

(vi) any proposal to amend this Certificate of Incorporation that affects the rights of holders of Class C Common Stock, including the right to convert into Class A Common Stock.

F. CONVERSION RIGHTS. Subject to the terms and conditions stated herein, (i) the holder of any shares of Class B Common Stock or Class C Common Stock shall have the right, at any time, at such holder's option, to convert all or a portion of the shares of Class B Common Stock or Class C Common Stock held by such holder into the same number of shares (the "Class A Conversion Ratio") of Class A Common Stock and (ii) the holder of any shares of Class B Common Stock shall have the right, at any time that it is permitted to hold Class C Common Stock, at such holder's option, to convert all or a portion of the shares of Class B Common Stock held by such holder into the same number of shares (the "Class C Conversion Ratio") of Class C Common Stock. Such rights of conversion shall be exercised by (A) giving written notice (the "Notice") to the Corporation at its principal office at least ten (10) days prior to the Conversion Date (as defined below) specified therein that the holder elects to convert a stated number of shares of Class B Common Stock or Class C Common Stock into shares of Class A Common Stock or Class C Common Stock, as applicable, on the date specified in the Notice (the "Conversion Date"), (B) by surrendering the certificate or certificates representing at least the number of shares of Class B Common Stock or Class C Common Stock to be converted to the Corporation at its principal office at any time during the usual business hours on or before the Conversion Date, duly endorsed in blank by the record owner of each certificate so surrendered, together with a statement of the name or names (with addresses) of the person or person(s) in whose name or names the certificate or certificates for shares issued upon conversion shall be registered, together with either funds in the amount of any tax that may be payable with respect to any issuance and delivery of the shares of Class A Common Stock or Class C Common Stock, as applicable, to a person other than the holder of the shares of Class B Common Stock or Class C Common Stock to

be converted or satisfactory evidence that such tax has been paid, is not payable or will be paid upon issuance of the shares of Class A Common Stock or Class C Common Stock, as applicable.

If any of the shares of Class A Common Stock or Class C Common Stock, as applicable, to be issued upon conversion are subject to restrictions on ownership under this Certificate of Incorporation or otherwise, the Corporation shall require, as a further condition to any such conversion, satisfactory evidence that either the proposed conversion will not violate any such restrictions or that immediately upon such conversion, the holder of the shares of Class B Common Stock or Class C Common Stock surrendered for conversion shall sell any shares of Class A Common Stock or Class C Common Stock, as applicable, issued upon the conversion to a person or entity that is qualified to hold such shares under this Certificate of Incorporation.

Shares of Class B Common Stock or Class C Common Stock that have been converted hereunder shall not be canceled but shall remain as treasury shares, available for reissue by the Corporation, unless retired by resolution of the Board of Directors.

The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Class A Common Stock and Class C Common Stock shares of Class A Common Stock and Class C Common Stock in a quantity sufficient to provide for the conversion of all outstanding shares of Class B Common Stock and Class C Common Stock into shares of Class A Common Stock and of all outstanding shares of Class B Common Stock into shares of Class C Common Stock. If any shares of Class A Common Stock or Class C Common Stock require registration with or approval of any governmental authority under any federal or state law before such shares may be issued upon conversion, the Corporation shall cause such shares to be duly registered or approved, as the case may be. The Corporation shall endeavor to use its commercially reasonable efforts to list the shares of Class A Common Stock or Class C Common Stock to be delivered upon conversion prior to such delivery upon each national securities exchange upon which the outstanding shares of Class A Common Stock or Class C Common Stock are listed at the time of such delivery. All shares of Class A Common Stock and Class C Common Stock that shall be issued upon conversion shall, upon issue, be fully paid and nonassessable.

Subject to the other provisions of this Section F, promptly after (A) the Conversion Date and (B) the surrender of such certificate or certificates representing the share or shares of Class B Common Stock or Class C Common Stock to be

converted, the Corporation shall issue and deliver, or cause to be issued and delivered, to the holder requesting conversion, registered in such name or names as such holder may direct, a certificate or certificates for the number of shares of Class A Common Stock or Class C Common Stock, as applicable, issuable upon the requested conversion, together with a certificate or certificates evidencing any balance of the shares of Class B Common Stock or Class C Common Stock surrendered to the Corporation but not then being converted.

To the extent permitted by law, such conversion shall be deemed to have been effected as of the close of business on the later of the Conversion Date or the date upon which the Corporation shall have received the certificate or certificates representing the share or shares of Class B Common Stock or Class C Common Stock to be converted, and at such time the rights of the holder of such share or shares as such holder shall cease, and the person or persons in whose name or names any certificate or certificates for shares shall be issuable upon such conversions shall be deemed to have become the holder or holders of records of such shares of Class A Common Stock or Class C Common Stock, as applicable.

The issuance of certificates representing shares of Class A Common Stock or Class C Common Stock, as applicable, upon the conversion of Class B Common Stock or Class C Common Stock, as hereinabove set forth, shall be made without charge or any expense or issuance tax in respect thereof; provided, however, that if any certificate is to be issued in a name other than that of the holder of the shares converted, the Corporation shall not be required to issue or deliver any such certificate unless and until the person requesting the issuance thereof shall have (i) paid to the Corporation the amount of any tax that may be payable with respect to any transfer involved in the issuance and delivery of such certificate or (ii) established to the satisfaction of the Corporation that such tax has been paid or is not payable.

G. ADJUSTMENTS. In case the Corporation shall (i) pay or make a dividend or other distribution on the Class A Common Stock in shares of Class A Common Stock, (ii) subdivide or split the outstanding shares of Class A Common Stock into a larger number of shares or (iii) combine the outstanding shares of Class A Common Stock into a smaller number of shares, then in each such case the Conversion Ratio shall be adjusted to equal the number of such shares of Class A Common Stock to which the holder of one share of Class B Common Stock or Class C Common Stock, respectively, would have been entitled upon the occurrence of such event had such share of Class B Common Stock and Class C Common Stock been converted immediately prior to the happening of such event or, in the case of a stock dividend or other distribution, prior to the record date for determination of stockholders entitled

thereto. An adjustment made pursuant to this Section G shall become effective immediately after the effective date of such event retroactive to the record date, if any, for such event in the case of a dividend or distribution and immediately after the effective date in the case of a subdivision, split or combination.

In case of any capital reorganization or any reclassification of the capital stock of the Corporation (whether pursuant to a merger or consolidation or otherwise), each share of Class B Common Stock and Class C Common Stock shall thereafter be convertible into the number of shares of stock or other securities or property receivable upon such capital reorganization or reclassification of capital stock, as the case may be, by a holder of the number of shares of Class A Common Stock into which such share of Class B Common Stock or Class C Common Stock was convertible immediately prior to such capital reorganization or reclassification of capital stock; and, in any case, appropriate adjustment (as determined in good faith by the Board of Directors) shall be made for the application of the provisions of this Section G with respect to the rights and interests thereafter of the holders of Class B Common Stock and Class C Common Stock to the end that the provisions set forth in this Section G shall thereafter be applicable, as nearly as reasonably practicable, in relation to any shares of stock or other securities or property thereafter deliverable upon the conversion of shares of Class B Common Stock and Class C Common Stock.

In case of any consolidation of the Corporation with, or merger of the Corporation into, any other person, any merger of another person into the Corporation (other than a merger which does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of Class A Common Stock) or any sale or transfer of all or substantially all of the assets of the Corporation to the person formed by such consolidation or resulting from such merger or which acquires such assets, as the case may be, each share of Class B Common Stock and each share of Class C Common Stock shall thereafter be convertible into the kind and amount of securities, cash and other property receivable upon such consolidation, merger, sale or transfer by a holder of the number of shares of Class A Common Stock into which, a share of Class B Common Stock or Class C Common Stock, as the case may be, may have been converted immediately prior to such consolidation, merger, sale or transfer. Adjustments for events after the effective date of such a consolidation, merger, sale or transfer of assets shall be as nearly equivalent as may be practicable to the adjustment provided for in this Section G. In any such event, effective provisions shall be made in the articles or certificate of incorporation of the resulting or surviving corporation, or in any contract of sale, merger, conveyance, lease, transfer or otherwise so that the provisions set forth in this Section G for the protection of the rights of the holders of shares of Class B Common Stock and Class C Common Stock shall thereafter

continue to be applicable; and any such resulting or surviving corporation shall expressly assume the obligation to deliver, upon exercise, such shares of stock, other securities, cash and property. The provisions of this Section G shall similarly apply to successive consolidations, mergers, sales, leases or transfers.

In case the Corporation shall, by dividend or otherwise, distribute to all holders of its Class A Common Stock shares of any of its capital stock (other than Class A Common Stock), options, rights or warrants to purchase any of its securities, cash, other assets or evidences of its indebtedness, then in each such case the Conversion Ratio shall be adjusted by multiplying the Conversion Ratio immediately prior to the date of such dividend or distribution by a fraction, of which the numerator shall be the Fair Market Value (as defined below) per share of Class A Common Stock at the record date for determining stockholders entitled to such dividend or distribution, and of which the denominator shall be such Fair Market Value per share less the Fair Market Value of the portion of the securities, cash, assets or evidences of indebtedness so distributed applicable to one share of Class A Common Stock. For purposes hereof, "Fair Market Value" as at any date of determination means the fair market value of the business, securities (and with respect to a share of Class A Common Stock, if shares of Class A Common Stock are not publicly traded, shall mean a proportionate amount of the Fair Market Value of the Corporation as of such date, as determined in good faith by the Board of Directors), property or services in question as of such date, as determined in good faith by the Board of Directors; provided, however, that if, at any date of determination of the Fair Market Value of Class A Common Stock, shares of Class A Common Stock shall then be publicly traded, then the Fair Market Value of a share of Class A Common Stock outstanding on such date shall be the average daily closing prices of one share of Class A Common Stock for the twenty (20) consecutive trading days ending on the most recent trading day prior to the date of determination.

H. LIQUIDATION, DISSOLUTION, ETC. In the event of any liquidation, dissolution or winding up (either voluntary or involuntary) of the Corporation, the holders of shares of Class A Common Stock, the holders of Class B Common Stock and the holders of Class C Common Stock shall be entitled to receive the assets and funds of the Corporation available for distribution after payments to creditors and to the holders of any Preferred Stock of the Corporation that may at the time be outstanding, in proportion to the number of shares held by them, respectively, without regard to class.

I. PREFERRED STOCK. The Board of Directors is hereby expressly authorized to provide for the issuance of all or any shares of the Preferred Stock in one or more classes or series, and to fix for each such class or series such voting power,

full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights and such qualifications, limitations or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issuance of such class or series, including, without limitation, the authority to provide that any such class or series may be (i) subject to redemption at such time or times and at such price or prices; (ii) entitled to receive dividends (which may be cumulative or non-cumulative) at such rates, on such conditions, and at such times, and payable in preference to, or in such relation to, the dividends payable on any other class or classes or any other series; (iii) entitled to such rights upon the dissolution of, or upon any distribution of the assets of, the Corporation; or (iv) convertible into, or exchangeable for, shares of any other class or classes of stock, or of any other series of the same or any other class or classes of stock, of the Corporation at such price or prices or at such rates of exchange and with such adjustments; all as may be stated in such resolution or resolutions.

J. POWER TO SELL AND PURCHASE SHARES. Subject to any applicable provision of law or this Certificate of Incorporation, the Corporation shall have the power to issue and sell all or any part of any class of stock herein or hereafter authorized to such persons, and for such consideration, as the Board of Directors shall from time to time, in its discretion, determine, whether or not greater consideration could be received upon the issue or sale of the same number of shares of another class, and as otherwise permitted by law. Subject to any applicable provision of law or this Certificate of Incorporation, the Corporation shall have the power to purchase any class of stock herein or hereafter authorized from such persons, and for such consideration, as the Board of Directors shall from time to time, in its discretion, determine, whether or not less consideration could be paid upon the purchase of the same number of shares of another class, and as otherwise permitted by law.

## ARTICLE VII

### MANAGEMENT OF THE CORPORATION

The following provisions are inserted for the management of the business and the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders:

A. BOARD OF DIRECTORS. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

B. BY-LAWS. In furtherance, and not in limitation, of the powers conferred upon it by the laws of the State of Delaware, the Board of Directors shall have the power to make, alter, amend, change, add to or repeal the By-Laws of the Corporation; provided, however, that any such amendment must be approved by the holders of two-thirds of the outstanding shares of Class A Common Stock and Class C Common Stock, voting together as a single class. The By-Laws of the Corporation also may be made, altered, amended, changed, added to or repealed by the affirmative vote of the holders of at least two-thirds of the outstanding shares of Class A Common Stock and Class C Common Stock, voting together as a single class.

C. NUMBER OF DIRECTORS AND COMPOSITION OF THE BOARD. The initial number of directors of the Corporation shall be nine (9). The number of directors of the Corporation may be increased or decreased from time to time, in the manner provided in the By-Laws of the Corporation, but shall in no event be less than nine (9) nor more than twelve (12). Subject to the rights, if any, of the holders of shares of Preferred Stock then outstanding, directors shall be elected by a plurality of the votes cast by the shares of Class A Common Stock and Class C Common Stock present and entitled to vote thereon at a meeting at which a quorum is present. Shares of Class B Common Stock shall not be entitled to vote in any election of directors. Election of directors need not be by written ballot unless the By-Laws so provide.

D. CLASSIFICATION OF BOARD. The Board of Directors shall be and is divided into three classes of directors of as nearly equal numbers as is possible, designated Class I, Class II and Class III, respectively, serving staggered three-year terms, with the term of a class expiring at each Annual Meeting of Stockholders. At each Annual Meeting of Stockholders, a number of directors equal to the number of directors of the class whose terms expires at such Annual Meeting of Stockholders (or the number of directors properly nominated and qualified for election) shall be elected to hold office until the third succeeding Annual Meeting of Stockholders after their election. Any increase or decrease in the number of directors shall be so apportioned among the classes of directors as to make all classes as nearly equal in number as possible. In all cases, each director shall serve until a successor has been elected and qualified or until such director's earlier resignation, retirement, removal from office, death or disability.

E. VACANCIES; REMOVAL. Subject to the rights, if any, of the holders of shares of Preferred Stock then outstanding, any vacancy on the Board of Directors resulting from an increase in the number of directors may be filled only by a majority of the Board of Directors then in office, provided that a quorum is present,

and any other vacancy on the Board of Directors may be filled only by the remaining directors (even though less than a quorum) or by a sole remaining director, in each case for the full term of the class of directors in which the vacancy occurs or is created. The Corporation's stockholders shall not, and shall have no power to, fill any vacancy on the Board of Directors. Subject to the rights, if any, of the holders of shares of Preferred Stock then outstanding, any or all of the directors of the Corporation may be removed from office at any time, but only for cause and only by the affirmative vote of the holders of at least a majority of the voting power of the Corporation's then outstanding capital stock entitled to vote generally in the election of directors. For purposes of this section, "for cause" shall include, without limitation, a director's willful misconduct or conviction of a felony and violation by a director of the independence provisions set forth in the Corporation's By-Laws. Notwithstanding the foregoing, whenever the holders of any one or more classes or series of Preferred Stock issued by the Corporation shall have the right, voting separately by class or series, to elect directors at an Annual or Special Meeting of Stockholders, the election, term of office, filling of vacancies and other features of such directorships shall be governed by the terms of this Certificate of Incorporation applicable thereto, and such directors so elected shall not be divided into classes pursuant to this Article VII unless expressly provided by such terms.

F. PERSONAL LIABILITY. No director shall be personally liable to the Corporation or any of 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 or (iii) for any transaction from which the director derived an improper personal benefit. Any repeal or modification of this Article VII by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification.

G. ADDITIONAL POWERS. In addition to the powers and authority hereinbefore or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the Delaware General Corporation Law (the "DGCL"), this Certificate of Incorporation, and any By-Laws adopted by the stockholders; provided, however, that no By-Laws hereafter adopted by the stockholders shall invalidate any prior act of the directors which would have been valid if such By-Laws had not been adopted.

H. DIRECTOR QUALIFICATIONS. In addition to any qualifications that may be required by law, no person shall be nominated or elected a director of the Corporation, nor may any person serve or continue to serve as a director of the Corporation, unless and until such person has satisfied all of the qualifications for directors of the Corporation, including any qualifications for director independence, as may be set forth from time to time in this Certificate of Incorporation or the By-Laws of the Corporation.

I. FIDUCIARY OBLIGATIONS. In managing the business and affairs of the Corporation, the directors of the Corporation shall perform their duties in a manner consistent with the directors' fiduciary duties to the stockholders of the Corporation under Delaware law. In so performing such duties, the directors shall consider the interests of the stockholders of the Corporation solely in their capacity as investors in the Corporation but shall have no duty to consider, and shall not consider, any other interests that the stockholders of the Corporation may have in any other business, asset or liability, including any interests such stockholders may have as participants in the electric markets served by the Corporation.

## ARTICLE VIII

### INDEMNIFICATION

The Corporation shall indemnify and may insure its officers and directors to the fullest extent permitted by law currently in effect or hereinafter enacted, and such right to indemnification shall continue as to a person who has ceased to be a director or officer of the Corporation and shall inure to the benefit of his or her heirs, executors and personal and legal representatives; provided, however, that, except for proceedings to enforce rights to indemnification, the Corporation shall not be obligated to indemnify any director or officer (or his or her heir, executor or personal or legal representatives) in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board of Directors. The right to indemnification conferred by this Article VIII shall include the right to be paid by the Corporation the expenses incurred in defending or otherwise participating in any proceeding in advance of its final disposition.

The Corporation may, to the extent authorized from time to time by the By-Laws of Corporation or the Board of Directors, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation similar to those conferred in this Article VIII to directors and officers of the Corporation.

The rights to indemnification and to the advancement of expenses conferred in this Article VIII shall not be exclusive of any other right which any person may have or hereafter acquire under this Certificate of Incorporation, the By-Laws of the Corporation, any statute, agreement, vote of stockholders or disinterested directors or otherwise.

Any repeal or modification of this Article VIII shall not adversely affect any rights to indemnification and the advancement of expenses of a director or officer of the Corporation existing at the time of such repeal or modification with respect to any acts or omission occurring prior to such repeal or modification.

## ARTICLE IX

### MEETINGS OF STOCKHOLDERS

A. CALL OF SPECIAL MEETINGS OF STOCKHOLDERS. Except as required by law, the Corporation shall not be required to hold a Special Meeting of Stockholders of the Corporation unless (in addition to any other requirements of law): (i) the holders of not less than fifty (50) percent of all the votes entitled to be cast on any issue proposed to be considered at the proposed Special Meeting of Stockholders sign, date and deliver to the Corporation's Secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held; (ii) the meeting is called by the Board pursuant to a resolution adopted by a majority of the entire Board of Directors; or (iii) the meeting is called by the Chairman of the Board of Directors. Only business within the purpose or purposes described in the special meeting notice (or any supplement thereto) required by Section 222 of the DGCL, or any successor provision may be conducted at a Special Meeting of Stockholders.

## ARTICLE X

### LOCATION OF MEETINGS AND RECORDS

Meetings of stockholders may be held within or without the State of Delaware, as the By-Laws may provide. The books of the Corporation may be kept (subject to any provision contained in the DGCL) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the By-Laws of the Corporation.

## ARTICLE XIII

### AMENDMENTS

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation. Notwithstanding the foregoing, any amendment, alteration, change or repeal of any provision contained in this Certificate of Incorporation (other than those contemplated by Section 241 of the DGCL, which may be approved by the Board of Directors without stockholder action) is, in addition to any other vote that may be required by law, subject to the approval of the holders of two-thirds of the outstanding shares of Class A Common Stock and Class C Common Stock, voting together as a single class, for which vote the holders of Class A Common Stock shall be entitled to one vote per share of Class A Common Stock and the holders of Class C Common Stock shall be entitled to one vote per share of Class C Common Stock and one vote per share of Class C Common Stock into which any Interest in TransConnect LLC of any such holder is then convertible pursuant to the terms and conditions of the Limited Liability Company Operating Agreement for TransConnect LLC; provided, however, that if any such amendment, alteration, change or repeal affects the rights of holders of Class B Common Stock, then such amendment, alteration, change or repeal shall also be subject to the approval of the holders of a majority of the outstanding shares of Class A Common Stock and the outstanding shares of Class B Common Stock, voting together as a single class, for which vote the holders of Class A Common Stock shall be entitled to one vote per share of Class A Common Stock and the holders of Class B Common Stock shall be entitled to one vote per share of Class B Common Stock and one vote per share of Class B Common Stock into which any Interest in TransConnect LLC of any such holder is then convertible pursuant to the terms and conditions of the Limited Liability Company Operating Agreement for TransConnect LLC.

## ARTICLE XI

### INCORPORATOR

The name and address of the incorporator of the Corporation is [Name To Come], [Address To Come].

I, THE UNDERSIGNED, being the Incorporator hereinbefore named, for the purpose of forming a corporation pursuant to the DGCL, have executed this Certificate of Incorporation this \_\_\_\_ day of \_\_\_\_\_, 2000.

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[To Come]  
Incorporator