

# SECURITIES AND EXCHANGE COMMISSION

## FORM 10-Q

Quarterly report pursuant to sections 13 or 15(d)

Filing Date: **1996-02-07** | Period of Report: **1995-12-24**  
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### FILER

#### NETWORK EQUIPMENT TECHNOLOGIES INC

CIK: **752431** | IRS No.: **942904044** | State of Incorpor.: **DE** | Fiscal Year End: **0331**  
Type: **10-Q** | Act: **34** | File No.: **001-10255** | Film No.: **96512935**  
SIC: **7373** Computer integrated systems design

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended December 24, 1995, or

/  TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934

For the transition period ended \_\_\_\_\_ or \_\_\_\_\_

Commission File Number 0-15323

NETWORK EQUIPMENT TECHNOLOGIES, INC.  
(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction  
of incorporation or  
organization)

94-2904044  
(I.R.S. Employer  
Identification Number)

800 Saginaw Drive  
Redwood City, CA 94063  
(415) 366-4400  
(Address, including zip code, and telephone number  
including area code, of registrant's  
principal executive offices)

Indicate by check mark whether the registrant (1) has filed all reports  
required to be filed by Section 13 or 15(d) of the Securities Exchange Act of  
1934 during the preceding 12 months (or for such shorter period that the  
registrant was required to file such reports) and (2) has been subject to such  
filing requirements for the past 90 days.

Yes    X    No  
-----    -----

The number of shares outstanding of the registrant's Common Stock, \$.01  
par value, on December 24, 1995 was 20,651,775.

This document consists of 13 pages of which this is page 1.

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NETWORK EQUIPMENT TECHNOLOGIES, INC.

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NETWORK EQUIPMENT TECHNOLOGIES, INC.  
Condensed Consolidated Balance Sheet  
(dollars in thousands)

<TABLE>  
<CAPTION>

	December 24, 1995 (unaudited)	March 31, 1995
	----- <C>	----- <C>
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Assets		
Current assets:		
Cash and cash equivalents	\$ 42,032	\$ 33,886
Temporary cash investments	58,184	52,734
Accounts receivable, net of allowances of \$4,279 at December 24 and \$2,514 at March 31	72,886	56,983
Inventories	34,782	32,314
Deferred income taxes	9,900	9,900
Prepaid expenses and other assets	6,456	4,625
	-----	-----
Total current assets	224,240	190,442
Property and equipment, net of accumulated depreciation and amortization of \$90,200 at December 24 and \$90,618 at March 31	28,149	27,149
Software production costs, net of accumulated amortization of \$22,761 at December 24 and \$20,838 at March 31	3,824	4,691
Other assets	8,350	9,764
	-----	-----
	\$264,563	\$232,046
	-----	-----
	-----	-----
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	\$ 21,469	\$ 18,315
Accrued liabilities	49,766	43,444
	-----	-----
Total current liabilities	71,235	61,759
7-1/4% convertible subordinated debentures	33,526	68,625
Stockholders' equity:		
Preferred stock, \$.01 par value		

Authorized: 5,000,000 shares,		
Outstanding: none	-	-
Common stock to be issued	-	32
Common stock, \$.01 par value		
Authorized: 50,000,000 shares		
Outstanding: 20,652,000 shares at December 24 and 18,714,000 shares at March 31	207	187
Additional paid-in capital	150,107	113,846
Unrealized gain (loss) on available-for-sale securities	43	(10)
Accumulated translation adjustment	(1,041)	(794)
Retained earnings (deficit)	10,486	(11,599)
	-----	-----
Total stockholders' equity	159,802	101,662
	-----	-----
	\$264,563	\$232,046
	-----	-----
	-----	-----

See Notes to Condensed Consolidated Financial Statements.

</TABLE>

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NETWORK EQUIPMENT TECHNOLOGIES, INC.  
Condensed Consolidated Statement of Income  
(in thousands, except per share amounts - unaudited)

<TABLE>  
<CAPTION>

	Quarter Ended		Nine Months Ended	
	Dec. 24, 1995	Dec. 25, 1994	Dec. 24, 1995	Dec. 25, 1994
	-----	-----	-----	-----
	<C>	<C>	<C>	<C>
Revenue:				
Product revenue	\$ 58,602	\$ 51,227	\$161,583	\$135,887
Service and other revenue	25,959	22,612	85,545	66,341
	-----	-----	-----	-----
Total revenue	84,561	73,839	247,128	202,228
Cost of sales:				
Cost of product revenue	23,361	20,825	64,671	56,025
Cost of service and other revenue	17,529	14,839	58,498	45,543
	-----	-----	-----	-----
Total cost of sales	40,890	35,664	123,169	101,568
Gross margin	43,671	38,175	123,959	100,660
Operating expenses:				
Sales and marketing	18,612	17,707	54,720	51,724
Research and development	9,456	8,556	26,323	25,100
General and administrative	2,805	3,029	8,845	8,375
	-----	-----	-----	-----
Total operating expenses	30,873	29,292	89,888	85,199
Income from operations	12,798	8,883	34,071	15,461
Other income (expense):				
Interest income	1,410	625	4,230	1,395
Interest expense	(1,494)	(1,304)	(4,151)	(3,906)
Other	(75)	(135)	(173)	(535)
	-----	-----	-----	-----
Income before income taxes	12,639	8,069	33,977	12,415

Income tax provision	4,424	2,810	11,892	2,810
	-----	-----	-----	-----
Net income	\$ 8,215	\$ 5,259	\$ 22,085	\$ 9,605
	-----	-----	-----	-----
Net income per share:				
Primary	\$ .39	\$ .27	\$ 1.07	\$ .52
	-----	-----	-----	-----
Fully diluted	\$ .39	\$ .27	\$ 1.07	\$ .49
	-----	-----	-----	-----
Shares used in computation:				
Primary	21,199	19,567	20,587	18,312
	-----	-----	-----	-----
Fully diluted	21,199	19,819	20,643	19,596
	-----	-----	-----	-----

See Notes to Condensed Consolidated Financial Statements.

</TABLE>

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NETWORK EQUIPMENT TECHNOLOGIES, INC.  
Condensed Consolidated Statement of Cash Flows  
(in thousands - unaudited)

<TABLE>  
<CAPTION>

	Nine Months Ended	
	Dec. 24, 1995	Dec. 25, 1994
	-----	-----
<S>	<C>	<C>
Cash and Cash Equivalents at Beginning of Period	\$ 33,886	\$ 23,854
Net Cash Flows from Operating Activities:		
Net income	22,085	9,605
Adjustments to reconcile net income to cash provided by operations:		
Depreciation and amortization	11,594	13,270
Restricted stock compensation	269	-
Changes in assets and liabilities:		
Accounts receivable	(16,444)	1,213
Inventories	(2,559)	2,239
Prepaid expenses and other assets	(1,901)	(805)
Accounts payable	3,236	(6,223)
Accrued liabilities	7,578	3,479
	-----	-----
Net cash provided by operations	23,858	22,778
	-----	-----
Cash Flows from Investing Activities:		
Purchases of temporary cash investments	(63,560)	(36,608)
Proceeds from maturities of temporary cash investments	58,163	19,068
Additions to property and equipment	(10,823)	(5,730)
Additions to software production costs	(1,056)	(1,609)
Other	961	579
	-----	-----
Net cash used for investing activities	(16,315)	(24,300)

Cash Flows from Financing Activities:		
Sale of common stock	10,268	7,461
Repurchase of convertible subordinated debentures	(10,117)	-
Repayments of borrowings	-	(17)
	-----	-----
Net cash provided by financing activities	151	7,444
	-----	-----
Effect of exchange rate changes on cash	452	(563)
	-----	-----
Net increase in cash and cash equivalents	8,146	5,359
	-----	-----
Cash and Cash Equivalents at End of Period	\$ 42,032	\$ 29,213
	-----	-----
Other Cash Flow Information:		
Cash paid for:		
Interest	\$ 4,162	\$ 5,076
Income taxes	\$ 5,215	\$ 1,223
Non-cash investing and financing activities:		
Conversion of convertible subordinated debentures to common stock (including accrued interest and debenture offering costs)	\$ 25,533	\$ -
Net unrealized (gain) loss on available-for-sale securities	\$ (53)	\$ 2

See Notes to Condensed Consolidated Financial Statements.

</TABLE>

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NETWORK EQUIPMENT TECHNOLOGIES, INC.  
Notes to Condensed Consolidated Financial Statements

1. Basis of Presentation

The consolidated financial statements include the accounts of the Company. Intercompany accounts and transactions have been eliminated.

In the opinion of management, the accompanying unaudited condensed consolidated financial statements contain all adjustments (consisting only of normal recurring adjustments) necessary to present fairly the financial position as of December 24, 1995, and the results of operations and cash flows for the quarter and nine months ended December 24, 1995 and December 25, 1994. These statements should be read in conjunction with the March 31, 1995 consolidated financial statements and notes thereto. The results of operations for the nine months ended December 24, 1995 are not necessarily indicative of the results to be expected for the fiscal year ending March 31, 1996.

2. Reclassification

Certain fiscal 1995 amounts have been reclassified to conform with fiscal 1996 presentation.

3. Inventories

Inventories consist of (in thousands):

	December 24, 1995 (unaudited)	March 31, 1995
Purchased components	\$ 13,797	\$ 11,498
Work-in-process	18,354	17,175
Finished goods	2,631	3,641
	-----	-----
	\$ 34,782	\$ 32,314
	-----	-----
	-----	-----

#### 4. Earnings Per Share

Net income per share has been computed based upon the weighted average number of common and common equivalent shares outstanding. For primary earnings per share, common equivalent shares consist of the incremental shares issuable upon the assumed exercise of dilutive stock options. For fully diluted earnings per share, common equivalent shares also include, if dilutive, the effect of incremental shares issuable upon the conversion of the 7-1/4% convertible subordinated debentures, and net income will be adjusted for the interest expense (net of income taxes) related to the debentures.

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#### MANAGEMENT'S DISCUSSION AND ANALYSIS OF RESULTS OF OPERATIONS AND FINANCIAL CONDITION

This discussion and analysis should be read in conjunction with Management's Discussion and Analysis in the Company's 1995 Annual Report to Shareholders and Part I of the Company's Form 10-K for the fiscal year ended March 31, 1995.

#### RESULTS OF OPERATIONS

The following table depicts selected data derived from the consolidated statement of operations expressed as a percentage of revenue for the periods presented:

<TABLE>  
<CAPTION>

Percent of Revenue	Quarter Ended		Nine Months Ended	
	Dec. 24, 1995	Dec. 25, 1994	Dec. 24, 1995	Dec. 25, 1994
	-----	-----	-----	-----
<S>	<C>	<C>	<C>	<C>
Product revenue	69.3	69.4	65.4	67.2
Service and other revenue	30.7	30.6	34.6	32.8
	-----	-----	-----	-----
Total revenue	100.0	100.0	100.0	100.0
	-----	-----	-----	-----
Product revenue gross margin	60.1	59.3	60.0	58.8
Service and other revenue gross margin	32.5	34.4	31.6	31.4
	-----	-----	-----	-----
Total gross margin	51.6	51.7	50.2	49.8
	-----	-----	-----	-----
Sales and marketing	22.0	24.0	22.1	25.6
Research and development	11.2	11.6	10.7	12.4
General and administrative	3.3	4.1	3.6	4.2
	-----	-----	-----	-----
Total operating expenses	36.5	39.7	36.4	42.2

	-----	-----	-----	-----
Income from operations	15.1	12.0	13.8	7.6
	-----	-----	-----	-----
Net income	9.7	7.1	8.9	4.7
	-----	-----	-----	-----

</TABLE>

#### Revenue

Total revenue for the third quarter and first nine months of fiscal 1996 increased 14.5% and 22.2%, respectively, from the comparable periods of fiscal 1995. Product revenue for the third quarter and first nine months of fiscal 1996 increased \$7.4 million, or 14.4%, and \$25.7 million, or 18.9%, respectively, from the comparable periods of the prior year. The quarter-over-quarter increase in product revenue is primarily a result of a \$7.4 million, or 62.8% increase in sales in the U.S. Federal channel. An increase in all sales channels, again most predominantly in the U.S. Federal channel, is the primary driver for the year-to-date increase in product revenue. Product sales in the U.S. Federal channel for the first nine months of fiscal 1996 have increased \$11.7 million, or 35.1%, from the comparable period of the prior year. International product sales decreased 5.1% to 29.3% of product revenue for the quarter and increased 13.1% to 32.9% of product revenue year-to-date.

Service and other revenue for the third quarter and first nine months of fiscal 1996 increased \$3.3 million and \$19.2 million, respectively. This increase is primarily attributable to systems integration services in support of product sales to the U.S. government. On a year-to-date basis, systems integration revenue increased by \$13.4 million over the prior year.

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#### Gross Margin

Total gross margin as a percentage of total revenue decreased slightly to 51.6% from 51.7% in the third quarter and increased to 50.2% from 49.8% in the first nine months of fiscal 1996 from the comparable periods of fiscal 1995. The quarter-over-quarter decrease is a result of decreased service and other gross margin while the year-over-year increase is a result of increases in both product and service and other gross margins. Product gross margin increased to 60.1% and 60.0% for the third quarter and first nine months of fiscal 1996 from 59.3% and 58.8%, respectively, for the comparable periods of fiscal 1995. These increases resulted primarily from a favorable product and channel mix and a higher revenue base over which to spread manufacturing costs.

Service and other gross margin decreased to 32.5% and increased to 31.6% for the third quarter and first nine months of fiscal 1996 from 34.4% and 31.4%, respectively, in the comparable periods of the prior year. The quarter-over-quarter decrease is a result of both a decrease in service margin and a higher mix of lower margin systems integration services provided under U.S. government contracts. Despite a similar increase in the volume of these services on a year-to-date basis, the service and other gross margin has increased as margins on both service and integration services have improved. Gross margin on integration services has increased to 17.9% and 14.9% for the third quarter and first nine months of fiscal 1996 from 11.3% and 11.0%, respectively, for the comparable periods of fiscal 1995. Management expects service and other gross margin to continue to fluctuate as a result of the changes in mix between systems integration services and other service revenue.

#### Operating Expenses



Operating expenses in the third quarter and first nine months of fiscal 1996 increased \$1.6 million and \$4.7 million from the comparable periods of fiscal 1995, but decreased as a percentage of total revenue to 36.5% and 36.4% from 39.7% and 42.2%, respectively, as a result of higher revenue levels. Management expects the relationship of operating expenses as a percentage of total revenue to continue to be favorable over the prior year during the remainder of fiscal 1996.

Sales and marketing expense in the third quarter and first nine months of fiscal 1996 increased \$.9 million and \$3.0 million, respectively, from the comparable periods of fiscal 1995, but decreased as a percentage of total revenue to 22.0% and 22.1% for the quarter and first nine months from 24.0% and 25.6%, respectively. The increase in spending is primarily the result of the addition of personnel to support expansion of the sales infrastructure. Management expects sales and marketing expenses to increase during the remainder of fiscal 1996 while continuing to be favorable over the prior year as a percentage of planned revenue.

Research and development expense increased \$.9 million and \$1.2 million, respectively, in the third quarter and first nine months of fiscal 1996 from the comparable periods of fiscal 1995, but decreased as a percentage of total revenue to 11.2% and 10.7%, respectively, from 11.6% and 12.4% in the comparable periods of fiscal 1995. The increase in spending is primarily a result of the addition of engineers as well as the purchase of hardware and software tools to support product development. Management plans to continue funding research and development efforts at levels necessary to advance product programs, and expects research and development spending to increase during the remainder of fiscal 1996.

General and administrative expense decreased \$.2 million in the third quarter and increased \$.5 million in the first nine months of fiscal 1996 as compared to the prior year, but decreased as a percentage of total revenue to 3.3% and 3.6%, respectively, from 4.1% and 4.2% in the comparable periods of fiscal 1995.

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#### Other Income (Expense)

Interest income for the first nine months of fiscal 1996 increased \$2.8 million from the comparable period of fiscal 1995 due to higher cash balances and higher interest rates. Interest expense, primarily related to the 7-1/4% convertible subordinated debentures, increased by \$.2 million to \$4.2 million due to approximately \$.5 million of one-time costs associated with the partial redemption of the Company's convertible debentures.

#### Income Taxes

The third quarter and first nine months of fiscal 1996 include a provision for income tax expense of \$4.4 million and \$11.9 million, respectively, at an effective rate of 35%. Tax expense of \$2.8 million was recorded in the third quarter and first nine months of fiscal 1995.

#### BUSINESS ENVIRONMENT, UNCERTAINTIES AND RISK FACTORS

The Management's Discussion and Analysis portion of this Form 10-Q contains forward-looking statements, including those concerning management's expectations regarding future financial performance and future events. These forward-looking statements involve risks and uncertainties, including those described below and others as set forth in the Company's periodic reports filed with the SEC. Actual results may differ materially from such forward-looking statements.

Historically, the majority of the Company's revenue in each quarter results from orders received and shipped in that quarter. Because of these ordering patterns and potential delivery schedule changes, the Company does not believe

that backlog is indicative of future revenue levels. Furthermore, if large orders do not close when forecasted or if near term demand for the Company's products weakens, the Company's operating results for that or subsequent quarters would be adversely affected.

Expense levels are relatively fixed and are set based on expectations regarding future revenue and margin levels. These expectations involve making judgments on issues such as future competitive conditions and customer requirements, a process that involves evaluation of information that is often unclear and in conflict. All markets for the Company's products are very competitive and dynamic. The Company has limited visibility into factors that could influence its revenue and margins, particularly in international markets that are served primarily by non-exclusive resellers. Moreover, the Company believes that operating results will depend on successful development or introduction of new products and enhancements to existing products and service offerings, and there can be no guarantee that the Company will succeed in such efforts.

The Company's products include components, assemblies and subassemblies that are currently available from single sources and, in some cases, are in short supply. Testing and manufacturing is performed at the Company's Redwood City, California facility. Availability limitations, price increases or business interruptions could adversely impact revenue, margins and earnings. In addition, price competition or changes in the mix of product or other revenue sources could adversely impact margins and earnings.

Because of the factors described above, as well as others that may affect the Company's operating results, past financial results may not be an accurate indicator of future performance.

The most recent version of the Company's SEC reports on Form 8-K; 10-Q or 10-K can be obtained by contacting the Company at either its Investor Hotline (1-800-234-4638 - Voice Mail Option 4) and requesting a copy or at its worldwide web site: <http://www.net.com>.

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#### LIQUIDITY AND CAPITAL RESOURCES

As of December 24, 1995, the Company had cash, cash equivalents and temporary cash investments of \$100.2 million, as compared to \$86.6 million as of March 31, 1995. Cash provided by operations was \$23.9 million during the first nine months of fiscal 1996, which was a \$1.1 million increase in cash provided by operations from the comparable period of the prior year, primarily as a result of increased net income offset by an increase in accounts receivable.

Net cash used for investing activities of \$16.3 million for the first nine months of fiscal 1996 primarily consisted of \$10.8 million in property and equipment purchases and \$5.4 million in net purchases of temporary cash investments.

Net cash provided by financing activities of \$.2 million for the first nine months of fiscal 1996 results from the issuance of Common Stock relating to the employee stock benefit plans, net of \$10.1 million used to redeem a portion of the Company's 7-1/4% Convertible Subordinated Debentures.

As of December 24, 1995, the Company had available an unsecured \$10.0 million line of credit. Borrowings under this committed facility are available through May 1996 and would bear interest at the bank's base rate (which approximates prime). At December 24, 1995, there were no outstanding borrowings under this facility.

In the third quarter of fiscal 1996, the Company completed a partial call of its outstanding 7-1/4% Convertible Subordinated Debentures due May 15, 2014, reducing long term debt by \$35.1 million to \$33.5 million. \$10.1 million in cash was used to redeem the debentures, \$.3 million of which represents the

premium paid in excess of principal. An additional \$25.3 million of principal was converted into 802,078 shares of Common Stock at a conversion rate of 31.746 shares for each \$1000 of principal.

The Company believes that current cash and cash equivalents, temporary cash investments and cash flows from operations will be sufficient to fund operations, purchases of capital equipment and research and development programs currently planned at least through the next twelve months.

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PART II

OTHER INFORMATION

Item 6. Exhibits and Reports on Form 8-K

(a) Exhibits

Exhibit 3(i): Restated Certificate of Incorporation  
Exhibit 3(ii): By-laws

Exhibit 11: Statement re: Computation of Primary and Fully Diluted Earnings Per Share

(b) Reports on Form 8-K

No report on Form 8-K was filed by the Company during its fiscal quarter ended December 24, 1995.

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SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this Report to be signed on its behalf by the undersigned thereunto duly authorized.

(REGISTRANT) NETWORK EQUIPMENT TECHNOLOGIES, INC.

BY (SIGNATURE) /s/ Craig M. Gentner

(NAME AND TITLE) Craig M. Gentner  
Senior Vice President and  
Chief Financial Officer and Secretary  
(Principal Financial and Accounting  
Officer)

(DATE) February 7, 1996

## EXHIBIT 11

NETWORK EQUIPMENT TECHNOLOGIES, INC.  
 Computation of Primary and Fully Diluted Earnings Per Share  
 (in thousands, except per share amounts - unaudited)

<TABLE>  
 <CAPTION>

	Quarter Ended		Nine Months Ended	
	Dec. 24, 1995	Dec. 25, 1994	Dec. 24, 1995	Dec. 25, 1994
	-----	-----	-----	-----
<S>	<C>	<C>	<C>	<C>
Primary				
Earnings:				
Net income	\$ 8,215	\$ 5,259	\$ 22,085	\$ 9,605
	-----	-----	-----	-----
Shares:				
Weighted average number of common shares outstanding	20,136	17,906	19,492	17,482
Number of common equivalent shares assuming exercise of dilutive stock options	1,063	1,661	1,095	830
	-----	-----	-----	-----
	21,199	19,567	20,587	18,312
	-----	-----	-----	-----
Primary earnings per share	\$ .39	\$ .27	\$ 1.07	\$ .52
	-----	-----	-----	-----
Fully Diluted				
Earnings:				
Net income	\$ 8,215	\$ 5,259	\$ 22,085	\$ 9,605
	-----	-----	-----	-----
Shares:				
Weighted average number of common shares outstanding	20,136	17,906	19,492	17,482
Number of common equivalent shares assuming exercise of dilutive stock options	1,063	1,913	1,151	2,114
Number of common equivalent shares assuming conversion of convertible securities (1)	-	-	-	-
	-----	-----	-----	-----
	21,199	19,819	20,643	19,596
	-----	-----	-----	-----
Fully diluted earnings per share	\$ .39	\$ .27	\$ 1.07	\$ .49
	-----	-----	-----	-----

</TABLE>

- 
- (1) The assumed exercise of these common stock equivalents was excluded as it was anti-dilutive or had no material impact on the earnings per share calculation.

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NETWORK EQUIPMENT TECHNOLOGIES, INC.  
BY-LAWS

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BY-LAWS OF  
NETWORK EQUIPMENT TECHNOLOGIES, INC.

ARTICLE I

OFFICES

Section 1. The registered office shall be in the City of Wilmington, County of New Castle, State of Delaware.

Section 2. The Corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II

MEETING OF STOCKHOLDERS

Section 1. All meetings of the stockholders for the election of directors shall be held in the City of Redwood City, State of California, at such place as may be fixed from time to time by the Board of Directors, or at such other place either within or without the State of Delaware as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting. Meetings of stockholders for any other purpose may be held at such time and place, within or without the State of Delaware, as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof.

Section 2. Annual meetings of stockholders shall be held on the second Tuesday in August if not a legal holiday, and, if a legal holiday, then on the next secular day following, at 10:00 a.m., or such other date and time as shall be designated from time to time by the Board of

Directors and stated in the notice of the meeting, at which the stockholders shall elect members of the Board of Directors to succeed those whose terms expire and shall transact such other business as may properly be brought before the meeting. At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be

specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, otherwise properly brought before the meeting by or at the direction of the Board of Directors, or otherwise properly brought before the meeting by a stockholder. In addition to any other applicable requirements, for business to be properly brought before an annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the Corporation at least sixty (60) days prior to the meeting; provided, however, that in the event that less than sixty (60) days' notice or prior public disclosure of the date of the meeting is given or made to stockholders, notice by the stockholder to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure was made. A stockholder's notice to the secretary shall set forth as to each matter the stockholder proposes to bring before the annual meeting (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (ii) such other information regarding the item of business to be proposed by such stockholder as would be required to be disclosed in solicitations for proxies to approve such proposed business pursuant to Schedule 14A under the Securities Exchange Act of 1934, as amended, (iii) the name and record address of the stockholder proposing such

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business, (iv) the class and number of shares of the Corporation which are beneficially owned by the stockholder, (v) any material interest of the stockholder in such business.

No business shall be conducted at the annual meeting except in accordance with the procedure set forth in this Section 2 of Article II.

The chairman of an annual meeting shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting in accordance with the provisions of this Section 2 of Article II, and if he or she should so determine, he or she shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted.

Section 3. Written notice of the annual meeting stating the place, date and hour of the meeting shall be given to each stockholder entitled to vote at such meeting



not less than ten (10) nor more than sixty (60) days before the date of the meeting.

Section 4. The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and

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place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

Section 5. Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by statute or by the certificate of incorporation, may be called by the chief executive officer and shall be called by the chief executive officer or secretary at the request in writing of a majority of the Board of Directors. Such request shall state the purpose or purposes of the proposed meeting.

Section 6. Written notice of a special meeting stating the place, date and hour of the meeting and the purpose or purposes for which the meeting is called shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting.

Section 7. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

Section 8. The holders of a majority of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute or by the certificate of incorporation. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat,

present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented any business

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may be transacted which might have been transacted at the meeting as originally notified. If the adjournment is for more than thirty (30) days or if, after the adjournment, a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 9. When a quorum is present at any meeting, the vote of the holders of a majority of the stock having voting power present in person or represented by proxy shall decide any question brought before such meeting unless the question is one upon which, by express provision of the statutes or of the certificate of incorporation, a different vote is required, in which case such express provision shall govern and control the decision of such question.

Section 10. Unless otherwise provided in the certificate of incorporation, each stockholder shall at every meeting of the stockholders be entitled to one vote in person or by proxy for each share of the capital stock having voting power held by such stockholder but no proxy shall be voted on after three years from its date unless the proxy provides for a longer period.

### ARTICLE III

#### DIRECTORS

Section 1. The number of directors which shall constitute the whole board shall not be less than five (5) nor more than eight (8). Within the limits above specified, the number of directors shall be determined by resolution of the Board of Directors or by the stockholders at the annual meeting of the stockholders, except as provided in Section 2 of this Article, and each director elected shall hold office until his or her successor is elected and qualified. Directors need not be stockholders. Section 1 of this

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Article III may only be amended as set forth in Article VI of the Corporation's Certificate of Incorporation.

Section 2. Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by two-thirds (2/3) of the directors then in office, though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and shall qualify unless sooner displaced. If there are no directors in office, then an election of directors may be held in the manner provided by statute.

Section 3. The business of the Corporation shall be managed by or under the direction of its Board of Directors which may exercise all such powers of the Corporation and do all such lawful acts and things as are not proscribed by statute or by the certificate of incorporation or by these By-Laws directed or required to be exercised or done by the stockholders.

#### MEETINGS OF THE BOARD OF DIRECTORS

Section 4. The Board of Directors of the Corporation may hold meetings, both regular and special, either within or without the State of Delaware.

Section 5. The first meeting of each newly elected Board of Directors shall be held at such time and place as shall be fixed by the vote of the stockholders at the annual meeting and no notice of such meeting shall be necessary to the newly elected directors in order legally to constitute the meeting, provided a quorum shall be present. In the event of the failure of the stockholders to fix the time or place of such first meeting of the newly elected Board of

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Directors, or in the event such meeting is not held at the time and place so fixed by the stockholders, the meeting may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the Board of Directors or as shall be specified in a written waiver signed by all of the directors.

Section 6. Regular meetings of the Board of Directors may be held without notice at such time and at such place as shall from time to time be determined by the Board.

Section 7. Special meetings of the Board may be called by the chief executive officer on four (4) days' notice to each director by mail or forty-eight (48) hours notice to each director either personally, via overnight

courier service, or by facsimile; special meetings shall be called by the chief executive officer or secretary in like manner and on like notice on the written request of two directors unless the board consists of only one director, in which case special meetings shall be called by the chief executive officer or secretary in like manner and on like notice on the written request of the sole director.

Section 8. At all meetings of the Board, a majority of the authorized number of directors shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors except as may be otherwise specifically provided by statute or by the certificate of incorporation. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

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Section 9. Unless otherwise restricted by the certificate of incorporation or these By-Laws any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or committee.

Section 10. Unless otherwise restricted by the certificate of incorporation or these By-Laws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors, or any committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

#### COMMITTEES OF DIRECTORS

Section 11. The Board of Directors may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee who may replace any absent or disqualified member at any meeting of the committee.

In the absence of disqualification of a member of a

committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she, or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

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Any such committee, to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the powers or authority in reference to amending the certificate of incorporation, adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets, recommending to the stockholders a dissolution of the Corporation or a revocation of a dissolution, or amending the By-Laws of the Corporation; and, unless the resolution or the certificate of incorporation expressly so provides, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors.

Section 12. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

#### COMPENSATION OF DIRECTORS

Section 13. Unless otherwise restricted by the certificate of incorporation or these By-Laws, the Board of Directors shall have the authority to fix the compensation of directors. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation

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therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

## REMOVAL OF DIRECTORS

Section 14. Unless otherwise restricted by the certificate of incorporation or these By-Laws, any director or the entire Board of Directors may be removed with cause by the holders of a majority of shares entitled to vote at an election of directors.

### ARTICLE IV

#### NOTICES

Section 1. Whenever, under the provisions of the statutes or of the certificate of incorporation or of these By-Laws, notice is required to be given to any director or stockholder, it shall not be construed to mean personal notice, but such notice may be given in writing, by mail, addressed to such director or stockholder, at his or her address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Notice to directors, institutional stockholders and affiliates may also be given via overnight courier service or facsimile.

Section 2. Whenever any notice is required to be given under the provisions of the statutes or of the certificate of incorporation or of these By-Laws, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

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### ARTICLE V

Section 1. Generally. The officers of the Corporation shall consist of a Chairman of the Board or a Chief Executive Officer or both, one or more Vice Presidents, a Secretary, a Chief Financial Officer or a Treasurer or both and such other officers, including one or more assistant secretaries and assistant treasurers, as may from time to time be appointed by the Board of Directors. Officers shall be elected by the Board of Directors. Each officer shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal. The Chairman of the Board shall be a member of the Board of Directors. Any number of offices may be held by the same person.

Section 2. Chairman of the Board. The Chairman of the Board, if any, shall preside at all meetings of the Board of Directors and of the stockholders at which he or she shall be present. He or she shall have and may exercise such powers as are, from time to time assigned to his or her by the Board and as may be provided by law. In the absence of the Chairman of the Board, the Vice Chairman of the Board, if any, shall preside at all meetings of the Board of Directors and of the stockholders at which he or she shall be present. He or she shall have and may exercise such powers as are, from time to time, assigned to his or her by the Board and as may be provided by law.

Section 3. Chief Executive Officer. The Chief Executive Officer shall be the chief executive officer of the Corporation. Subject to the provisions of these by-laws and to the direction of the Board of Directors, he or she shall have the responsibility for the general management and control of the business and affairs of the Corporation and shall perform all duties and have all powers which are commonly incident to the office of chief executive or which

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are delegated to him or her by the Board of Directors. The Chief Executive Officer shall be responsible for all resolutions, orders, and directives of the Board of Directors being carried into effect and may sign and execute, in the name of the Corporation, all stock certificates, deeds, mortgages, bonds, contracts and other instruments, and shall have general supervision and direction of all of the other officers, employees, and agents of the Corporation.

Section 4. Vice President. One or more Vice Presidents shall be designated by the Board to perform the duties and exercise the powers of the Chief Executive Officer in the event of the Chief Executive Officer's absence or disability. The vice presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Board of Directors, the bylaws, or the Chief Executive Officer.

Section 5. Chief Financial Officer. The Chief Financial Officer shall control, audit, and arrange the financial affairs of the Corporation and shall keep and maintain adequate and correct accounts of the Corporation's properties and business transactions and prepare and deliver such financial reports and statements as may be requested by the Board of Directors or as may be required by law and in general shall perform all the duties incident to the office of Chief Financial Officer and such other duties as from time

to time may be assigned by the Board of Directors. The Chief Financial Officer shall also be responsible for all functions and duties of the treasurer of the Corporation, except if and to the extent responsibility for such functions and/or duties is assigned to a separate officer designated by the Board of Directors as the Treasurer of the Corporation. It shall be the duty of the Assistant Treasurers to assist the Chief Financial Officer, and the Treasurer, if any, in the performance of their duties and to perform such other duties

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as from time to time as may be assigned by the Board of Directors.

Section 6. Secretary. The Secretary shall issue all authorized notices for all meetings of the stockholders and the Board of Directors. The Secretary shall keep minutes of all meetings of the stockholders and the Board of Directors. The minutes shall show the time and place of each meeting, whether regular or special (and, if special, how authorized and the notice given), the names of those present at directors' meetings, the number of shares present or represented at stockholders' meetings, and the proceedings thereof. The Secretary shall have charge of the corporate books and shall perform such other duties as the Board of Directors may from time to time prescribe. It shall be the duty of the Assistant Secretaries to assist the Secretary in the performance of his or her duties. In addition, the Chief Executive Officer may direct any Assistant Secretary to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer shall designate from time to time.

Section 7. Delegation of Authority. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officers or agents, notwithstanding any provision hereof.

Section 8. Removal. Any officer of the Corporation may be removed at any time, with or without cause, by the Board of Directors.

Section 9. Unless otherwise directed by the Board of Directors, the Chairman of the Board, or the Chief Executive Officer or any officer of the Corporation

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authorized by the Chairman of the Board or the Chief Executive Officer shall have power to vote and otherwise act on behalf of the Corporation, in person or by proxy, at any meeting of stockholders with respect to any action of stockholders of any other Corporation which this Corporation may hold securities and otherwise to exercise any and all rights and powers which this Corporation may possess by reason of its ownership of securities in such other Corporation.

## ARTICLE VI

### CERTIFICATE OF STOCK

Section 1. Every holder of stock in the Corporation shall be entitled to have a certificate, signed by, or in the name of the Corporation by, the Chairman or Vice Chairman of the Board of Directors, or the chief executive officer or a vice president and the treasurer or an assistant treasurer, or the secretary or an assistant secretary of the Corporation, certifying the number of shares owned by his or her in the Corporation.

Certificates may be issued for partly paid shares and, in such case, upon the face or back of the certificates issued to represent any such partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be specified.

If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualification, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided in section 202 of the General Corporation

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Law of Delaware, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock, a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Section 2. Any of or all the signatures on the certificate may be facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

#### LOST CERTIFICATES

Section 3. The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, stolen or destroyed upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his or her legal representative, to advertise the same in such manner as it shall require and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may

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be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

#### TRANSFER OF STOCK

Section 4. Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the Corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

#### FIXING RECORD DATE

Section 5. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record

date, which shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

#### REGISTERED STOCKHOLDERS

Section 6. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner and to hold liable for calls and

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assessments a person registered on its books as the owner of shares and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

#### ARTICLE VII

#### GENERAL PROVISIONS

#### DIVIDENDS

Section 1. Dividends upon the capital stock of the Corporation, subject to the provisions of the certificate of incorporation, if any, may be declared by the Board of Directors at any regular or special meetings, pursuant to law. Dividends may be paid in cash, in property or in shares of the capital stock, subject to the provisions of the certificate of incorporation.

Section 2. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purposes as the directors shall think conducive to the interest of the Corporation, and the directors may modify or abolish any such reserve in the manner in which it was created.

#### CHECKS

Section 3. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

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#### FISCAL YEAR

Section 4. The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

#### SEAL

Section 5. The Board of Directors may adopt a corporate seal having inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal, Delaware." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

#### INDEMNIFICATION OF OFFICERS, DIRECTORS AND OTHERS

(a) Indemnification in Actions Other Than Those Brought by the Corporation. The corporation shall indemnify and hold harmless, to the fullest extent permitted by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of such amendment, only to the extent that such amendment permits the corporation to provide broader indemnification rights than such law permitted the corporation to provide prior to such amendment), any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he or she is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding.

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Except as provided in paragraph (d) of this Section 6, the corporation shall be required to indemnify a person in connection with a proceeding (or part thereof) initiated by such person only if the proceeding (or part thereof) was authorized by the Board of Directors of the corporation.

(b) Indemnification in Actions Brought By or on Behalf of the Corporation. The corporation shall indemnify and hold harmless, to the fullest extent permitted by the Delaware General Corporation Law, as the same exists or may hereafter be amended, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he or she is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, against expenses (including attorney's fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit.

(c) Expenses; Prepayment. The corporation shall pay the expenses (including attorneys' fees) incurred by a director or officer who has been successful on the merits or otherwise in defending any action, suit or proceeding referenced in paragraphs (a) and (b) of this Section 6 and shall pay such expenses in advance of the final disposition of such matter upon receipt of an undertaking by the director or officer to repay all amounts advanced if it should be ultimately determined that the director or officer is not entitled to be indemnified under this Article or otherwise.

(d) Indemnification Procedure; Claims. Any indemnification under paragraphs (a) and (b) of this Section 6 (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a

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determination that indemnification of the director or office is proper in the circumstances because he or she has met the applicable standard of conduct set forth in paragraphs (a) and (b). If a claim for indemnification or payment of expenses under Section 6 of this Article is not paid in full within sixty days after a written claim therefor has been received by the corporation, the claimant may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim.

(e) Indemnification of Others. The Board of Directors, in its discretion, shall have the power on behalf of the corporation to indemnify any person, other than a director or officer, made a party to any action, suit or proceeding by reason of the fact that he or she, or his or her testator or intestate, is or was an employee or agent of the corporation and to pay the expenses incurred by any such

person in defending such action, suit or proceeding in advance of its final disposition.

(f) Non-exclusivity of Rights. The indemnification and advancement of expenses provided by or granted pursuant to Section 6 of this Article VII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders, or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office.

(g) Other Indemnification. The corporation's obligation, if any, to indemnify any person who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or nonprofit entity shall be reduced by any

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amount such person may collect as indemnification from such other corporation, partnership, joint venture, trust, enterprise or nonprofit enterprise.

(h) Insurance. The corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation against any liability asserted against him or her and incurred by him or her in such capacity, or arising out of his or her status as such, whether or not the corporation would have the power to indemnify him or her against such liability under the provisions of this Section 6.

(i) Successor Entities. For purposes of Section 6 of this Article VII, references to "the corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued would have had power and authority to indemnify its directors, officers, employees and agents so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation shall stand in the same position under the provisions of this Section 6 of Article VII with respect to the resulting or surviving corporation as he or she would have with respect to

such constituent corporation if its separate existence had continued.

(j) Survival of Rights; Amendment or Repeal. The indemnification and advancement of expenses provided by, or granted pursuant to this Article VII shall, unless otherwise

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provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person. Any repeal or modification of the foregoing provisions of Section 6 of this Article VII shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

## ARTICLE VIII

### AMENDMENTS

Section 1. These By-Laws may be altered, amended or repealed or new By-Laws may be adopted by the stockholders or by the Board of Directors pursuant to the provisions of the certificate of incorporation at any regular meeting of the stockholders or of the Board of Directors or at any special meeting of the stockholders or of the Board of Directors if notice of such alteration, amendment, repeal or adoption of new By-Laws be contained in the notice of such special meeting.

END

N.E.T. BY-LAWS

AS AMENDED AUGUST 8, 1995

RESTATED CERTIFICATE OF INCORPORATION  
OF NETWORK EQUIPMENT TECHNOLOGIES, INC.

NETWORK EQUIPMENT TECHNOLOGIES, INC., a corporation organized and existing under the General Corporation Law of the State of Delaware, hereby certifies as follows:

1. The name of the corporation is NETWORK EQUIPMENT TECHNOLOGIES, INC. The corporation was originally incorporated under the same name, and the original Certificate of Incorporation of the corporation was filed with the Secretary of State of the State of Delaware on October 7, 1986.

2. Pursuant to Sections 245 of the General Corporation Law of the State of Delaware, this Restated Certificate of Incorporation restates and integrates, but does not further amend, the provisions of the Certificate of Incorporation of this corporation as heretofore amended or supplemented, and there is no discrepancy between those provisions and the provisions of this Restated Certificate of Incorporation.

3. The text of the Certificate of Incorporation as heretofore amended or supplemented is hereby restated to read in its entirety as follows:

ARTICLE I

The name of this corporation is NETWORK EQUIPMENT TECHNOLOGIES, INC.

ARTICLE II

The address of the registered office of the corporation in the State of Delaware is 229 South State Street, in the City of Dover, County of Kent. The name of its registered agent at such address is The Prentice-Hall Corporation System, Inc.

ARTICLE III

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

ARTICLE IV

A. Classes of Stock. This corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the corporation is authorized to issue is fifty-five million



(55,000,000) shares. Fifty million (50,000,000) shares shall be Common Stock and five million (5,000,000) shares shall be Preferred Stock. The Common Stock shall have a par value of \$0.01 per share; the Preferred Stock shall have a par value of \$0.01 per share.

B. Rights, Preferences and Restrictions of Preferred Stock. The Preferred Stock authorized by this Certificate of Incorporation may be issued from time to time in series. The rights, preferences, privileges and restrictions granted to and imposed on the Series A Junior Participating Preferred Stock (the "Series A Preferred Stock") are as set forth in this Article IV(B). The number of shares constituting the Series A Preferred Stock shall be Five Hundred Thousand (500,000). Such number of shares may be increased or decreased by resolution of the Board of Directors; provided, that no decrease shall reduce the number of shares of Series A Preferred Stock to a number less than the number of shares then outstanding plus the number of shares reserved for issuance upon the exercise of outstanding options, rights or warrants or upon the conversion of any outstanding securities issued by the corporation convertible into Series A Preferred Stock. Except as otherwise provided in this Certificate of Incorporation, the Board of Directors is hereby authorized to fix or alter the rights, preferences, privileges and restrictions granted to or imposed upon such additional series of Preferred Stock, and the number of shares constituting any such series and the designations thereof, or any of them. In the case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoptions of the resolution originally fixing the number of shares of such series.

#### 1. Dividends and Distributions.

(a) Subject to the rights of the holders of any shares of any series of Preferred Stock (or any similar stock) ranking prior and superior to the Series A Preferred Stock with respect to dividends, the holders of shares of Series A Preferred Stock, in preference to the holders of Common Stock and of any other junior stock, shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the first day of March, June, September and December in each year (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (a) \$1 or (b) subject to the provision for adjustment hereinafter set forth, 100 times the aggregate per share amount of all cash dividends, and 100 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions, other than a dividend payable in

shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock since the immediately preceding Quarterly Dividend Payment Date or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series A Preferred Stock. In the event the corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(b) The corporation shall declare a dividend or distribution on the Series A Preferred Stock as provided in paragraph (a) of this Section 1 immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock); provided that, in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of \$1 per share on the Series A Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

(c) Dividends shall begin to accrue and be cumulative on outstanding shares of Series A Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series A Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series A Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Series A Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be not more than 60 days prior to the date fixed for the payment thereof.

2. Voting Rights. The holders of shares of Series A Preferred Stock shall have the following voting rights:

(a) Subject to the provision for adjustment hereinafter set forth, each share of Series A Preferred Stock shall entitle the holder thereof to 100 votes on all matters submitted to a vote of the stockholders of the corporation. In the event the corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the number of votes per share to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(b) Except as otherwise provided herein, in any other Certificate of Designations creating a series of Preferred Stock or any similar stock, or by law, the holders of shares of Series A Preferred Stock and the holders of shares of Common Stock and any other capital stock of the corporation having general voting rights shall vote together as one class on all matters submitted to a vote of stockholders of the corporation.

(c) Except as set forth herein, or as otherwise provided by law, holders of Series A Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.

### 3. Certain Restrictions.

(a) Whenever quarterly dividends or other dividends or distributions payable on the Series A Preferred Stock as provided in Section 1 of this Article IV(B) are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series A Preferred Stock outstanding shall have been paid in full, the corporation shall not:

(i) declare or pay dividends, or make any other distributions, on any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock;

(ii) declare or pay dividends, or make any other distributions, on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except dividends paid ratably

on the Series A Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock, provided that the corporation may at any time redeem, purchase or otherwise acquire shares of any such junior stock in exchange for shares of any stock of the corporation ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series A Preferred Stock; or

(iv) redeem or purchase or otherwise acquire for consideration any shares of Series A Preferred stock, or any shares of stock ranking on a parity with the Series A Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(b) The corporation shall not permit any subsidiary of the corporation to purchase or otherwise acquire for consideration any shares of stock of the corporation unless the corporation could, under paragraph (a) of this Section 3, purchase or otherwise acquire such shares at such, time and in such manner.

4. Reacquired Shares. Any shares of Series A Preferred Stock purchased or otherwise acquired by the corporation in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock subject to the conditions and restrictions on issuance set forth herein or in any other Certificate of Designations creating a series of Preferred Stock or any similar stock or as otherwise required by law.

5. Liquidation, Dissolution or Winding Up. Upon any liquidation, dissolution or winding up of the corporation, no distribution shall be made (a) to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock unless, prior thereto, the holders of shares of Series A Preferred Stock shall have received \$100 per share, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment, provided that the holders of shares of Series A Preferred Stock shall be entitled to receive an aggregate amount per share, subject to the provision for adjustment hereinafter set forth, equal to 100 times the

aggregate amount to be distributed per share to holders of shares of Common Stock, or (b) to the holders of shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except distributions made ratably on the Series A Preferred Stock and all such parity stock in proportion to the total amounts to which the holders of all such shares are entitled upon such liquidation, dissolution or winding up. In the event the corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the aggregate amount to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event under the proviso in clause (a) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

6. Consolidation, Merger, etc. In case the corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case each share of Series A Preferred Stock shall at the same time be similarly exchanged or changed into an amount per share, subject to the provision for adjustment hereinafter set forth, equal to 100 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged. In the event the corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Series A Preferred Stock shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

7. No Redemption. The shares of Series A Preferred Stock shall not be redeemable.

8. Rank. The Series A Preferred Stock shall rank, with respect to the payment of dividends and the distribution of assets, junior to all series of any other class of the Preferred

Stock.

9. Amendment. This Certificate of Incorporation shall not be amended in any manner which would materially alter or change the powers, preferences or special rights of the Series A Preferred Stock so as to affect them adversely without the affirmative vote of the holders of at least two-thirds of the outstanding shares of Series A Preferred Stock, voting together as a single class.

#### ARTICLE V

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind from time to time any or all of the Bylaws of the corporation; provided, however, any Bylaw amendment adopted by the Board of Directors increasing or reducing the authorized number of directors shall require a resolution adopted by the affirmative vote of not less than two-thirds of the directors. In addition, new Bylaws may be adopted or the Bylaws may be amended or repealed by a vote of not less than two-thirds of the outstanding stock of the corporation entitled to vote thereon unless the Bylaw amendment or repeal has been previously approved by the Board of Directors, in which case the Bylaws may be so amended or repealed by a vote of not less than a majority of the outstanding stock of the corporation entitled to vote thereon.

#### ARTICLE VI

The number of directors of the corporation shall be fixed from time to time by a Bylaw or amendment thereof duly adopted by the Board of Directors. Except as provided by applicable law, the Board of Directors shall have the exclusive power and authority to fill any vacancies or any newly created directorships on the Board of Directors upon a vote of two-thirds of the remaining or existing members of the Board of Directors and the stockholders shall have no right to fill such vacancies, except that in the event a director is removed by the stockholders for cause, the stockholders shall be entitled to fill the vacancy created as a result of such removal. A director appointed by the Board of Directors to fill a vacancy shall serve for the remainder of the term of the vacated directorship he is filling.

The Board of Directors shall be and is divided into three classes, Class I, Class II and Class III. Such classes shall be as nearly equal in number of directors as possible. Each director shall serve for a term ending on the third annual meeting following the annual meeting at which such director was elected; provided however, that the directors first elected to Class I shall serve for a term ending on the annual meeting next following the end of the calendar year 1987, the directors first elected to Class II shall serve for a term ending on the second annual meeting next following the end of the calendar year 1987, and the

directors first elected to Class III shall serve for a term ending on the third annual meeting next following the end of the calendar year 1987. The foregoing notwithstanding, each director shall serve until his successor shall have been duly elected and qualified, unless he shall resign, become disqualified, disabled or shall otherwise be removed.

At each annual election, directors chosen to succeed those whose terms then expire shall be of the same class as the directors they succeed, unless by reason of any intervening changes in the authorized number of directors, the Board shall designate one or more directorships whose term then expires as directorships of another class in order more nearly to achieve equality of number of directors among the classes.

Notwithstanding the rule that the three classes shall be as nearly equal in number of directors as possible, in the event of any change in the authorized number of directors each director then continuing to serve as such shall nevertheless continue as a director of the class of which he is a member until the expiration of his current term, or his prior death, resignation or removal. If any newly created directorship may, consistently with the rule that the three classes shall be as nearly equal in number of directors as possible, be allocated to one of two or more classes, the Board shall allocate it to that of the available classes whose term of office is due to expire at the earliest date following such allocation.

#### ARTICLE VII

Elections of directors need not be by written ballot unless the Bylaws of the corporation shall so provide.

#### ARTICLE VIII

Stockholders of the corporation shall take action by meetings held pursuant to this Certificate of Incorporation and the Bylaws and shall have no right to take any action by written consent without a meeting. Meetings of stockholders may be held within or outside of the State of Delaware, as the Bylaws may provide. The books of the corporation may be kept (subject to any provision contained in the statutes) 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 Bylaws of the corporation.

#### ARTICLE IX

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 Delaware General

Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit. If the Delaware General Corporation Law is hereafter amended to authorize, with the approval of a corporation's stockholders, further reductions in the liability of the corporation's directors for breach of fiduciary duty, then a director of the corporation shall not be liable for any such breach to the fullest extent permitted by the Delaware General Corporation Law as so amended. Any repeal or modification of the foregoing provisions of this Article IX 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.

#### ARTICLE X

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 on stockholders herein are granted subject to this reservation. Notwithstanding the foregoing, the provisions set forth in Articles V, VI and VIII and this Article X may not be repealed or amended in any respect unless such repeal or amendment is approved by the affirmative vote of not less than two-thirds of the total voting power of all outstanding shares of stock in the corporation entitled to vote thereon unless such amendment or repeal has been previously approved by the Board of Directors, in which case these Articles of the Certificate of Incorporation may be so amended or repealed by a vote of not less than a majority of the outstanding stock of the Corporation entitled to vote thereon.

IN WITNESS WHEREOF, this Restated Certificate of Incorporation has been signed by James B. DeGolia, its authorized officer, this 6th day of February 1996.

NETWORK EQUIPMENT TECHNOLOGIES, INC.

By: /s/ James B. DeGolia  
James B. DeGolia  
Vice President and General Counsel