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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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| <p>In the Matter of the Joint Application of Broadweave Networks, Inc. and Veracity Communications, Inc. for Approval of a Transaction to Combine the Companies in Veracity Networks LLC</p> | <p><u>DOCKET NO. 09-2410-01</u><br/>and<br/><u>DOCKET NO. 09-2461-01</u></p> |
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JOINT APPLICATION

## **JOINT APPLICATION**

### **A. Introduction**

1. On June 2, 2008, Broadweave Networks, Inc. (“Broadweave”) and Veracity Communications, Inc. (“Veracity”), the Joint Applicants in this proceeding, requested that the Public Service Commission (“Commission”) approve the merger of Joint Applicants in Docket Nos. 08-2410-01 and 08-2461-01. On June 30, 2008, the Commission approved the proposed merger.

2. Following issuance of the June 30, 2008 approval order, Joint Applicants engaged in further discussion and decided not to consummate the merger they presented to the Commission. Joint Applicants have now re-negotiated the terms of their proposed business combination and have reached an agreement in which the assets and liabilities of Broadweave and Veracity will be combined in a new company named Veracity Networks, LLC (“Veracity Networks”) a Delaware limited liability company. Broadweave and Veracity will each own 50 percent of Veracity Networks. This transaction is described in greater detail below.

3. Joint Applicants seek approval of this application under Utah Code Ann. §§ 54-4-28, 54-4-29 or 54-4-30 and Utah Admin. Code § R746-349-7 to the extent that such approval is necessary and in accordance therewith state as follows:

- a. Joint Applicants are not Incumbent Local Exchange Carriers (ILECs);
- b. No filings are required by the Federal Communications Commission or other state utility regulatory agency in connection with this transaction;
- c. No federal agency or other state utility regulatory agency is reviewing this transaction; and,

- d. Joint Applicants and the transaction for which they seek approval are described below.

**B. Applicants**

4. Broadweave is a Utah corporation in good standing with its principal place of business at 744 North 300 West, Provo, Utah. Broadweave Networks of Utah, LLC (“Broadweave Utah”) has operated as a subsidiary of Broadweave and was authorized by the Commission to provide public telecommunications services within the State of Utah, excluding those local exchanges with fewer than 5,000 access lines owned by incumbent telephone corporations with fewer than 30,000 access lines on September 29, 2003 in Docket No. 03-2410-01. Broadweave Utah has been serving primarily residential customers in Qwest service territory and acquired the iProvo network from the city of Provo.

5. Veracity is a Utah corporation in good standing with its principal place of business at 379 N. University Avenue, Suite 301, Provo, Utah. The Commission authorized Veracity 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 on September 21, 2005 in Docket No. 05-2461-01. Veracity has been serving primarily business and commercial customers in Utah and Salt Lake Counties and on the iProvo network in Provo.

6. Broadweave Utah and Veracity are Competitive Local Exchange Carriers (“CLECs”).

**C. Description of Transaction (Diagram Attached as an Exhibit)**

7. Pursuant to a Master Contribution Agreement Joint Applicants have executed, Joint Applicants will complete the proposed transaction in two steps. First, Broadweave has organized Veracity Networks, and with the exception of certain debts, will contribute all of

Broadweave's assets and liabilities, including interests in Broadweave's subsidiaries, to Veracity Networks in exchange for all of the member interests of Veracity Networks.

8. Second, Veracity will organize V-Opco, LLC ("V-Opco") and will contribute all of its assets and liabilities to V-Opco in exchange for all of the member interests in V-Opco. Veracity will initially use V-Opco to distinguish Veracity's contributed assets from Broadweave's contributed assets which are subject to security agreements from Broadweave's acquisition of iProvo. Veracity will then contribute its member interests in V-Opco to Veracity Networks in exchange for 50 percent of the total issued and outstanding units of member interests in Veracity Networks and certain cash payments made over a period of 40 months. Veracity Networks will be the sole member and parent of V-Opco and Broadweave and Veracity will each have a 50 percent interest in Veracity Networks.

9. Once the transaction is closed, Joint Applicants will share equal voting rights in Veracity Networks and each will have to give separate approval of any material acquisition, liquidation, or sale of Veracity Networks and any assumption of significant debt. Veracity Networks, with the Commission's approval, will assume Veracity's certificate of public convenience and necessity and will be the retail service provider serving customers.

**D. Management**

10. Joint Applicants will continue to exist as members of Veracity Networks. In March 2009, Stephen T. Christensen left Broadweave. He was serving as Chief Executive Officer and was replaced by David Moon. The management of Veracity Networks will be a combination of Joint Applicants' management. Drew Peterson, currently Chief Executive Officer of Veracity, will be Chief Executive Officer of Veracity Networks. Scott Nelson, currently President and Chief Operating Officer of Broadweave, will take the same positions in

Veracity Networks. Formerly, Mr. Nelson was Vice President for the West Region at XO Communications. Veracity Networks' Board of Managers will be comprised of three members from Broadweave, three members from Veracity, and one jointly selected by Broadweave and Veracity. Initially, the three Board members from Broadweave will be David Moon, Lane Critchfield, and Robert Frankenberg. The three Board members from Veracity will be Drew Peterson, Kevin Mayberry, and Tyler Whitehead. The seventh member has not yet been selected.

11. The management and the Board of Veracity Networks have many years of experience owning and operating telecommunications corporations. The combination of Joint Applicants will enhance the managerial and technical expertise of Veracity Networks to provide existing and new services to all of its customers after the Commission approves the transaction. Veracity Networks will be able to draw on the talents, experience, and expertise of both companies.

**E. Public Interest**

12. The combination of the Broadweave and Veracity in Veracity Networks will serve the public interest. This proposed transaction responds to marketplace changes by bringing together two Utah companies with complementary strengths to serve their customers better. Currently, as stated above, Broadweave primarily serves residential customers and Veracity primarily serves business customers. Together, Broadweave and Veracity will be poised to deliver more innovative products and services to both residential and business customers, and to accelerate the deployment of advanced, Internet Protocol ("IP") networks and services more broadly, than either company would provide on a stand-alone basis. The combined companies will be financially strong and able to meet the needs of all its customers.

13. The combination in Veracity Networks will increase incentives for investment in innovation. As a result, residential and small business customers should enjoy greater capabilities more quickly than might otherwise only be available to large business and government customers. The combined company will offer a broader array of services to a broader spectrum of customers than either company would on its own.

**F. Competition and Benefits of the Transaction**

14. In addition to the other public interest benefits Veracity Networks creates, it will not reduce competition. As stated above, the operations of the two companies have largely been complementary. The two companies have not been competing with one another because they have been serving two different customer markets. By pairing the complementary strengths of the two companies, the customers of each company will get all of the benefits and services of both companies.

15. One service the combined companies will provide is Voice over Internet Protocol (“VoIP”). Increasingly the competition for VoIP customers is coming from cable operators offering VoIP and other IP-based services, other VoIP providers, and wireless carriers, in addition to traditional competitors such as ILECs and CLECs. Veracity Networks will have no adverse effect on competition in this market, but will instead provide a stronger competitor in the market prepared to provide advanced services to both residential and business customers.

16. The proposed combination of Veracity and Broadweave will not adversely affect the quality of the service currently offered by the two companies. Nor will the combination affect the rates, terms, or conditions of service that these companies currently provide to their customers. In that respect, with the exception of the change in names for Joint Applicants’

customers, the combination in Veracity Networks should be virtually transparent to the customers of both companies.

17. The transaction will also position the combined companies for growth, which in time could produce additional jobs in the local economy.

18. As a result of the transaction and the synergies that will come from it, Veracity Networks will continue to expand its community involvement and good corporate citizenship. Combining the assets of the two companies will strengthen Veracity Networks' financial capability and will provide an even stronger competitor in the market. As part of the transaction, Broadweave has restructured its payments to Provo City for the note that Broadweave delivered to Provo City as part of Broadweave's purchase of iProvo. This restructuring will allow Broadweave to pay Provo City smaller amounts for approximately 18 months to help facilitate the combination of Joint Applicants. The combination of Joint Applicants will improve Veracity Networks' access to capital at favorable rates and the synergies created by this transaction will reduce costs, increase productivity, and augment revenues to the company. Veracity Networks will continue to have the financial resources to provide the services for which Joint Applicants have been certificated and will provide more detailed financial information following the issuance of a protective order if the Commission requires it to approve this transaction.

**G. Commission Jurisdiction**

19. After execution of the transaction, the Commission will retain the same regulatory authority that it possesses today over Joint Applicants that have been providing service in Utah since 2003 as a certificated competitive local exchange carrier. Under the Commission's jurisdictional statute Commission approval is required if (1) a public utility combines, merges, or consolidates "...with another public utility engaged in the same general line of business in this

state” (Utah Code Ann. § 54-4-28); (2) a public utility purchases or otherwise acquires “...the voting securities or the secured obligations of any other public utility engaged in the same general line of business” (Utah Code Ann. § 54-4-29); or (3) a public utility acquires “...the plants, facilities, equipment or properties of any other public utility engaged in the same general line of business in this state” (Utah Code Ann. § 54-4-30).<sup>1</sup> Approval is granted “only after investigation and hearing and finding that such proposed merger, consolidation or combination is in the public interest.” Utah Code Ann. § 54-4-28. *See also* Utah Code Ann. §§ 54-4-29, 54-4-30. Based on the cited statutes, the Commission has jurisdiction to approve the proposed transaction.

**H. Designated Contacts**

20. The designated contacts for this Joint Application are as follows:

a. **Counsel for Joint Applicants**

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b. **Broadweave Networks, Inc.**

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<sup>1</sup>*See also*, Utah Admin. Code R746-401-3(B): Each public utility shall file with the Commission, at least 30 days before it is being consummated, a report of the sale, transfer or other disposition by that utility of utility assets having a book cost allocated to Utah in excess of the lesser of ten million dollars or five percent of gross investment in utility plant devoted to Utah service at the latest balance sheet date as set forth in its most recent annual report on file with the Commission.

c. **Veracity Communications, Inc.**

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**I. Conclusion**

21. Wherefore, based on the foregoing, Joint Applicants respectfully request that the Commission find the combination of the two companies as joint members and owners of Veracity Networks to be in the public interest, allow Veracity Networks to assume and operate under Veracity's certificate of public convenience and necessity, and approve this Joint Application pursuant to Utah Admin. Code § R746-349-7. Joint Applicants also request that the Commission waive the anti-slamming requirements in Utah Code Ann. § 54-8b-18 and Utah Admin. Code § R746-349-5, and the 20-day tentative period if Utah Admin. Code § R746-110-2 is deemed to apply to this proceeding.

Respectfully submitted this 21<sup>st</sup> day of October, 2009

Callister Nebeker & McCullough

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Stephen F. Mecham

## **Public Notice of Application**

The Public Service Commission gives notice that Broadweave Networks, Inc. and Veracity Communications, Inc. have filed a joint application seeking Commission approval of a transaction in which the two companies will combine to own and operate Veracity Networks LLC. Any interested party may submit comments on the application to the Commission within 14 days of this notice and may submit reply comments within 21 days of this notice. In accordance with Utah Admin. Code § R746-349-7, the Commission will hold a hearing on this application on Tuesday, November 17, 2009 at 9:30 a.m. in Room 451 on the fourth floor of the Heber M. Wells Building, 160 East 300 South, Salt Lake City, Utah. In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during the hearing should notify the Commission, at 160 East 300 South, Salt Lake City, Utah, 84111, (801) 530-6716, at least three working days prior to the hearing.