

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Joint Application of)
Computer Network Technology) DOCKET NO. 07-2418-01
Corporation and Bandwidth.com CLEC,) DOCKET NO. 08-2494-01
LLC for Authority to Complete the)
Transfer of the Certificate of Public)
Convenience and Necessity to Provide) REPORT AND ORDER
Competitive Telecommunications) APPROVING TRANSFER OF CONTROL
Services of Computer Network) AND GRANTING CERTIFICATE OF
Technology Corporation to) PUBLIC CONVENIENCE AND
Bandwidth.com CLEC, LLC) NECESSITY
)

SYNOPSIS

The Commission finds the proposed transfer of control of certain assets of Computer Network Technology Corporation (“CNTC”) to Bandwidth.com CLEC, LLC (“Bandwidth”) to be in the public interest and approves the same. By this Order the Commission cancels the Certificate of Public Convenience and Necessity (“Certificate”) issued to CNTC on April 8, 2004, in Docket No. 03-2418-01 and issues a Certificate to Bandwidth, said cancellation and issuance to be effective upon Commission notification of the execution of the Asset Purchase Agreement between Bandwidth and CNTC.

ISSUED: April 3, 2008

By The Commission:

PROCEDURAL HISTORY

On November 14, 2007, Computer Network Technology Corporation (“CNTC”) and Bandwidth.com CLEC, LLC (“Bandwidth”) (hereinafter referred to jointly as “Applicants”) filed a Joint Application pursuant to *Utah Code Ann.* §§ 54-4-28 and -30 seeking Commission approval of a transaction that will result in Bandwidth’s purchase of substantially all of CNTC’s regulated telecommunications services operations, including CNTC’s Utah Certificate of Public

Convenience and Necessity (“Certificate”) issued to CNTC on April 8, 2004, in Docket No. 03-2418-01.

On March 14, 2008, the Division of Public Utilities (“Division”) filed a memorandum of its investigation of the proposed transfer recommending approval of the same. The Division, having reviewed Bandwidth’s qualifications to serve as a competitive local exchange carrier, further recommends the Commission cancel CNTC’s Certificate and issue a new Certificate to Bandwidth, said cancellation and issuance to be effective upon Commission notification of execution of the Asset Purchase Agreement (“Agreement”) between Bandwidth and CNTC.

BACKGROUND AND DISCUSSION

CNTC is a corporation organized under the laws of the state of Minnesota, which operates under the names CNTC and McDATA Services Corporation. CNTC’s business address is 6000 Nathan Lane North, Minneapolis, Minnesota 55442. CNTC became a wholly owned indirect subsidiary of Brocade Communications Systems, Inc. (“Brocade”) in February, 2007 upon completion of the acquisition of CNTC’s corporate parent, McData Corporation. In Utah, CNTC is authorized to provide public telecommunications services pursuant to Certificate granted in Docket No. 03-3218-01. CNTC does not provide any intrastate telecommunications services in Utah. CNTC is authorized to provide intrastate telecommunications services in approximately 42 other states and the District of Columbia. CNTC is also authorized by the Federal Communications Commission (“FCC”) to provide international and domestic interstate telecommunications services as a non-dominant carrier.

Bandwidth is a Delaware limited liability company formed on January 9, 2007. Bandwidth is a subsidiary of Bandwidth.com, Inc., a Delaware S Corporation providing voice and data services. Bandwidth is authorized to provide telecommunications services in the following states: California, Florida, Illinois, Montana, New York, North Carolina, Ohio, and Texas. Bandwidth has pending requests for authority to provide telecommunications services in Georgia, Pennsylvania, and Virginia and is in the process of seeking similar authority in all other states. Bandwidth is also authorized by the FCC to provide international and domestic interstate telecommunications services as a non-dominant carrier.

Through the Agreement, CNTC has agreed to sell to Bandwidth certain assets of CNTC, including certain of CNTC's authorizations to provide intrastate services (the "Transaction"). Following the proposed Transaction, CNTC will not provide intrastate common carrier services in Utah and Bandwidth will replace CNTC as a certificated entity in Utah. Applicants, therefore, request the Commission allow CNTC to transfer its existing Utah Certificate to Bandwidth with the same conditions as previously granted to CNTC. In the event that the Commission determines the Utah Certificate granted to CNTC cannot be transferred to Bandwidth, Applicants request a separate Certificate be granted to Bandwidth and that CNTC's Certificate be cancelled upon notice of the completion of the proposed Transaction.

Applicants state the proposed Transaction will provide Bandwidth a presence in the Utah telecommunications market, thereby making Bandwidth a more viable competitor in all its markets. Furthermore, given that Bandwidth proposes to offer service on the same rates, terms and

conditions as that offered by CNTC, Applicants expect the Transaction to be virtually transparent to consumers and potential customers, except for the name change of the carrier offering service.

The Division notes Bandwidth plans to provide resold and facilities-based local exchange and interexchange telecommunications services to residential and business customers. Local exchange services will be offered in the service territory of Qwest. Interexchange services will be offered throughout the state of Utah. Bandwidth's proposed service offerings will include but are not limited to basic local exchange services, customer calling features and directory assistance. The interexchange services Bandwidth will offer include but are not limited to interlata and intralata toll services. Bandwidth requests the \$100,000 bond requirement be waived because it will not require customer deposits or prepayments of any kind.

The Division concludes Bandwidth has considerable managerial and technical experience in the telecommunications industry. Although Bandwidth has a small negative net worth, the Division believes it has ample working capital to cover its day-to-day operations. In addition, its parent company, Bandwidth.com, Inc., has provided a Letter of Guarantee for the financial obligations of Bandwidth. The Division also notes Bandwidth has sufficient cash flow to meet cash needs and that Bandwidth has no pending complaints or investigations in the areas where it currently operates.

Utah Administrative Code Rule 746-110-1, authorizes the Commission to adjudicate a matter informally under *Utah Code Ann.* § 63-46b-5 when the Commission “determines that the matter can reasonably be expected to be unopposed and uncontested.” We note that in the months since filing of the Joint Application no party has sought intervention in

this matter. We therefore view this matter as unopposed and uncontested and conclude it is in the public interest to proceed informally without hearing. Pursuant to Rule 746-110-2, we conclude good cause exists to waive the 20-day tentative period for an order issued in an informally adjudicated proceeding. Accordingly, this order will become effective on the date of issuance.

Based upon the evidence submitted by Applicant, as well as the Division's recommendation, and pursuant to *Utah Code Ann.* §§ 54-4-28 and -30, we find and conclude that the proposed transfer of control will not harm and can provide benefits to the State of Utah, its citizens, and to Applicant's Utah customers and is in the public interest.

Having approved the proposed Transaction, we therefore determine to cancel the Certificate issued to CNTC in Docket No. 03-2418-01 on April 8, 2004, and consider below whether to grant the requested Certificate to Bandwidth (hereinafter referred to as "Applicant").

FINDINGS OF FACT

1. Applicant is qualified to do business in Utah.
2. Applicant has requested that the Commission grant a Certificate authorizing it to provide public telecommunications services within the State of Utah.
3. Applicant is proposing to provide public telecommunication services in the state of Utah, excluding those exchanges with less than 5,000 access lines that are served by incumbent telephone corporations with fewer than 30,000 access lines in the state.
4. Applicant will utilize its managerial and technical expertise to support its Utah operations.

5. Applicant has sufficient technical resources and abilities to provide the public telecommunications services for which it has applied for a Certificate.

6. Applicant has sufficient managerial resources and abilities to provide the public telecommunications services for which it has applied for a Certificate.

7. Applicant has a secure and sufficient source of funding for its Utah operations that will enable it to meet projected capital and operating expenses and to implement its business plans.

8. Applicant has sufficient financial resources and abilities to provide the public telecommunications services for which it has applied for a Certificate.

9. In its provision of intrastate services, Applicant will be subject to competition from other certified telecommunications services providers.

10. Applicant's service offerings will provide customers with a wider range of choices in meeting their telecommunications needs and will support the development of competition.

11. The issuance of a Certificate to Applicant to provide public telecommunications services is in the public interest.

12. The reporting requirements in Exhibit B attached hereto are in the public interest and are binding upon Applicant until modified by the Commission.

13. Applicant has applied for exemptions from the requirements of various procedures of the Utah Code and the Commission's Rules and Regulations.

14. The grant of exemptions from the provisions of the Utah Code and the Commission's Rules and Regulations, as set forth in Exhibit B, is in accord with Commission practice and is in the public interest.

15. Applicant does not propose to take customer deposits nor provide pre-paid services.

CONCLUSIONS OF LAW

1. Applicant meets each of the statutory requirements §54-8b-2.1, *et. seq.* UCA 1953, as amended) for issuance of a Certificate as a telecommunications corporation.

2. Applicant meets each of the statutory requirements §54-8b-2.1, *et. seq.*, UCA 1953, as amended) for authorization to provide the public telecommunications services for which it seeks a Certificate.

3. The issuance of a Certificate to Applicant to provide the telecommunications services for which it has applied is in accord with the legislative policy declarations set forth in Utah Code §54-8b-1.1.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. This matter be, and it is, converted to an informal proceeding pursuant to §63-46b-4(3), UCA 1953, as amended.

2. The proposed transfer of control of certain assets of Computer Network Technology Corporation to Bandwidth.com CLEC, LLC is approved.

3. The approval granted herein is effective as of the date of this Order.

4. The Certificate of Public Convenience and Necessity issued to Computer Network Technology Corporation on April 8, 2004, in Docket No. 03-2418-01 is cancelled, effective as of the date of notification of the Commission by Bandwidth.com CLEC, LLC of the execution of the Asset Purchase Agreement described above.

5. The Commission grants Bandwidth.com CLEC, LLC the Certificate attached hereto as Exhibit A and, by this reference, made part of this Report and Order, effective as of the date of notification of the Commission by Bandwidth.com CLEC, LLC of the execution of the Asset Purchase Agreement described above.

6. Bandwidth.com CLEC, LLC shall provide reports to the Commission and to the Division of Public Utilities, Utah Department of Commerce, as set forth in Exhibit B and, by this reference, made part of this Report and Order.

7. Bandwidth.com CLEC, LLC is exempt from certain provisions of the Utah Code and the Commission's Rules and Regulations, as set forth in Exhibit B.

8. As Bandwidth.com CLEC, LLC does not propose to take customer deposits nor provide pre-paid services, the Commission's bond requirement is waived.

Pursuant to Utah Code §§63-46b-12 and 54-7-15, agency review or rehearing of this order may be obtained by filing a request for review or rehearing with the Commission within 30 days after the effective date of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the

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Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code §§63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 3rd day of April, 2008.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#56801 Docket No. 07-2418-01
G#56803 Docket No. 08-2494-01

EXHIBIT A

In the Matter of the Joint Application of)
Computer Network Technology)
Corporation and Bandwidth.com CLEC,)
LLC for Authority to Complete the)
Transfer of the Certificate of Public)
Convenience and Necessity to Provide)
Competitive Telecommunications)
Services of Computer Network)
Technology Corporation to)
Bandwidth.com CLEC, LLC)

DOCKET NO. 08-2494-01

CERTIFICATE

ISSUED: April 3, 2008

By the Commission:

The Public Service Commission of Utah, pursuant to the Utah Code Ann. §54-8b-2.1, *et. seq.*, hereby issues a Certificate of Public Convenience and Necessity authorizing Bandwidth.com CLEC, LLC (“Grantee”) to provide public telecommunications services within the State of Utah, excluding those local exchanges of less than 5,000 access lines of incumbent telephone corporations with fewer than 30,000 access lines in the state.

DATED at Salt Lake City, Utah, this 3rd day of April, 2008.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

EXHIBIT B

I. Annual Report

Grantee shall file an Annual Report, on or before March 31 of each year, unless said grantee requests and obtains an extension. The Annual Report shall contain the following:

A. **Annual Revenues** from operations attributable to the State of Utah by major service categories. Such information would be provided on a "Total Utah" and "Utah Intrastate" basis. "Total Utah" will consist of the total of interstate and intrastate revenues. "Utah Intrastate" will reflect only revenues derived from intrastate tariffs, price lists, or contracts. Both Total Utah and Intrastate Utah revenues shall be reported according to at least the following classes of service:

- (1) private line and special access,
- (2) business local exchange,
- (3) residential local exchange,
- (4) measured interexchange, and
- (5) vertical services.

Business local exchange, residential local exchange and vertical service revenue will be reported by geographic area, to the extent feasible.

B. **Annual Expenses and Estimated Taxes** attributed to operations in the State of Utah.

C. **Year End Balances by Account for Property, Plant, Equipment, Annual**

Depreciation, and Accumulated Depreciation for telecommunications investment in Utah.

The Actual Depreciation Rates which were applied in developing annual and accumulated depreciation figures shall also be shown.

D. **Financial Statements** maintained in accordance with generally accepted accounting principles in the ordinary course of business. These financial statements shall at a minimum include an income statement, balance sheet and statement of cash flows.

E. **List of Services** offered to customers and the geographic areas in which those services are offered. This list shall be current and shall be updated whenever a new service is offered or a new area is served.

F. **Number of Access Lines in Service** by geographic area, segregated between business and residential customers.

G. **Number of Messages and Minutes of Services** for measured services billed to end users.

H. **List of Officers and Responsible Contact Personnel** updated annually.

I. **Chart of Accounts.** In addition to the foregoing, said grantee will provide its chart of accounts as existing and updated (no less than annually). Said Grantee will also work with the Division in good faith to develop a method of estimating intrastate expenses and investments.

II. Applicable Statutory Provisions and Exemptions from Statutes and Waiver of Regulations.

Grantee shall be exempted from the following statutory provisions and regulations:

A. Exemptions from Title 54

54-3-8, 54-3-19	--	Prohibitions of discrimination
54-7-12	--	Rate increases or decreases
54-4-21	--	Establishment of property values
54-4-24	--	Depreciation rates
54-4-26	--	Approval of expenditures

B. Waivers of Regulations

R746-340-2(D)	--	Uniform System of Accounts (47 C.F.R. 32)
R746-340-2(E)(1)	--	Tariff filings required
R746-340-2(E)(2)	--	Exchange Maps
R746-341	--	Lifeline ¹
R746-344	--	Rate case filing requirements
R746-401	--	Reporting of construction, acquisition and disposition of assets
R746-405	--	Tariff formats
R746-600	--	Accounting for post-retirement benefits

¹This regulation would be waived only until the Commission establishes Lifeline rules that may include Grantee or until it begins to provide residential local exchange service.

III. Obligations with Respect to Provision of Services.

Grantee agrees to provide service within specified geographic areas upon reasonable request and subject to the following conditions:

A. Grantee's obligation to furnish service to customers is dependent upon the availability of suitable facilities on its own network and the networks of underlying carriers. Grantee will provide a map identifying the areas within the state of Utah where it is offering any services. The map will be updated as Grantee serves new areas and no less frequently than annually.

B. Grantee will only be responsible for the operation and maintenance of services that it provides.

IV. Modification

It is anticipated that to the extent such requirements impact competitive entry or impact effective competition that they will be subject to the rule making requirements of the Utah Code Ann. § 54-8b-2.2 and that the provisions set forth herein shall be superseded by any such rule adopted by the Commission.